

January 27, 2009

TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Import Administration

RE: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

SUMMARY

We have analyzed the substantive response of the domestic interested parties in the sunset review of the antidumping duty order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”). We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

History of the Order

On July 24, 2002, the Department of Commerce (“Department”) initiated an antidumping duty investigation on fish fillets from Vietnam.¹ On January 31, 2003, the Department preliminarily determined that fish fillets were being sold in the United States at less than fair value (“LTFV”).² The Department completed the investigation and published its final determination of sales at LTFV in the Federal Register on June 23, 2003.³ On July 24, 2003, the Department amended the final determination of sales at LTFV. In the amended final determination, the Department

¹ See Initiation of Antidumping Duty Investigation: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 67 FR 48437 (July 24, 2002).

² See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003).

³ See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

calculated company-specific weighted average dumping margins ranging from 36.84 percent to 53.68 percent, and a Vietnam-wide rate of 63.88 percent.⁴ On August 12, 2003, the Department published the antidumping duty order on fish fillets from Vietnam.⁵

Since the issuance of the antidumping order, the Department has conducted three administrative reviews, two new shipper reviews, one circumvention inquiry, and has also rescinded two new shipper reviews. The Department is currently conducting two ongoing administrative reviews, four new shipper reviews, and a changed circumstances review.

Background

On July 1, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on fish fillets from Vietnam pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (“Sunset”) Review, 73 FR 37411 (July 1, 2008). On July 16, 2008, the Department received a notice of intent to participate from the Catfish Farmers of America (“CFA”) and individual U.S. catfish processors, America’s Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc. dba Alabama Catfish Inc., Heartland Catfish Company, Magnolia Processing, Inc. dba Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (collectively, “Petitioners”). Submissions of the notices of intent to participate filed by Petitioners were within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under section 771(9)(C) and (G) of the Act as they comprise domestic producers of fish fillets in the United States and a trade association representative of the industry. On July 31, 2008, the Department received a substantive response from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department determined to conduct an expedited review of the order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, 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

⁴ See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 43713 (July 24, 2003).

⁵ See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 47909 (August 12, 2003).

duty order. In addition, 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. Below we address the comments made by the domestic interested parties in this proceeding.

1. Likelihood of continuation or recurrence of dumping

Interested Party Comments

Petitioners argue that the rescission of the antidumping duty order is likely to lead to continued or recurring dumping, as numerous Vietnamese producers and exporters are currently subject to margins that are above de minimis. See Petitioners' July 31, 2008, substantive response at 9-11. Petitioners stipulate that the existence of margins higher than de minimis after the issuance of the orders compels the Department to find that dumping will continue or recur if it revokes the order.

Department Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"),⁶ the Department normally determines that revocation of an antidumping duty order is likely to lead to 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.⁷ In this case, the Department found dumping at above de minimis levels in the original antidumping duty investigation of fish fillets from Vietnam, as well as in the subsequent administrative and new shipper reviews it has conducted since the original antidumping duty investigation. See Petitioners' July 31, 2008, substantive response at 9-11.

The Department finds that the existence of dumping margins even with an order in place is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

Petitioners argue that, consistent with the Department's normal practice, the Department should

⁶ See, e.g., SAA accompanying the URAA, H.R. Doc. No. 103-316, vol. 1, 889 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

⁷ See, e.g., 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; see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at comment 1.

find that the magnitude of the margin of dumping that is likely to prevail is identical to the margins determined to exist in the original investigation.

Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.⁸ Furthermore, pursuant to section 752(c)(4)(A), a dumping margin of “zero or de minimis shall not by itself require” that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value. The Department continues to find that the margins calculated in the original investigation are the best indication of the margins likely to prevail if the order were revoked, because they are the only calculated rates without the discipline of an order in place.

Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, the Department will report to the ITC the corresponding individual company rates and the Vietnam-wide rate from the original investigation as noted in the “Final Results of Review” section, below.

Final Results of Review

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

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
An Giang Fisheries Import and Export Joint Stock Company (“Agifish”)	47.05
Vinh Hoan Company Limited (“Vinh Hoan”)	36.84
Nam Viet Company Limited (“Nam Viet”)	53.68
Can Tho Agricultural and Animal Products Import Export Company (“CATACO”)	45.81
An Giang Agriculture and Food Import Export Company (“Afiex”)	45.55
Can Tho Animal Fishery Products Processing Export Enterprise (“CAFATEX”)	45.55
Da Nang Seaproducts Import-Export Corporation (“Da Nang”)	45.55
Mekongfish Company (“Mekonimex”)	45.55
QVD Food Company Limited (“QVD”)	45.55
Viet Hai Seafood Company Limited (“Viet Hai”)	45.55

⁸ See 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.

Vinh Long Import-Export Company (“Vinh Long”)	45.55
Vietnam-Wide	63.88

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the Federal Register.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date