

DATE: November 7, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of Full
Third Sunset Review of the Antidumping Duty Order on Fresh and
Chilled Atlantic Salmon from Norway

Summary

On July 29, 2011, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the full third sunset review of the antidumping (AD) order on Fresh and Chilled Atlantic Salmon (FAS) from Norway. See Fresh and Chilled Atlantic Salmon From Norway: Preliminary Results of Full Third Sunset Review of Antidumping Duty Order, 76 FR 45513 (July 29, 2011) (Preliminary Results) and accompanying Issues and Decision Memorandum (Preliminary Decision Memorandum). We preliminarily found that dumping was likely to continue or recur at the following weighted-average margins:

| Manufacturer/Exporter | Margin (Percent) |
|------------------------------|-------------------------|
| Salmonor A/S | 18.39 |
| Sea Star International A/S | 24.61 |
| Skaarfish Mowi A/S | 15.65 |
| Fremstad Group A/S | 21.51 |
| Domstein and Co. | 31.81 |
| Saga A/S | 26.55 |
| Chr. Bjelland Seafood A/S | 19.96 |
| Hallvard Leroy A/S | 31.81 |
| All Others | 23.80 |

See Preliminary Results, 76 FR at 45514.

We invited parties to comment on the Preliminary Results and received a case brief from the Government of Norway (GON) and a rebuttal brief from Phoenix Salmon U.S., Inc. (Phoenix Salmon), the domestic interested party (a.k.a. Petitioner). We have analyzed those comments, which are summarized below. We recommend that you approve the positions, which we have

developed in the “Discussion of Issues” section. The issues addressed in the final results are:

Comment 1: Whether the Department’s Prior Dumping Calculations Are Obsolete and Unsuitable for Use in Determining Likelihood

Comment 2: Whether the Department Should Recalculate Prior Dumping Margins Without Regard to the “Zeroing” Methodology When Determining Likelihood

Comment 3: Whether the Department Improperly Rejected Price, Cost, and Profitability Data When Examining Whether “Good Cause” Exists to Consider “Other Factors” as Part of the Likelihood Determination

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:¹

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
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,² 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 to 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) and accompanying Issues and Decision 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.

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

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

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 GON, Norwegian Seafood Federation (NSF) and Aquaculture Division of the Norwegian Seafood Association (ADNSA) submitted their letters of appearance.³ On January 18, 2011, Phoenix Salmon,⁴ 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, 2011.⁵

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 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.⁶ 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.⁷ On February 25, 2011, the GON submitted a rebuttal to Phoenix Salmon’s surrebuttal responding to the company’s claims that NSF and ADNSA were not interested parties and that the respondents’ joint response was incomplete.⁸

On March 3, 2011, counsel for Phoenix Salmon met with Department officials about the interested party status of NSF and ADNSA.⁹ 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.¹⁰ On March 11, 2011, NSF and ADNSA submitted annotated membership lists, which identify the members of each association that are producers or

³ All public documents and public versions of proprietary documents with regard to this third full sunset review filed after August 5, 2011, are available via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building.

⁴ 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.

⁵ 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).

⁶ See Phoenix Salmon’s “Rebuttal Comments to Respondents’ Joint Substantive Response” (February 14, 2011) at 2.

⁷ Id. at 6-8.

⁸ The GON’s surrebuttal is immaterial to the Department’s analysis, given the Department’s request for additional information on March 4, 2011, regarding NSF’s and ADNSA’s membership and the Department’s subsequent finding that the trade associations have standing as interested parties under section 771(9)(A) of the Act.

⁹ 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).

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

exporters of subject merchandise.¹¹ 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 Issues:

Comment 1: Whether the Department’s Prior Dumping Calculations Are Obsolete and Unsuitable for Use in Determining Likelihood

Citing to section 752(c)(2) of the Act, the GON argues that the Department is authorized to consider “other factors” where “good cause” is shown rather than rely solely on the two statutory criteria: (1) the previously-calculated dumping margins; and (2) the volume of imports of subject merchandise since the order was issued. The GON asserts that it presented compelling evidence that “good cause” exists to consider “other factors.” The GON contends that the Department incorrectly disregarded the argument that the obsolescence of the non-contemporaneous dumping margins calculated in the original investigation constitutes “good cause.” The GON argues that the Department simply cannot make a likelihood determination of dumping for current fresh and chilled Atlantic salmon exporters based on the pricing behavior of exporters that no longer exist.

Petitioner takes issue with the GON’s claims that all of the original exporting companies “no longer exist.” Citing to business proprietary information contained in the Norwegian parties’ prior submission, Petitioner claims that exporters that received company-specific dumping margins in the investigation continue to exist today. See the NSF/ADNSA March 11, 2011, submission at Attachment A. Petitioner further argues that the GON failed to mention that some of the original exporting companies have either been acquired by or merged with other entities. See the GON, NSF/ADNSA Substantive Response at 14 – 15, which indicates that Kinn Salmon AS was found to be the successor-in-interest to the original exporter Skaarfish Group A/S. On this point, Petitioner further notes that the Department has previously held that “neither privatization nor other changes in ownership result in the removal of a producer of subject

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

merchandise from being subject to an existing order unless that company was found to be a successor-in-interest to an already revoked company. See, e.g., Solid Urea from the Russian Federation; Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 70 FR 24528 (May 10, 2005) and accompanying Issues and Decision Memorandum at “Likelihood of Continuation or Recurrence of Dumping.” Thus, Petitioner contends that absent an administrative review, the Department cannot assume that any of the Norwegian exporters did not dump.

Petitioner argues that the GON’s claims would be unfounded even if none of the original exporting companies were in existence today. Petitioner asserts that the Department’s sunset analysis does not involve an inquiry as to whether all of the original exporters continue to exist at the time of the sunset review, and argues that the GON has not provided any legal support to conclude otherwise. Rather, contends Petitioner, the Department has consistently held that the dumping margins calculated in the proceeding are presumed to be correct until there is a final judgment invalidating previously calculated margins. See, e.g., Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of the Five-Year (“Sunset”) Review of the Antidumping Duty Order, 76 FR 25668 (May 5, 2011) and accompanying Issues and Decision Memorandum (Sheet and Strip from Mexico Decision Memorandum) at “Dumping Continued at Any Level Above De Minimis After the Issuance of the Order.” Petitioner also argues that the GON’s claims ignore the all others rate, which applies to numerous other exporters not individually examined at the time of the investigation but continue to exist today.

Lastly, Petitioner argues that the margins calculated in the investigation, irrespective of the passage of time, are the most probative because those margins represent the last level at which the Norwegian producers/exporters shipped subject merchandise to the United States without the price disciplining effect of the order.

Department’s Position: We disagree with the GON’s arguments concerning the contemporaneity of the previously-calculated dumping margins for the same reasons presented by the Department in the Preliminary Results. As we stated in the Preliminary Results, “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.” See Preliminary Decision Memorandum at 11.

We have concluded that there is not “good cause” in this case to consider the additional information argued by GON. In determining the likelihood of dumping, the statute directs the Department to consider previously-calculated dumping margins and the volume of imports of subject merchandise since the imposition of the order. See section 752(c) (1) of the Act. Importantly, the Act does not direct the Department to apply a statute of limitations after which facts concerning previously-calculated dumping margins no longer apply. The Department’s practice reflects the express requirements of the statute:

The Department’s practice is to recognize that the existence of a margin at any level above de minimis over the five year review period indicates there is still a likelihood of continued or recurred dumping. . . pursuant to the antidumping statute and the Department’s regulations, the Department must consider dumping margins that were

calculated and published by the Department. Such margins are above de minimis, and support the Department's determination that dumping is likely to continue or recur if the order is revoked.

See Sheet and Strip from Mexico Decision Memorandum at "Dumping Continued at Any Level Above De Minimis After the Issuance of the Order." The Department's regulations go on to state that:

Even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations...

See 19 CFR 351.218.

Section 752(c) (2) of the Act provides that the Department "shall consider" "other factors" than those listed in section 752(c) (1) of the Act only if "good cause is shown." Under 19 CFR 351.218(e)(2)(iii), the Department "will consider other factors" under section 752(c)(2) of the Act only if it "determines that "good cause" to consider such factors exists." We have concluded that no such good cause exists in this case, because the previously-calculated dumping margins and the volume of imports of subject merchandise since the imposition of the order satisfy the statutory test for determining if the likelihood of the continuation of dumping would exist absent the existence of the antidumping order.

Accordingly, for the reasons stated above and in the Preliminary Decision Memorandum, we find that the arguments of the GON do not constitute the "extraordinary circumstances" cited under 19 CFR 351.218. Further, contrary to the GON's claims, there are Norwegian exporters of subject merchandise that received company-specific dumping margins that continue to exist today. See the NSF/ADNSA March 11, 2011, submission at Attachment A. Thus, in accordance with the statute and regulations, we have continued to rely upon previously calculated dumping margins when making our likelihood determination.

Comment 2: Whether the Department Should Recalculate Prior Dumping Margins Without Regard to the "Zeroing" Methodology When Determining Likelihood

The GON argues that the Department improperly avoided recalculating previous dumping margins without regard to the Department's zeroing methodology. The GON argues that recalculating previously dumping margins without regard to the zero methodology would have compelled the Department to find that "good cause" exists to consider "other factors." According to the GON, the Department based its refusal to do so on its view that, when "determining the margin likely to prevail in a sunset review," it has never recalculated dumping margins in order to eliminate the impact that zeroing had in original investigations, and thus there is no reason to implement such a recalculation in the current case. See Preliminary Decision Memorandum at 10. However, the GON argues this reasoning ignores the fact that the GON is not advocating the recalculation of dumping margins in order to eliminate the impact that zeroing had in the original investigation. Rather, argues the GON, the Department's announced intention to abide by a World Trade Organization (WTO) decision barring the

practice of zeroing is, itself, “good cause” to consider factors other than previously calculated dumping margins that utilized the zeroing methodology.¹²

Petitioner asserts that, by arguing that the Department’s purported change of position regarding the impact of zeroing in sunset reviews is by itself “good cause,” the GON would have the Department speculate on what the impact on the dumping margins would be in this sunset review. Petitioner notes that the Department has previously rejected this line of reasoning. See, e.g., Stainless Steel Sheet and Strip in Coils From Italy: Final Results of the Full Five-Year (“Sunset”) Review of the Antidumping Duty Order, 76 FR 25670 (April 28, 2011) (Sheet and Strip from Italy Final Sunset Review) and accompanying Issues and Decision Memorandum at “At Likelihood of the Continuation of Dumping.” Rather, Petitioner asserts that the statute directs the Department to rely on actual dumping margins calculated in the investigation and subsequent reviews. See section 752(c)(1) of the Act.

Petitioner also argues that the Department’s proposal before the WTO with respect to the use of zeroing in sunset reviews has not been finalized or implemented. As a result, argues Petitioner, the ultimate impact of the Department’s actions on the zeroing issue is, at this point, wholly speculative.

Department’s Position: We do not find that the Department should modify its analysis of this sunset review as argued by GON. As we have explained in past sunset review determinations the Department does not recalculate antidumping duty margins calculated in less than fair value investigations or administrative reviews in sunset reviews.

In the Preliminary Results the Department cited to 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 at Comment 4, for this proposition:

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 . . . 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.

See Preliminary Decision Memorandum at 9 – 10. See also 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 at Comment 4, unchanged in Sheet and Strip from Italy Final Sunset Review and ; Sheet and Strip from Mexico Decision Memorandum at Comment 2.

¹² See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010).

None of the Section 129 determinations in which the Department has modified its calculations for less than fair value investigations has pertained to sunset review proceedings. 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).

Further the Department's proposal with respect to the use of zeroing has not been finalized, and more importantly has not been implemented. The Department's recent proposal under section 123 does not establish that the final results of prior reviews are unlawful under the U.S. law. To the contrary, the Department made a proposal to modify its practice pursuant to the express statutory scheme for responding to WTO reports. Section 123 provides that no regulation or practice may be amended, rescinded or otherwise modified unless, and until, the final rule or other modification has been published in the Federal Register. See 19 U.S.C. 3533(g)(1)(F). No such final rule or modification was published in the Federal Register. The Department emphasized this point recently in Brass Sheet and Strip From Germany: Preliminary Results of the Third Five-Year ("Sunset") Review of the Antidumping Duty Order, 76 FR 59386 (September 26, 2011) and accompanying Issues and Decisions Memorandum at Comment 2 (Brass Sheet and Strip from Germany Sunset Review):

Section 123 of the {Uruguay Round Agreements Act} mandates a number of steps must be fulfilled before the Department is permitted to modify its methodology in response to an adverse WTO report. Those steps have yet to be completed with respect to the December 28 proposal. The Department finds that any presumption that eliminating zeroing would eliminate respondent interested parties' dumping margins is entirely speculative at this time.

The Department's analysis in Brass Sheet and Strip from Germany Sunset Review applies equally in this case. WTO panel decisions are not self-executing. See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 69 FR 68309 (November 24, 2004) (in which Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change.") (citing the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, at 659). Furthermore, numerous decisions made by the U.S. courts have consistently upheld the application of zeroing in administrative reviews as permissible under U.S. law.¹³

¹³ See, e.g., SKF USA Inc. v. United States, 630 F.3d 1365 (CAFC 2011); Andaman Seafood Co. v. United States, 2010 Ct. Int'l Trade LEXIS 10, Slip. Op. 2010-12 (Ct. Int'l Trade Feb. 2, 2010); SKF USA Inc. v. United States, 2009 WL 4931671 (Ct. Int'l Trade Dec. 21, 2009); JTEKT Corp. v. United States, 2009 WL 4897287 (Ct. Int'l Trade Dec. 18, 2009); SKF USA Inc. v. United States, 659 F. Supp. 2d 1338, 1346-47 (Ct. Int'l Trade 2009); Union Steel v. United States, 645 F. Supp. 2d 1298, 1305-09 (Ct. Int'l Trade 2009); Fujian Lianfu Forestry Co., Ltd. v. United States, 2009 Ct. Intl. Trade LEXIS 92, at *74-78 (Ct. Int'l Trade August 10, 2009); SKF USA Inc. v. United States, 611 F. Supp. 2d 1351, 1360 (Ct. Int'l Trade 2009); NMB Singapore Ltd. v. United States, 533 F. Supp. 2d 1244 (Ct. Int'l Trade 2007); Corus Staal BV v. United States, 2009 Ct. Int'l Trade LEXIS 14, at *1 (Ct. Int'l Trade March 24, 2009); Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1343-44 (Ct. Int'l Trade 2007); Corus Staal BV

Moreover, the Department's regulations specify that "even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a...dumping margin other than those it calculated and published in its prior determinations."¹⁴ In each administrative review, the Norwegian parties' dumping margins were above de minimis. The Department does not find in this case that there are extraordinary circumstances that would warrant the Department to disregard prior calculated and published margins. Therefore, we disagree that there is any cause to consider modifying the Department's calculations in the manner argued by the GON.

Comment 3: Whether the Department Improperly Rejected Price, Cost, and Profitability Data When Examining Whether "Good Cause" Exists to Consider "Other Factors" as Part of the Likelihood Determination

The GON contends that in determining that "good cause" does not exist to consider "other factors," the Department improperly rejected price, cost, and profitability data submitted by the Norwegian parties. The GON argues that rather than address the merits of the data, the Department simply dismissed the evidence by stating that it "does not calculate antidumping margins for the first time in sunset reviews." See Preliminary Decision Memorandum at 11. The GON asserts that the aggregate price, cost, and profitability data are sufficient to demonstrate that "good cause" exists to consider "other factors" because they constitute evidence that in recent years the Norwegian FAS industry has not behaved like the exporters involved in the original investigation and that dumping will not recur if the order is revoked.

In its substantive response, the GON presented six factors it claimed constituted "good cause" for examining "other factors:" (i) the obsolescence of the antidumping order and the margins calculated in the original investigation; (ii) recent developments in the Department's position on zeroing; (iii) the increasing average Norwegian export prices to the United States; (iv) the fact that the increasing prices have consistently exceeded costs of production of Norwegian fresh, whole and Atlantic salmon; (v) the resulting increase in profitability of the Norwegian fresh, whole and Atlantic salmon industry; and (vi) the estimated average dumping margins calculated by the Norwegian parties, which, using a variety of sources for normal value, have been consistently negative over the past three years. It asserts that these factors also serve as "other factors" because they demonstrate that the Norwegian exporters of fresh and chilled Atlantic salmon that exist today behave differently from those that existed at the time of the investigation. The GON asserts that if the Department were to examine, rather than dismiss, the information presented by the GON, it would conclude that dumping will not recur if the order is revoked. The GON contends this is particularly true with regard to the last factor, the estimated dumping margins calculated by the Norwegian parties. The GON states that the Norwegian parties corroborated this evidence by providing several methods of calculating dumping margins, all of which supported the conclusion that no dumping margin has occurred for at least three years.

v. United States, 493 F. Supp. 2d 1276, 1288 (Ct. Int'l Trade 2007); *SKF USA Inc. v. United States*, 491 F. Supp. 2d 1354, 1365-66 (Ct. Int'l Trade 2007); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1315-16 (Ct. Int'l Trade 2006).

¹⁴ See 19 CFR 351.218(e)(2)(i).

Petitioner argues that the GON's comments mischaracterize the Department's approach in the Preliminary Results. According to Petitioner, the Department declined to consider the Norwegian parties' data because they did not demonstrate "how purported, aggregate trends in unit prices, costs, and profitability in the Norwegian Salmon industry . . . demonstrate that the recurrence of dumping is not likely. See Preliminary Decision Memorandum at 11.

In addition, Petitioner contends that the data supplied by the Norwegian parties are not suitable because the data are in the aggregate and, as a result, one cannot assume that the trends in the data apply equally to all Norwegian producers. Petitioner notes that, in this regard, the Department highlighted the importance of company-specific data when making likelihood determinations. See Preliminary Decision Memorandum at 12. Petitioner contends that the data submitted by the Norwegian parties are instead more suitable for review as part of the sunset analysis conducted by the U.S. International Trade Commission (ITC).

Department's Position: As noted above, section 752(c)(1) of the Act provides that the Department shall consider previously-calculated dumping margins and the volume of imports of subject merchandise since the order was issued in determining whether likelihood exists. As we have concluded above in Comments 1 and 2, we find no flaws with respect to either of these factors in this sunset review. Accordingly, we do not believe it is necessary to consider "other factors," as addressed under section 752(c) (2) of the Act.

However, even if the Department did believe "good cause" existed in this case to consider "other factors," 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 findings of the Department in this regard apply equally to price and profitability data. Furthermore, we continue to find that 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. As explained in the Preliminary Results, the Department's practice in sunset reviews is to review company-specific data. See Preliminary Results Decision Memorandum at 11-12 (citing the 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) the data are aggregate in nature, and therefore do not reflect the dumping experience of individual companies.

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 final results of review in the Federal Register and notify the ITC of our determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

Date