

DATE: November 29, 2010

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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the First
Sunset Review of the Antidumping Duty Order on Certain Frozen
Warmwater Shrimp from the Socialist Republic of Vietnam

Summary

We have analyzed the case brief submitted on behalf of the respondent interested parties (collectively “Vietnamese Respondents”), and the rebuttal briefs submitted on behalf of the Ad Hoc Shrimp Trade Action Committee (“AHSTAC”) and the American Shrimp Processors Association (“ASPA”), in the first sunset review of the antidumping duty order on certain frozen warmwater shrimp (“shrimp”) from the Socialist Republic of Vietnam (“Vietnam”). We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this full sunset review for which we received comments by parties:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

Background:

The Department of Commerce (“the Department”) published the preliminary results of this sunset review on August 6, 2010. See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Five-year “Sunset” Review of the Antidumping Duty Order, 75 FR 47546 (August 6, 2010) (“Preliminary Results”) and accompanying Issues and Decision Memorandum (“Preliminary Decision Memo”). In the Preliminary Results, the Department found that revocation of the order would likely result in continuation or recurrence of dumping at margins found from the original investigation.

On September 7, 2010, within the deadline specified in 19 CFR 351.309(c)(1)(i), the Department received a case brief on behalf of Vietnamese Respondents. On September 13, 2010, the

Department received rebuttal briefs on behalf of AHSTAC and ASPA.

Discussion of the Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (“Act”), the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. Section 752(c)(2) of the Act provides that, if good cause is shown, the Department will consider such other factors as it deems relevant in making this determination. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments and rebuttals of the interested parties.

Issue 1. Likelihood of Continuation or Recurrence of Dumping

Interested Parties Comments:

Vietnamese Respondents argue that the basis of the Department’s finding that dumping occurred during the sunset period of review is erroneous. Specifically, Vietnamese Respondents assert that the Department ignored the fact that each of the mandatory respondents that fully participated in the first three administrative reviews (“ARs”) received de minimis margins and the Department should have assigned de minimis rates to separate rate companies during those first three ARs. In addition, for AR4, Vietnamese Respondents claim that the only reason mandatory respondents received positive dumping margins was that the Department applied a methodology of zeroing negative dumping margins, which is inconsistent with rulings of the World Trade Organization. Therefore, Vietnamese Respondents declare that the mandatory respondents in AR4 should have received de minimis rates, as would the separate rate companies of that review.¹

Vietnamese Respondents claim that the standard for determining the likelihood of continuation or recurrence of dumping is whether dumping margins generally declined since imposition of the order. Based upon the de minimis rates that the Department calculated for the mandatory respondents during the first three ARs, and the calculated rates for AR4 and the separate rates during four ARs, which Vietnamese Respondents contend should have been de minimis, Vietnamese Respondents argue the dumping margins have declined from the rates found in the original investigation. Vietnamese Respondents assert that this decline in dumping margins alone requires the Department to reverse its preliminary findings.²

Vietnamese Respondents also argue that the Department’s finding that import volumes fell after the initiation of investigation, and did not return to pre-initiation levels, is flawed because the

¹ See Vietnamese Respondents’ Case Brief, dated September 7, 2010, at 2-4.

² See Vietnamese Respondents’ Case Brief at 4-5.

Department failed to account for other relevant market information and focused on the wrong period. In terms of import volume comparison, Vietnamese Respondents use the year during the investigation as the base year for comparison and point to the import volume of two (2005 and 2008) of the five years during the sunset review period to demonstrate increases in import volumes. Vietnamese Respondents claim that the decrease in import volume for 2006 was due to a decline in the supply of raw shrimp, and for 2009, a decline in demand. Vietnamese Respondents further speculate that their imports would have been higher but for the Department's policy to deny separate rate companies individually examined company specific rates or de minimis rates averaged from the mandatory respondents examined. Finally, Vietnamese Respondents repeat their assertion that, in terms of market share, the imports from Vietnam commanded a stable and increasing market share in the U.S. market from 2005 to 2008.³

AHSTAC and ASPA argue that the Department was correct to find that dumping continued to exist after the issuance of the order. AHSTAC first notes that two companies chosen as mandatory respondents during AR1 did not cooperate and as a result received the 25.76% adverse facts available ("AFA") rate. AHSTAC argues there is reasonable basis to conclude that these companies were dumping in the U.S. market even during the AR1 period of review.⁴ With regard to Vietnamese Respondents' arguments that the mandatory respondents in AR4 and the separate rate companies during the four ARs should receive de minimis rates, AHSTAC and ASPA argue that the Department reasonably applied the antidumping laws in its decisions and as these matters have not been settled by the Court of International Trade, the Department's decisions stand and Vietnamese Respondents' position should not be assumed to be correct.⁵

AHSTAC and ASPA argue that the Department correctly followed its practice in using the full year prior to initiation (2003) as the base year for import volume comparison and correctly concluded that imports fell significantly after initiation of the investigation and have not returned to pre-initiation levels.⁶ AHSTAC states that the Department should not depart from its established practice and ignore the immediate and dramatic dampening effect of the investigation on import volumes during the year the investigation took place in this case.⁷ ASPA argues that Vietnamese Respondents did not make timely good cause arguments for other factors to consider in their substantive response, and that Vietnamese Respondents were unable to provide relevant market data to support their market share claim. In fact, ASPA states that the data provided by Vietnamese Respondents, when properly analyzed, shows that even post-order market share levels for 2005-2008 continued to be below the pre-investigation level in 2003.⁸

Department's Position:

The Department continues to find that the evidence on the record indicates that dumping of shrimp from Vietnam is likely to continue, or recur, absent the discipline of the antidumping duty order. The Department determines that both the positive dumping margins found for numerous

³ See Vietnamese Respondents' Case Brief at 5-7.

⁴ See AHSTAC's Rebuttal Brief, dated September 13, 2010, at 2.

⁵ See AHSTAC's Rebuttal Brief at 3-7; ASPA's Rebuttal Brief, dated September 13, 2010, at 1-3.

⁶ See AHSTAC's Rebuttal Brief at 7-10; ASPA's Rebuttal Brief at 3-4.

⁷ See AHSTAC's Rebuttal Brief at 9.

⁸ See ASPA's Rebuttal Brief at 3.

companies reviewed, and the decline in import volume during the sunset review period following the initiation of the original investigation, consistent with the language of the statute and reflective of our practice as discussed in the statute and the Statement of Administrative Action (“SAA”), are highly probative that dumping is likely to continue or recur.⁹ Additionally, after thoroughly reviewing the evidence on the record, the Department believes that the “other factors” raised by Vietnamese Respondents do not outweigh the likelihood analysis based on existence of margins and decline of imports.

In determining whether revocation of an order would likely lead to a continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period, as well as the volume of imports for the periods before and after the issuance of the order. See Section 752(c)(1) of the Act. The Department normally will determine that revocation of an antidumping duty order is likely to lead to a continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁰ Otherwise, declining (or no) dumping margins, accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.¹¹

Contrary to Vietnamese Respondents’ assertion, the Department considered the zero and de minimis margins that the Department calculated for some of the mandatory respondents during the first three ARs in assessing whether dumping continued during the five-year sunset period of 2005-2009. However, as the Department explained in the Preliminary Decision Memo, the Department’s determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis, and the existence of zero or de minimis margins, do not by themselves require that the Department determine that a continuation or recurrence is not likely.¹²

The Department first notes that, while Vietnamese Respondents repeatedly claim that dumping did not continue following the issuance of the order, Vietnamese Respondents also carefully qualify that claim by stating that only the “vast majority” of the imports were not dumped.¹³ Therefore, by their own admission, Vietnamese Respondents do not dispute there was some dumping that occurred. Vietnamese Respondents fail to address the fact that the Department selected two companies during AR1 as mandatory respondents but these companies chose not to participate in the administrative review and, as part of the Vietnam-wide entity, received the AFA margin of 25.76% as a result.¹⁴ The Department also found positive dumping margins for the mandatory

⁹ See SAA, H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”).

¹⁰ See SAA at 899 and 890, House Report at 63-64, and Senate Report at 52.

¹¹ See SAA at 889-90, House Report at 63, Senate Report at 52.

¹² See Preliminary Decision Memo at 5.

¹³ See Vietnamese Respondents’ Case Brief at 1, 3, 4 and 5.

¹⁴ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689, 10691-93 (March 9, 2007) (unchanged in final

respondents in AR4.¹⁵ While Vietnamese Respondents argue that the only reason mandatory respondents in that review received positive dumping margins was the application of the zeroing methodology, Vietnamese Respondents also fail to provide any evidentiary support for their claim. Further, Vietnamese Respondents have not demonstrated that the Department's zeroing methodology is contrary to U.S. law, as it is well-settled that the use of zeroing represents a reasonable interpretation of the statute.¹⁶ Similarly, with respect to Vietnamese Respondents' arguments on the assignment of positive separate rate margins for the separate rate companies during the ARs, these determinations are presumed to be correct. Therefore, the Department finds Vietnamese Respondents' arguments for the absence of dumping and declines in margins to be unpersuasive, as the Vietnamese Respondents' purported margins that are the basis of their arguments are unsubstantiated by record evidence or law.

With regard to the proper import volumes analysis, Vietnamese Respondents have not articulated any rationale that would compel the Department to depart from its established practice to look at the full year prior to initiation of the investigation as the base year for comparison. As the Department explained in the Preliminary Decision Memo, the rationale behind this is that initiation of an investigation may immediately cause a dampening effect on trade, which could skew the comparison, which is precisely the case in the instant review.¹⁷ While the Department acknowledges there were certain recoveries in import volume following the issuance of the order, the record demonstrates, and the Department continues to find that, imports fell after the initiation of the original investigation, and did not return to pre-investigation levels in any of the individual years, or as a whole.¹⁸

With respect to Vietnamese Respondents' arguments for "other factors" to consider, the burden is on an interested party to provide information or evidence that would warrant consideration of the other factors in question. See 19 CFR 351.218(d)(3)(iv). The other factors addressed by interested parties should serve to establish one of two things: (1) an independent element, aside from margins or volumes, that the Department should consider in its sunset review analysis; or, more typically; (2) why the margin and volume data primarily relied upon by the Department are not necessarily indicative of the likelihood of dumping. Thus, it is clear that parties must present information in support of their claim that the factors at issue are relevant.

In this case, Vietnamese Respondents have not demonstrated the relevance of the other factors they have cited, nor have they demonstrated why dumping margins and import volumes are not necessarily indicative of the likelihood of continued dumping. The Department already noted in the Preliminary Decision Memo that Vietnamese Respondents did not make a timely good cause argument for other factors to consider in their substantive response.¹⁹ Further, we noted that the market share information provided was incomplete as the data for the last year (2009) of the sunset

results).

¹⁵ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 75 FR 61122 (October 4, 2010).

¹⁶ See, e.g., Union Steel v. United States, 645 F. Supp. 2d 1298, 1309-10 (Ct. Int'l Trade 2009).

¹⁷ See Preliminary Decision Memo at 5-6

¹⁸ See Preliminary Decision Memo at 6.

¹⁹ Id.

review period was not provided, and the Vietnamese Respondents' argument concerning market share is unpersuasive because the data provided indicates that the post-order market share levels for the first four years of the review period (2005-2008) continued to be below the pre-investigation level in 2003.²⁰ Vietnamese Respondents fail to provide any comments to address these concerns and merely repeat their previous assertions. While the Vietnamese Respondents speculate that import volume could have been higher, if not for the margins assigned to the separate rate companies or supply and demand issues, they have not demonstrated how these factors could have affected import volumes. Therefore the Department continues to find that these market share and other factor arguments do not outweigh the likelihood analysis based on the existence of margins and decline of imports.

For these reasons, the Department continues to find that the evidence on the record indicates that dumping of shrimp from Vietnam is likely to continue, or recur, absent the discipline of the antidumping duty order because dumping occurred after the issuance of the order, and import volumes fell and have not recovered to the levels prior to the initiation of the investigation. Moreover, we find that the other factors alleged by the Vietnamese Respondents do not affect this finding.

Issue 2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

Vietnamese Respondents argue that, as discussed above, an accurate assessment of the relevant information would lead to the conclusion that there was no dumping following the issuance of the order, and that import volume was steady or increasing. Therefore, the Department should report to the ITC that the margin likely to prevail is zero or de minimis.²¹

AHSTAC and ASPA argue that the Department correctly determined in the Preliminary Results that dumping occurred after the issuance of the order, and that import volume fell following the initiation of the original investigation and did not return to pre-initiation levels. Therefore, the Department should continue to report the margins from the investigation.²²

Department's Position:

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically 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.²³

For the reasons stated above, the Department continues to find that both dumping occurred after the issuance of the order, and that import volumes fell and have not recovered to the levels prior to

²⁰ Id.

²¹ See Vietnamese Respondents' Case Brief at 7-8.

²² See AHSTAC's Rebuttal Brief at 10-11; ASPA's Rebuttal Brief at 4-6.

²³ See Preliminary Decision Memo at 7.

the initiation of the investigation. Therefore, the margins from the investigation are the only calculated rates that reflect the behaviors of manufacturers, producers, and exporters without the discipline of the order in place. Thus, the Department will report to the ITC the margins from the original investigation as the margin likely to prevail.

Final Results of Review

We determine that revocation of the antidumping duty order on certain warmwater shrimp from Vietnam would likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Certain Frozen Warmwater Shrimp from Vietnam	
Manufacturer/Exporter	Weighted-Average Margin (Percent)
Bac Lieu Fisheries Joint Stock Company	4.57%
Bim Seafood Joint Stock Company	4.57%
C.P. Vietnam Livestock Corporation	4.57%
Ca Mau Seafood Joint Stock Company (“Seaprimexco Vietnam”)	4.57%
Cadovimex Seafood Import-Export and Processing Joint Stock Company (“Cadovimex -Vietnam”)	4.57%
Cafatex Fishery Joint Stock Corporation (“Cafatex Corporation”) aka Camranh Seafoods	4.57%
Camau Frozen Seafood Processing Import Export Corporation (“CAMIMEX”)	5.24%
Cam Ranh Seafoods Processing Enterprise PTE (“Cam Ranh Seafoods”)	4.57%
Coastal Fishery Development Corporation (“COFIDEC”)	4.57%
Cuulong Seaproducts Company (“Cuulong Seapro”)	4.57%
Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) (and its affiliate Tho Quang Seafood Processing & Export Company)	4.57%
Grobest & I-Mei Industry (Vietnam) Co., Ltd.	4.57%
Investment Commerce Fisheries Corporation (“Incomfish”)	4.57%
Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”)	4.57%
Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”)	4.30%
Minh Phu Seafood Corp. (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively “Minh Phu Group”)	4.38%
Ngoc Sinh Private Enterprise	4.57%
Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”)	4.57%
Nha Trang Seaproduct Company (“Nha Trang Seafoods”)	4.57%

Phu Cuong Seafood Processing & Import-Export Co., Ltd.	4.57%
Phuong Nam Co., Ltd.	4.57%
Sao Ta Foods Joint Stock Company (“FIMEX VN”)	4.57%
Soc Trang Seafood Joint Stock Company (“STAPIMEX”)	4.57%
Thuan Phuoc Seafoods and Trading Corporation (and its affiliates Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory)	4.57%
UTXI Aquatic Products Processing Corporation	4.57%
Viet Foods Co., Ltd.	4.57%
Viet Hai Seafood Co., Ltd. aka Viet Nam Fish-One Co., Ltd.	4.57%
Vinh Loi Import Export Company (“VIMEX”)	4.57%
Vietnam-Wide Entity	25.76 %

Recommendation

Based on our analysis of the responses 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 findings.

AGREE _____

DISAGREE _____

 Ronald K. Lorentzen
 Deputy Assistant Secretary
 for Import Administration

 Date