



A-552-802  
2<sup>nd</sup> Sunset Review  
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**DATE:** September 9, 2016

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

**SUBJECT:** Preliminary Decision Memorandum for the Second Sunset Review  
of the Antidumping Duty Order on Certain Frozen Warmwater  
Shrimp from the Socialist Republic of Vietnam

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### Summary

We have analyzed the responses of the interested parties in the second sunset review of the antidumping duty order ("AD Order") covering certain frozen warmwater 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 sunset review:

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

### History of the Order

On February 1, 2005, the Department of Commerce ("Department") published its amended final antidumping duty determination and order for certain warmwater shrimp from Vietnam in the Federal Register.<sup>1</sup> In the first five-year (sunset) review, the Department found that revocation of the AD Order would be likely to lead to continuation or recurrence of dumping and the International Trade Commission ("ITC") determined, pursuant to 751(c) of the Tariff Act of 1930,

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<sup>1</sup> See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005) ("AD Order"). We calculated the following dumping margins for the four mandatory respondents, one of which was based entirely on adverse facts available: 1) Camau Frozen Seafood Processing Import Export Corporation, 5.24 percent; 2) Kim Anh Company Limited, 25.76 percent; 3) Minh Phu Seafood Corporation, 4.38 percent; and 4) Minh Hai Joint Stock Seafoods Processing Company, 4.30 percent. The Vietnam-wide margin was established as 25.76 percent. The dumping margin calculated for 31 non-individually examined companies receiving a separate rate ("all-others") was 4.57 percent.



as amended (“the Act”), that revocation of the AD Order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup> The Department has completed six administrative reviews and one new shipper review since we issued the First Sunset Review in December 2010 and the Continuation Order in April 2011. The Department has also conducted two changed circumstances reviews since the First Sunset Review.<sup>3</sup>

The tenth administrative review for the period February 1, 2014, through January 31, 2015, is due for its final results on September 6, 2016. The eleventh administrative review for the period February 1, 2015, through January 31, 2016, is currently ongoing. There have been no circumvention determinations or duty absorption findings concerning the AD Order. On July 18, 2016, the Department implemented a determination under Section 129 of the Uruguay Round Agreements Act (“URAA”), in compliance with a decision of the World Trade Organization (“WTO”), United States – Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from Viet Nam (WTO/DS429). In that determination, the Department revoked the AD Order with respect to the Minh Phu Group.<sup>4</sup> The AD Order remains in effect for all remaining manufacturers, producers, and exporters of the subject merchandise from Vietnam.

## Background

On March 1, 2016, the Department initiated a sunset review of the AD Order pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).<sup>5</sup> The Department received a notice of intent to participate from the following domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i): the Ad Hoc Shrimp Trade Action Committee (“AHSTAC”), Petitioner in the original investigation, and the American Shrimp Processors Association (“ASPA”). AHSTAC and ASPA claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

On March 29, 2016, AHSTAC filed its substantive response.<sup>6</sup> On March 31, 2016, ASPA filed its substantive response.<sup>7</sup> Additionally, on March 31, 2016, the Department received a substantive response from 24 respondent interested parties, (collectively “Respondents”), which are foreign producers and exporters of subject merchandise during this review.<sup>8</sup> These responses were

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<sup>2</sup> See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Five-year “Sunset” Review of the Antidumping Duty Order, 75 FR 75965 (December 7, 2010) (“First Sunset Review”). See also Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders, 76 FR 23972 (April 29, 2011) (“Continuation Order”).

<sup>3</sup> See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review, 75 FR 23222 (April 18, 2012); Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review, 76 FR 30648 (May 26, 2011).

<sup>4</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order, 81 FR 47756 (July 22, 2016).

<sup>5</sup> See Initiation of Five-Year (“Sunset”) Reviews, 81 FR 10578 (March 1, 2016).

<sup>6</sup> See AHSTAC’s Substantive Response dated March 29, 2016.

<sup>7</sup> See ASPA’s Substantive Response dated March 31, 2016.

<sup>8</sup> See Respondents’ Substantive Response dated March 31, 2016.

received within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In their substantive response, Respondents claimed interested party status under section 771(9)(A) of the Act. On April 21, 2016, the Department determined that Respondents' substantive response met the requirements of section 351.218(d)(3) of the Department's regulations and provided an adequate response to the notice of initiation.<sup>9</sup> We also found that Respondents had adequately responded to the notice of initiation under 19 CFR 351.218(e)(1)(i)(A).<sup>10</sup> Further, we found that domestic interested parties submitted an adequate response, as more than one domestic interested party submitted a complete substantive response under 19 CFR 351.218(e)(1)(i). As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(2)(i), the Department began conducting a full sunset review of this order.

### Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>11</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the HTS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater

<sup>9</sup> See Memorandum to the File, from Irene Gorelik, Senior Analyst, Office V, re: "Adequacy Determination in Antidumping Duty Second Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated April 21, 2016.

<sup>10</sup> *Id.*

<sup>11</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

shrimp and prawns (HTS subheading 1605.20.10.40); and 7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.<sup>12</sup>

## Discussion of the Issues

### *Legal Framework*

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. 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 periods before, and the periods after, the issuance of the AD Order.

In accordance with the guidance provided in the legislative history accompanying the URAA, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (“SAA”)<sup>13</sup> and the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), the Department’s determinations of likelihood will be made on an order-wide, rather than company-specific, basis.<sup>14</sup> In addition, the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order

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<sup>12</sup> On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the ITC determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

<sup>13</sup> Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

<sup>14</sup> See SAA at 879, and House Report at 56.

and import volumes for the subject merchandise declined significantly.<sup>15</sup> Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.<sup>16</sup> In addition, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.<sup>17</sup>

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the dumping margins from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.<sup>18</sup> However, in the Final Modification for Reviews, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.<sup>19</sup> The Department further stated that apart from the "most extraordinary circumstances," it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."<sup>20</sup>

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or de minimis shall not by itself require the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>21</sup> Our analysis of the comments submitted by interested parties follows.

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<sup>15</sup> See SAA at 889-90, House Report at 63-64, and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report) at 52, reprinted at 1994 U.S.C.C.A.N. 3773.

<sup>16</sup> See SAA at 889-90, and House Report at 63.

<sup>17</sup> See, e.g., 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 Comment 1.

<sup>18</sup> See SAA at 890; see also Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 11868 (March 5, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>19</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (February 14, 2012) ("Final Modification for Reviews").

<sup>20</sup> Id.

<sup>21</sup> See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

## Issue 1: Likelihood of Continuation or Recurrence of Dumping

### Domestic Parties' Comments:

The domestic interested parties, AHSTAC and ASPA, argue that revocation of the AD Order will likely lead to a continuation or recurrence of dumping of certain frozen warmwater shrimp from Vietnam. AHSTAC and ASPA state that the Department found dumping with respect to all mandatory respondents investigated in the original investigation and continued to assign positive dumping margins for some of the companies under review during the five administrative reviews completed after the First Sunset Review (covering the fifth through ninth administrative reviews) and in the preliminary results of the tenth administrative review.<sup>22</sup> AHSTAC notes that the total volume of frozen warmwater shrimp imported into the United States from Vietnam reached an historic high in 2014, but declined in 2015 and, in the first month of 2016, declined again compared to the same time period in the prior year. Citing to the Statement of Administrative Action ("SAA"), AHSTAC further notes that the "{e}xistence of dumping margins after the order . . . is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of the order in place, it is reasonable to assume that dumping would continue if the discipline were removed."<sup>23</sup> AHSTAC argues that the Department has repeatedly found LTFV sales with respect to the exporters reviewed.<sup>24</sup> In sum, because Vietnamese shrimp imports continued to be dumped into the United States market following the imposition of the AD Order, the Department should find that the revocation would be likely to lead to the continuation or recurrence of dumping.

### Respondents' Comments:

The respondents have shown through participation in the Department's reviews that they continue to ship at levels comparable to those in effect before the AD Order was imposed, while also not dumping. The respondents each would have received de minimis margins in every review since the last sunset review if zeroing of negative dumping margins had not been applied, before or after the Department adopted its differential pricing methodology (i.e., targeted dumping).<sup>25</sup> This is evident from the Department's margin calculation programs in each of those reviews if zeroing had been eliminated. Further, the WTO has deemed zeroing inconsistent with the Anti-Dumping Agreement, including when applying targeted dumping.<sup>26</sup> The respondents expect the actual, non-zeroed margins to remain de minimis upon revocation, because the companies were able to sell at high volumes without dumping while the order was in place. There is no reason to conclude that the same would not occur in the absence of an order.

### Department's Position:

In determining whether revocation of an order would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews

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<sup>22</sup> See AHSTAC's Substantive Response at 37-45; ASPA's Substantive Response at 11.

<sup>23</sup> See AHSTAC Substantive Response at 44, citing to SAA, H.R. Doc. 103-316, vol. 1, at 890.

<sup>24</sup> See AHSTAC Substantive Response at 44.

<sup>25</sup> See VASEP Substantive Response at 3 and 5.

<sup>26</sup> Id.

conducted during the sunset review period,<sup>27</sup> as well as the volume of imports for the periods before and after the issuance of the AD Order.<sup>28</sup>

While Respondents challenge that the most recent rates from administrative reviews are not WTO-consistent, citing to United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (WT/DS464/R), we disagree with this argument. The Court of Appeals for the Federal Circuit has held that WTO reports are without effect under U.S. law “unless and until such a report has been adopted pursuant to the specified statutory scheme” established in the URAA.<sup>29</sup> Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>30</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.<sup>31</sup> We note the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA’s statutory procedure.

The Department examined the ITC Dataweb data placed on the record of imports of the subject merchandise for the period before and after the issuance of the AD Order, pursuant to section 752(c)(1)(B) of the Act.<sup>32</sup> This data collectively shows that while import volumes have fluctuated following imposition of the AD Order, they have more recently remained at the same or higher volumes than pre-order import volumes.<sup>33</sup> Given the continued existence of margins calculated without zeroing in the eighth and ninth administrative reviews, completed since the 2011 Continuation Order, it is unlikely that respondents would be able to sell at pre-order volumes without dumping. Accordingly, the Department determines that dumping would likely continue if the order were revoked.<sup>34</sup>

## **Issue 2: Magnitude of the Margin Likely to Prevail**

### Domestic Parties’ Comments:

The domestic interested parties, AHSTAC and ASPA, argue that the Department should report to the ITC the margins that were determined in the original investigation.<sup>35</sup> AHSTAC notes that the Department has found less-than-fair-value sales at above de minimis levels for four of the five respondents individually reviewed in the last two completed (eighth and ninth) administrative reviews using methodologies not determined to be WTO-inconsistent.<sup>36</sup> Accordingly, consistent

<sup>27</sup> This includes zero or de minimis margins, which do not by themselves require that the Department determine that a continuation or recurrence is not likely. See Section 752(c)(4)(A) of the Act.

<sup>28</sup> See Section 752(c)(1) of the Act.

<sup>29</sup> See Corus Staal BV v. the United States, 395 F.3d 1343, 1347-1349 (CAFC 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007).

<sup>30</sup> See, e.g., 19 U.S.C. §3533, 3538.

<sup>31</sup> See, e.g., 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

<sup>32</sup> See Petitioner’s Substantive Response at 43-44. The ITC Trade Dataweb can be found at <http://dataweb.usitc.gov>.

<sup>33</sup> Id.

<sup>34</sup> See Final Modification for Reviews, 77 FR at 8103; SAA at 890 (explaining that “{i}f companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed”).

<sup>35</sup> See AHSTAC’s Substantive Response at 24-25; ASPA’s Substantive Response at 11.

<sup>36</sup> See AHSTAC’s Substantive Response at 50.

with the guidance of the SAA, the Policy Bulletin<sup>37</sup>, and the Department's recent modification of its practice in sunset reviews, the Department should exercise its discretion to determine that revocation of the AD Order would be likely to lead to continuation or recurrence of dumping up to the weighted-average dumping margin of 25.76%.<sup>38</sup> In addition, ASPA also argues that the Department can use the more recently calculated rates.<sup>39</sup>

#### Respondents' Comments:

Respondents argue that the Department should report to the ITC that the margin likely to prevail is de minimis because Respondents would have received de minimis margins in every review conducted since the last sunset review if the Department had not used zeroing in its calculations, before or after the Department adopted its differential pricing methodology.<sup>40</sup> Respondents expect that non-zeroed margins would remain de minimis upon revocation because they companies were able to sell at high volumes without dumping while the AD Order was in place.<sup>41</sup>

#### Department's Position:

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company.<sup>42</sup> For companies not investigated specifically or for companies that did not begin shipping until after the AD Order was issued, the Department normally will provide a margin based on the all-others rate from the investigation.<sup>43</sup> The Department's preference for selecting a margin from the investigation is based it being the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. However, the Department may provide a more recently calculated margin for a particular company, where declining (or zero or de minimis) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, the Department may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.<sup>44</sup>

With the exception of the last three most-recently completed administrative reviews (seventh

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<sup>37</sup> See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Policy Bulletin").

<sup>38</sup> Id., at 51.

<sup>39</sup> See ASPA's Substantive Response at 12.

<sup>40</sup> See Respondents' Substantive Response at Issue 7.

<sup>41</sup> Id.

<sup>42</sup> See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

<sup>43</sup> See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>44</sup> See Section 752(c)(3) of the Act.

through ninth administrative reviews<sup>45</sup>) of this proceeding, the Department used average-to-average comparisons, along with zeroing, for each segment under the AD Order (all segments through and including the sixth administrative review).<sup>46</sup> However, the Vietnam-wide rate, which has remained unchanged since the underlying investigation, was based on adverse facts available.<sup>47</sup> This adverse facts available rate was based on the petition and, therefore, did not include zeroing and is consistent with the Final Modification for Reviews. Thus, we find it appropriate to provide the ITC the margin of 25.76 percent from the original investigation, which was based on adverse facts available, and not on the use of average-to-average comparisons with zeroing, as the rate up to which dumping is likely to continue or recur.

We disagree with Respondents argument that the margins likely to prevail are de minimis, and should, thus, be reported as such to the ITC. As noted by AHSTAC and ASPA, the Department has assigned WTO-consistent, above-de minimis rates in the eighth and ninth administrative reviews covered by this second sunset review period.<sup>48</sup> Based on the above, we find that dumping has continued at above de minimis levels with the discipline of the order in place, and those weighted-average dumping margins support a determination that dumping will continue or recur if the AD Order were to be revoked. Thus, we determine that revocation of the AD Order would be likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 25.76 percent.

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<sup>45</sup> See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014, 80 FR 55328, 55329-30 (September 15, 2015) ("AR9 Final"); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013, 79 FR 57047, 57049 (September 24, 2014) ("AR8 Final").

<sup>46</sup> For the reasons described above, the Department will not rely on those past dumping margins in this sunset review. See Final Modification for Reviews, 77 FR at 8103.

<sup>47</sup> See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005, 71008 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comments 6 and 10C ("we have applied a rate of 25.76 percent, a rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department)").

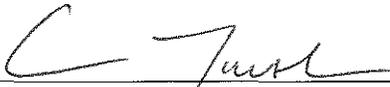
<sup>48</sup> Because the calculated dumping margins from AR4 through AR6 were WTO-inconsistent, we have excluded those calculated margins from the analysis for this second sunset review. In the eighth administrative review, we calculated an above-de minimis margin of 9.75 percent for a mandatory respondent (excluding the calculated margin for the Minh Phu Group). See AR8 Final. In the ninth administrative review, we calculated an above-de minimis margin of 1.16 percent for a mandatory respondent (excluding the calculated margin for the Minh Phu Group). See AR9 Final.

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 preliminary results of review in the Federal Register.

AGREE ✓

DISAGREE \_\_\_\_\_



Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

9/9/16  
Date