

70 FR 51012, August 29, 2005

A-403-801  
Sunset Review  
POR: 2000-2005  
Public Document

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

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Preliminary Decision Memorandum

RE: Preliminary Results of the Full Sunset Review of the Antidumping  
Duty Order on Fresh and Chilled Atlantic Salmon from Norway

Summary:

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

1. Likelihood of the continuation of dumping
2. Magnitude of the margin likely to prevail
3. Good cause to examine other factors

History of the Order:

In the February 25, 1991, final determination of the antidumping duty investigation, covering the period September 1, 1989, through February 28, 1990, the Department determined the following weighted-average dumping margins for respondent companies (56 FR 7661):

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 antidumping duty order, the Department has completed four administrative reviews, one new shipper review, and one sunset review on imports of Salmon from Norway. A detailed history of those reviews may be found in the final results of the first sunset review, in which the Department found that revocation of the antidumping duty order would be 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). Subsequent to the completion of that first sunset review, there have been no administrative reviews or further proceedings with respect to the antidumping order on Salmon from Norway.

#### Background:

On February 2, 2005, the Department published its notice of initiation of the second sunset review of the antidumping duty order and countervailing duty order on Salmon from Norway. See Notice of Initiation of Five-Year (“Sunset”) Reviews, 70 FR 5415 (February 2, 2005). The Department received a Notice of Intent to Participate from Heritage Salmon Company, Inc. and Atlantic Salmon of Maine (collectively "domestic interested parties") on February 17, 2005, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations.

The Department received a complete and timely substantive response from the domestic interested parties on March 4, 2005. The Department also received a complete substantive response on behalf of The Norwegian Seafood Federation and The Norwegian Seafood Association (collectively “respondents”) on March 4, 2005. Respondents claimed interested party status under 19 U.S.C. 1677(9)(A) as trade or business associations. On April 13, 2005, the Department determined that respondents’ submission constituted an adequate response to the notice of initiation. As a result, the Department determined, in accordance with section 351.218(e)(2) of the Sunset Regulations, to conduct a full (240 day) review. On March 9, 2005, the Department received rebuttal comments from the domestic interested parties and the respondent interested parties.

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (the Act), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order. On June 13, 2005, the Department determined that the sunset review of the antidumping duty order on Salmon from Norway, a transition order, was extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than August 21, 2005,<sup>1</sup> in accordance with section 751(c)(5)(B) of the Act.

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<sup>1</sup>Consistent with Department policy, (Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of

### Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping. In this case, the Department considered the weighted average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of Salmon from Norway for the period before and the period after the issuance of the antidumping order. In making these considerations, the Department finds the following indicative of the likely continuation or recurrence of dumping: whether dumping continued at any level above de minimis after the issuance of the antidumping duty order; whether the imports ceased after the issuance of the order; and whether dumping was eliminated and import volumes declined significantly after the issuance of the order. In addition, pursuant to section 751(c)(2) of the Act, the Department considered whether good cause to consider other price, cost, market or other economic factors was shown in this case.

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

#### **1. Likelihood of the Continuation of Dumping**

##### Domestic Interested Parties' Substantive Response:

Pursuant to the statute and guidance provided by the Department's Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18,871, *et seq.* (April 16, 1998) (the "Policy Bulletin") and the Statement of the Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., (1994) (the "SAA"), the domestic interested parties assert that revocation of the antidumping duty order on Salmon from Norway is likely to lead to continued dumping by foreign producers/exporters. See Domestic Interested Parties' substantive response at 17.

In support of their assertion, domestic interested parties contend that the imposition of the antidumping duty order on Salmon from Norway dramatically reduced the volume of those imports and provided import statistics of U.S. imports on Salmon from Norway from 1985 through 2004. See Domestic Response, Attachment 2. In particular, the domestic interested

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1930, As Amended, 70 FR 24533 (May 10, 2005)), and because August 21, 2005, is a non-business day, these results are due the next business day: Monday, August 22, 2005.

parties note the decrease in import volumes by comparing the average annual volume in the three years prior to the filing of the petition with the average annual import volume in the three years following the imposition of the order. Commenting on the increasing volume of imports since the first sunset review, domestic interested parties contend that Norwegian producers remain interested in the U.S. market, but that such volumes remain well below those occurring prior to the imposition of the order.

In addition, domestic interested parties assert that the history of dumping margins on Salmon from Norway since the order was published demonstrates that Norwegian producers rely on continued dumping to sustain their access to the U.S. market. See Domestic Response at 19.

#### Respondent Interested Parties' Substantive Response:

Respondents state that it is extremely unlikely that revocation of the antidumping duty order on Salmon from Norway would result in sales at less than fair value. See Respondent Interested Parties' substantive response at 6. Citing a March 4, 2005, report produced by The Stern Group, Inc. (the "Stern Report"), a March 1, 2005, report produced by Kontali Analyse (the "Kontali Report") and a statement from an importer, respondents contend that were the order discontinued, they would continue to focus on the premium priced product (e.g., filet) which is not subject merchandise. See Respondent Interested Parties' substantive response, Exhibits 1, 2 and 3, respectively. Moreover, respondents contend that, by focusing on premium merchandise, which is not covered by the order, Norwegian producers have prospered with the order in effect, have developed alternative markets, and have no incentive to ship subject merchandise to the United States should the order be revoked. Finally, respondents state that, during the past five years, other countries (i.e., Canada and Chile) have come to dominate the U.S. salmon market, thus removing any incentive for the Norwegian salmon producers to re-enter the U.S. market.

#### Domestic Interested Parties' Rebuttal:

Domestic interested parties argue that the entry of appearance, filed on behalf of the respondent interested parties in this case, should be rejected. In particular, the domestic interested parties assert that the respondents have failed to establish that their respective memberships satisfy the statutory requirements for an "interested party." Citing the statutory language, a hypothetical example, and the legislative history and precedent of an analogous statutory provision, the domestic interested parties urge the Department to reject the respondents' entry of appearance in this case. See Domestic Interested Parties' rebuttal at 4.

#### Respondent Interested Parties' Rebuttal:

Respondents, in their rebuttal to the domestic interested parties' response, argue that the domestic interested parties have not established that dumping is likely to continue or recur, but they have only reiterated evidence already on the record. See Respondents' rebuttal at 1.

### Department's Position:

As part of its determination of whether revocation of an antidumping order is likely to lead to the continuation or recurrence of dumping, the Department will examine whether: a) dumping continued at any level above de minimis after the issuance of the order or the suspension agreement, as applicable; b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.

Here, the Department determines that revocation of the order on Salmon from Norway is likely to lead to the continuation of dumping. First, the Department examined the dumping margins determined in the investigation and in subsequent administrative reviews of this order. In the original investigation, the Department found that Norwegian producers were selling at less than fair value in the United States at levels greater than de minimis, specifically between 15.65 and 31.81 percent. In all but one of the subsequent reviews, the Department similarly found dumping margins above de minimis levels and even determined that the margins of dumping increased in the second review when compared to those in the investigation.

With respect to import volumes, the Department examined statistics compiled from its own trade data along with those from the U.S. International Trade Commission and found that total import volumes of Salmon from Norway have remained well below their pre-order levels. In addition, the Department notes that import volumes have fluctuated over the five years immediately preceding this sunset review (295,142 kgs in 2000; 483,782 kgs in 2001; 767,161 kgs in 2002; 823,964 kgs in 2003; and 212,892 kgs in 2004). The Department notes the level of these imports is significantly below those in the years prior to the issuance of the order. Based on the record evidence that dumping was not eliminated after the issuance of the order, and the lack of good cause to consider other factors in this case, as discussed in the “Good Cause to Consider Other Factors” section below, the Department determines that revocation of the order on Salmon from Norway is likely to lead to the continuation of dumping.

With respect to the domestic interested parties’ assertion that the respondents have failed to establish their interested party status, this issue has previously been resolved. See Memorandum for Ronald K. Lorentzen from Hilary E. Sadler, Esq. (April 13, 2005), which has been placed on the record of this case.

## **2. Magnitude of the Margin Likely to Prevail**

### Domestic Interested Parties’ Substantive Response:

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

See Domestic Interested Parties' response, at 24. Additionally, because administrative reviews have resulted in some higher company-specific rates, the domestic interested parties contend that those higher rates, including those based on best information available, should be viewed as the margins likely to prevail for the respective companies.

Respondent Interested Parties' Substantive Response:

Respondents argue that the post-revocation dumping margin likely to prevail is zero. Citing the Stern and Kontali Reports and the statement from an importer, respondents argue that there is no incentive for Norwegian producers to sell salmon at anything other than premium prices. Respondents further assert that the zero dumping margin earned by a Norwegian producer in the most recently completed review supports this claim.

Domestic Interested Parties' Rebuttal:

The domestic interested parties did not submit rebuttal comments concerning the margin likely to prevail.

Respondent Interested Parties' Rebuttal:

The respondents did not submit rebuttal comments concerning the margin likely to prevail.

Department's Position:

In a sunset review, the Department will normally provide to the International Trade Commission (the "ITC") the margin that was determined in the final determination of the original investigation. For companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation because these rates are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place. In certain instances, the Department may, in response to argument from an interested party, provide the ITC a more recently calculated margin for a particular company.

The domestic interested parties' recommendation that the Department report to the ITC the higher margins determined for certain companies based on those companies' margins from more recent administrative reviews is unpersuasive. According to Department practice, a more recent rate may be appropriate where a company chooses to increase dumping in order to increase or maintain market share. However, without company-specific information or argument related to increasing exports corresponding to increased dumping, we have no basis to determine that a more recent rate is more probative of the margin likely to prevail.

Respondents' assertion that the zero dumping margin earned by a Norwegian producer in the most recently completed administrative review supports a post-revocation dumping margin likely

to prevail of zero is unpersuasive. With the exception of the zero percent margin determined in that review, conducted in 1996, the margins have remained above de minimis throughout the history of the order. Further, section 752(c)(4)(A) of the Act provides that a de minimis margin determined in an administrative review shall not, by itself, require the Department to determine that revocation of an antidumping duty order would not be likely to lead to continuation or recurrence of sales at less than fair value. Respondents' argument for a zero margin, when margins have remained consistent, or increased from the original investigation, for all but two producers, is not persuasive. Accordingly, the Department finds that the zero margin found for a single producer in an administrative review does not reflect the likely behavior of exporters without the discipline of the order in place. Therefore, we will report to the ITC the company-specific and "all others" rates determined in the original investigation, as contained in the *Preliminary Results of Review* section of this notice, because these rates best reflect the behavior of producers/exporters without the discipline of the order.

### **3. Good Cause to Consider Other Factors**

#### Respondent Interested Parties' Substantive Response:

In their substantive response, respondents contend that, pursuant to 19 U.S.C. § 1675a(c)(2) (section 753(c)(2) of the Act), good cause exists to consider a variety of other factors in this review. Respondents make five arguments with respect to good cause. See Respondents Response, at 10. First, respondents argue that the period of time that has elapsed since the Department last analyzed Norwegian pricing practices establishes good cause to review other factors. Second, respondents argue that the nine factors discussed in the Stern Report (included as Exhibit 1) demonstrate good cause to examine other economic factors. Third, respondents argue that the seven factors discussed in the Kontali Report (included as Exhibit 2) demonstrate good cause to examine other factors. Fourth, respondents argue that the statement of an importer and distributor of seafood products in the United States (included as Exhibit 3) demonstrates good cause to consider other economic factors. Finally, respondents argue that the fact that it has been ten years since the domestic industry requested an administrative review further establishes good cause to consider other factors.

#### Domestic Interested Parties' Substantive Response:

The domestic interested parties did not submit comments on whether there is good cause to consider other factors in this case.

#### Respondent Interested Parties' Rebuttal:

The respondents argue that the domestic interested parties have failed to address their claim that good cause exists to consider other factors. In addition, citing Department precedent, the

respondent interested parties argue that the Department will examine additional economic factors when good cause is shown, and argue that such good cause exists in this case.<sup>2</sup>

#### Domestic Interested Parties' Rebuttal:

The domestic interested parties did not submit rebuttal comments on whether there is good cause to consider other factors in this case.

#### Department's Position:

With respect to the issue of whether there is good cause to consider “other factors,” the “burden” is on an interested party to provide information or evidence that would warrant consideration of the other factors in question. Thus, it is clear that parties must present information in support of their claim that the factor at issue is relevant. It is then the Department’s responsibility to analyze the information provided, request more information if necessary, and determine if the information and/or evidence affects the Department’s likelihood determination.

The Department finds, in light of the relationship between dumping margins and import volumes, that the arguments and claims respondents assert to establish that there is good cause to consider other factors in this case, are not relevant to the likelihood of continued dumping. Because the respondent interested parties’ observations concerning the period of time since the investigation, and the period of time since the last administrative review was requested, as well as the Stern and Kontali Reports, are not relevant to the issue of whether continued dumping is likely, we have not considered the factors.

As an initial matter, the “other factors” addressed by a respondent were intended to be those that serve to establish one of two things. The “other factors” may be those that establish an independent element, aside from margins or volumes, that the Department should consider in its sunset review analysis or more typically, the “other factors” may be those that demonstrate why the margin and volume data primarily relied upon by the Department are not necessarily indicative of the likelihood of dumping.<sup>3</sup> For example, such factors may explain why a persistent

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<sup>2</sup>Section 351.309(c)(2) provides that the case brief in a full sunset review must present all arguments that the submitter believes are relevant to the final results, and section 351.309(d)(2) provides that the rebuttal brief may respond only to arguments raised in the case briefs. Because petitioners did not address the good cause issue at all in their case brief, we have disregarded and not addressed the new arguments on the good cause issue that respondents raised, for the first time, in their rebuttal brief.

<sup>3</sup>The SAA, at 890, states that “[s]uch ‘other factors’ might include, the market share of foreign producers subject to the antidumping proceeding; changes in exchange rates, inventory levels, production capacity, and capacity utilization; any history of sales below cost of



margin above de minimis or depressed or declining import volumes (which would otherwise militate in favor of continuation of an order) are not necessarily indicative of the likely continuation or recurrence of dumping. Indeed, domestic interested parties may also wish to point out “other factors” that they believe explain why low margins or increasing import volumes of a respondent are not indicative that revocation would not lead to continuation or recurrence of dumping. In either case, the party asserting “good cause” to consider other factors must first establish the relevance of those other factors to the Department’s analysis.

In this case, the respondents have not demonstrated, in their substantive response, 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. A claim as to changes in the market for the subject merchandise cannot be analyzed without a demonstration of its relevance to the Department’s statutorily mandated consideration of: 1) the weighted average dumping margins determined in the investigation and subsequent reviews; 2) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order; or 3) the magnitude of the margin of dumping likely to prevail if the order is revoked. We find that none of the purported good cause factors proffered by respondents are relevant to the Department’s likelihood determination.

As part of their claim for an analysis of other factors (contained in their substantive response), the respondent interested parties cite the Final Results of Full Sunset Review: Brass Sheet and Strip from the Netherlands, 65 FR 735, (January 6, 2000) (“Brass Sheet and Strip”) as Department precedent that concerned the consideration of other factors in a sunset review. See Respondents’ Response, Exhibit 1, at 1. That precedent, however, serves only to highlight the type of relevance demonstration lacking in the present case. In Brass Sheet and Strip, the respondent interested party claimed and provided evidence to support its claim that the unique circumstances of that case necessitated the Department’s consideration of other factors. Specifically, subsequent to the issuance of the order, the respondent had acquired a U.S. producer of the subject merchandise, through which it could maintain its U.S. market share without dumping. The existence of such a sister company went a long way to explaining why the respondent’s import volumes could have declined so significantly for reasons other than an inability to sell at its original volumes without dumping.<sup>4</sup>

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production; changes in manufacturing technology of the industry; and prevailing prices in relevant markets.” The SAA, at 890, also notes that: “In practice, this will permit interested parties to provide information indicating that observed patterns regarding dumping margins and import volumes are not necessarily indicative of the likelihood of dumping... the list of factors is illustrative, and the Administration will analyze such information on a case-by-case basis.”

<sup>4</sup>As stated in the Final Results: “(the Department) preliminarily determined that, despite the significant decline in import volumes of subject merchandise after the issuance of the order, the two most recent reviews were probative of the behavior of the company absent the discipline of the order.” Brass Sheet and Strip, 65 FR at 736.

In this case, the respondent interested parties have failed to demonstrate the relevance of the other factors they have cited. Instead, they appear to reiterate arguments presented to the ITC to address the likelihood that injury would recur in the concurrent sunset review being conducted at that agency. Rather than substantiate their claims, respondents simply attempt to shift their own burden to present information to the Department. Where an interested party fails to provide information sufficient to demonstrate the relevance to the Department's likelihood analysis, the Department has no statutory obligation to consider such a factor in its likelihood determination.

### **Preliminary Results of Review**

After taking into consideration the circumstances of this case, including the history of margins and import volumes, as well as potentially relevant information presented by respondents, we preliminarily determine that revocation of the antidumping duty order on Salmon from Norway is likely to lead to the continuation of dumping at the margins listed below:

Manufacturer/producer/exporter	Weighted-average 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

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

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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(Date)