

DATE: July 30, 2010

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

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Summary

We have analyzed the responses of the interested parties in the first sunset review of the antidumping duty 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 at the following rates.¹

| | |
|-----------------------------------------------------------|-------|
| Camau Frozen Seafood Processing Import Export Corporation | 5.24 |
| Kim Anh Company Limited | 25.76 |
| Minh Phu Seafood Corporation | 4.38 |
| Minh Hai Joint Stock Seafoods Processing Company | 4.30 |

¹ 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).

| | |
|----------------------------------------------------------------|-------|
| Vietnam-Wide Margin | 25.76 |
| Amanda Foods (Vietnam) Ltd. | 4.57 |
| Aquatic Products Trading Company | 4.57 |
| Bac Lieu Fisheries Company Limited | 4.57 |
| Coastal Fisheries Development Corporation | 4.57 |
| Cai Doi Vam Seafood Import-Export Company | 4.57 |
| Cam Ranh Seafoods Processing Enterprise Company | 4.57 |
| Can Tho Agriculture and Animal Products Import Export Company | 4.57 |
| Cantho Animal Fisheries Product Processing Export Enterprise | 4.57 |
| C.P. Vietnam Livestock Co. Ltd. | 4.57 |
| Cuu Long Seaproducts Company | 4.57 |
| Danang Seaproducts Import Export Corporation | 4.57 |
| Hanoi Seaproducts Import Export Corporation | 4.57 |
| Investment Commerce Fisheries Corporation | 4.57 |
| Kien Giang Sea-Product Import-Export Company | 4.57 |
| Minh Hai Export Frozen Seafood Processing Joint-Stock Company | 4.57 |
| Minh Hai Seaproducts Import Export Corporation | 4.57 |
| Ngoc Sinh Private Enterprise | 4.57 |
| Nha Trang Fisheries Joint Stock Company | 4.57 |
| Nha Trang Seaproduct Company | 4.57 |
| Pataya Food Industries (Vietnam) Ltd. | 4.57 |
| Phu Cuong Seafood Processing and Import-Export Company Limited | 4.57 |
| Phuong Nam Co. Ltd. | 4.57 |
| Sao Ta Foods Joint Stock Company | 4.57 |
| Soc Trang Aquatic Products and General Import Export Company | 4.57 |
| Song Huong ASC Import-Export Company Ltd. | 4.57 |
| Thuan Phuoc Seafoods and Trading Corporation | 4.57 |
| UTXI Aquatic Products Processing Company | 4.57 |
| Viet Foods Co., Ltd. | 4.57 |
| Viet Nhan Company | 4.57 |
| Viet Hai Seafood Company Ltd. | 4.57 |
| Vinh Loi Import Export Company | 4.57 |

Since the issuance of the antidumping duty order, the Department has conducted four administrative reviews and three new shipper reviews with respect to certain frozen warmwater shrimp from Vietnam.² The Department is issuing the final results of the fourth administrative

² See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007)(“First Administrative Review”); Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273 (September 9, 2008)(“Second Administrative Review”); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the Second New Shipper Review, 74 FR 24796 (May 26, 2009); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 74 FR 53701 (October 20, 2009)(“Third Administrative Review”); and Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Rescission of New Shipper Review, 75 FR 36635 (June 28, 2010); Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for

review concurrently with the preliminary results of this first sunset review. See Attachment 1.

The Department has issued one changed circumstances determination.³ There have been no duty absorption findings concerning the certain frozen warmwater shrimp from Vietnam antidumping duty order. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Vietnam.

On January 4, 2010, the Department published the notice of initiation of the first sunset review of the antidumping duty order on certain frozen warmwater shrimp from Vietnam pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”).⁴ On January 19, 2010, the Department received notices of intent to participate from domestic interested parties, the Ad Hoc Shrimp Trade Action Committee (“AHSTAC”), and the American Shrimp Processors Association (“ASPA”). The submissions were received within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

On February 3, 2010, we received substantive responses from the domestic interested parties and 28 respondent interested parties (collectively “Respondents”). These responses were 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. Pursuant to 19 CFR 351.218(d)(4), on February 12, 2010, ASPA and Respondents filed rebuttal comments on parties’ substantive responses.

On March 2, 2010, we found Respondents’ response to be adequate because Respondents accounted for more than 50 percent of the exports by volume of subject merchandise from Vietnam to the United States during the sunset review period.⁵ We also found that Respondents had adequately responded to the notice of initiation under 19 CFR 351.218(e)(1)(i)(A).⁶ 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.

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 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

Revocation, in Part, of the Fourth Administrative Review, 75 FR 12206 (March 15, 2010).

³ See Frozen Warmwater Shrimp from Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Review, 74 FR 42050 (August 20, 2009).

⁴ Initiation of Five-Year (“Sunset”) Review, 75 FR 103 (January 4, 2010).

⁵ See Memorandum to James C. Doyle: Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated March 2, 2010 (“Adequacy Memo”).

⁶ See id.

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. 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 of the interested parties.

Issue 1. Likelihood of Continuation or Recurrence of Dumping

Interested Parties Comments:

The domestic interested parties, AHSTAC and ASPA, argue that revocation of the antidumping duty 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 three administrative reviews that have been completed. In addition, AHSTAC and ASPA argue that the volume of subject merchandise imported into the United States declined significantly overall following the imposition of the antidumping duty order, although there were modest increases in volume over the period of review, particularly in 2008.⁷ Based on this analysis, ASPA specifically argues that Respondents cannot ship subject merchandise at the volume reached before the order without dumping.⁸

Respondents state that all of the mandatory respondents examined in the first three administrative reviews obtained de minimis margins. Moreover, Vietnamese Respondents argue that the separate rate respondents also should have received de minimis margins, and this matter is still ongoing before the U.S. Court of International Trade.⁹ Vietnamese Respondents assert that because they have been able to ship subject merchandise near “historic levels” without dumping, they will continue to ship at these levels without dumping whether the antidumping order is place or not.¹⁰

In its rebuttal comments, ASPA argues that Respondents’ assertions about its import volumes and dumping levels are incorrect and disregard evidence that supports the opposite conclusion. Specifically, ASPA states that there was a significant drop in subject import volume from 2003 to 2004, following the petition for an antidumping investigation, and that subject import volumes have remained below pre-petition levels. ASPA argues that Respondents’ statement of no dumping ignores the large number of companies that received positive separate rates and the Vietnam-wide entity rate. With regard to Respondents’ argument for rates assigned to separate rate respondents, ASPA asserts the determination of the agency (to assign positive rates) is presumed to be correct until a final court order is issued.¹¹

⁷ See AHSTAC’s Substantive Response, dated February 3, 2010, at 21-23; ASPA’s Substantive Response, dated February 3, 2010, at 6-10.

⁸ See ASPA’s Substantive Response at 10.

⁹ See Amanda Foods (Vietnam) Ltd. v. United States, Consol Court No. 08-00301.

¹⁰ See Respondents’ Substantive Response, dated February 3, 2010, at 2.

¹¹ See ASPA’s Rebuttal Comments, dated February 12, 2010, at 3.

In their rebuttal comments, Respondents argue that more and more companies have obtained de minimis margins, and the separate rate respondents were likewise entitled to de minimis margins. Since the imposition of the order, Respondents argue that the subject import volumes have remained strong, with an increase from 2004 to 2008. Respondents assert that such facts support the revocation of the antidumping order. Finally, Respondents provided certain market share information, which Respondents claim indicates an increase of Vietnam's market share from 2005 to 2008 and that this further supports the revocation of the order.¹²

The Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("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"), the Department's determinations of likelihood will be made on an order-wide basis.¹³ 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 conducted during the sunset review period¹⁴, 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.¹⁵ However, the SAA at 889-90, the House Report at 63, and the Senate Report at 52 state that, "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."

In analyzing whether dumping is likely to continue or recur if the order on certain frozen warmwater shrimp from Vietnam was revoked, we first examined the extent of dumping during the five-year sunset period of 2005-2009. As claimed by AHSTAC and ASPA, the Department has assigned positive rates for many Respondents during the four completed administrative reviews.¹⁶ Therefore, the Department has found dumping of the subject merchandise to exist after the issuance of the order, and that the revocation of the antidumping order is likely to lead to a continuation of dumping.

When comparing imports of subject merchandise for the five-year sunset review period, the

¹² See Respondents' Rebuttal Comments, dated February 12, 2010, at 2-10.

¹³ See SAA at 879 and House Report at 56.

¹⁴ 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.

¹⁵ See SAA at 899 and 890, House Report at 63-64, and Senate Report at 52.

¹⁶ See First Administrative Review, 72 FR at 52054; Second Administrative Review, 73 FR 52275-52276; Third Administrative Review, 74 FR at 53702; See Attachment 1.

Department's current practice is to look at the full year prior to initiation of the investigation (as opposed to prior to issuance of the order). 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 4-5; Furfuryl Alcohol From Thailand; Preliminary Results of the Second Sunset Review of the Antidumping Duty Order, 71 FR 62583 (October 26, 2006) and accompanying Issues and Decision Memorandum at 5. The rationale behind this is that initiation of an investigation may immediately cause a dampening effect on trade, which could skew the comparison.

We reviewed public U.S. import data as reported by the ITC Trade Database for 2003-2009, which includes the five-year sunset period (2005-2009).¹⁷ We compared the public import data to Respondents' reported data and found that these data are comparable.¹⁸ Imports of subject merchandise from Vietnam for the sunset period of review of 2005 through 2009 numbered 42.1, 35.9, 37.9, 46.7, 40.1 million kilograms, respectively. In 2003 (the year preceding the year of initiation of the antidumping investigation), subject imports totaled 56.3 million kilograms. Therefore, with the discipline of the order, imports fell after the initiation of the original investigation, and did not return to pre-initiation levels in any of the individual years or as a whole (an average of 40.5 million kilograms during the sunset review period).

Respondents also argued that the import market share is another factor that the Department can consider and Vietnam's share of the U.S. market remained stable, increasing slightly from 2005 to 2008.¹⁹ We first note that Respondents did not make a timely good cause argument for other factors to consider in their substantive response, in accordance with the Department's regulations and practice.²⁰ We also note that the information provided by Respondents is incomplete, as they did not provide market share information for 2009, the last year of the sunset review period. Nonetheless, their narrative argument about market share fails because the data provided does not support that argument; instead, the data Respondents provided indicates that the post-order market share levels for the first four years (2005-2008) continued to be below the pre-investigation level in 2003.²¹

Issue 2. Magnitude of the Margin Likely to Prevail

Interested Party 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.²² In addition, the ASPA

¹⁷ See AHSTAC's Substantive Response at 23; Respondents' Substantive Response at Exhibit 3.

¹⁸ See Respondents' Substantive Response at Exhibit 3.

¹⁹ See Respondents' Rebuttal Comments at 9-10.

²⁰ See Furfuryl Alcohol from Thailand; Final Results of the Second Sunset Review of the Antidumping Duty Order and Revocation of the Order, 72 FR 9729 (March 5, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

²¹ See Respondents' Rebuttal Comments at Exhibit 2.

²² See AHSTAC's Substantive Response at 24-25; ASPA's Substantive Response at 11.

also argues that the Department can use the more recently calculated rate.²³ Respondents argue that the Department should report to the ITC that the margin likely to prevail is de minimis because there is no likelihood of continuation or recurrence of dumping.²⁴

The Department's Position:

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999). 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. 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. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.

The Department may provide a more recently calculated margin for a particular company, however, 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 in order 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. See Section 752(c)(3) of the Act.

In the instant case, as noted above, dumping continued to occur during the sunset review period, and the post-order volume of imports did not match the level of imports prior to the investigation. Thus, the margins from the original investigation are more indicative of the margin likely to prevail without the discipline of the order.

Preliminary Results of Review

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

²³ See ASPA's Substantive Response at 12.

²⁴ See Respondents' Substantive Response at Issue 7.

| 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 preliminary results of review in the Federal Register.

AGREE _____

DISAGREE _____

 Ronald K. Lorentzen
 Deputy Assistant Secretary
 for Import Administration

 Date