

67 FR 48437, July 24, 2002

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Initiation of Antidumping Duty Investigation: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Lisa Shishido, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3208, (202) 482-0413, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (2002).

The Petition

On June 28, 2002, the Department of Commerce ("Department") received a petition on imports of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") filed in proper form by Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "the Petitioners." On July 3, 2002, the Department requested clarification of certain areas of the petition and received a response on July 10, 2002. A second request for clarification was sent

on July 9, 2002, and the Department received a response on July 11, 2002.

In accordance with section 732(b) of the Act, the Petitioners allege that imports of certain frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Petitioners are domestic farmers and processors of catfish and account for over fifty percent of domestic production of catfish fillets, as defined in the petition. Therefore, the Department finds that the Petitioners have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act, with respect to the merchandise subject to this investigation. The Petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

#### Scope of Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57\1 (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

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\1\The Petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term 'sole' to describe Vietnamese basa and tra.

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During our review of the petition, we discussed the scope with the

Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice.

Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street

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and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. In investigations involving a processed agricultural product that is produced from a raw agricultural product, section 771(4)(E) of the Act provides that the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if (1) the processed agricultural product is produced from the raw agricultural product through a continuous line of production and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships.

Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to growers, processors, and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must

also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.\2\

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\2\See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

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Section 771(10) of the Act defines the domestic like product as ``a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is ``the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the ``Scope of Investigation" section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (see *Initiation Checklist Re: Industry Support*, July 18, 2002) (``Initiation Checklist"). To the best of the Department's knowledge, producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A), (C), (D), (E), or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price

The following is a description of the allegation of sales at less than fair value ("LTFV") upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The Petitioners identified approximately fifty-three Vietnamese companies as major producers and exporters of frozen fish fillets in Vietnam. See Initiation Checklist at Attachment I.

The Petitioners submitted LTFV analyses for Vietnam as a non-market economy and a market economy. Consequently, the Petitioners calculated an export price using a non-market economy and a market economy analysis.

In both the non-market economy and the market economy analysis, the Petitioners based export price ("EP") on quantities and free on board ("FOB") values from Bureau of Census" import statistics, using the weighted average unit values of the merchandise subject to this investigation classifiable under HTSUS category 0304.20.60.30. To obtain ex-factory prices, in both instances, the Petitioners adjusted the average unit value for brokerage and handling and inland freight costs. See Initiation Checklist for further information.

#### Normal Value: Nonmarket Economy

The Petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). For the normal value ("NV") calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for certain frozen fish fillets on information from a U.S. catfish producer. The Petitioners asserted that they did not have specific, reliable information on frozen basa and tra fillet production factors in Vietnam. However, according to the Petitioners, all catfish processors, whether they are located in the United States or Vietnam, perform the same basic steps in producing frozen fish fillets. Therefore, the Petitioners relied upon U.S. production factors for the NV calculation, after adjusting for known differences in Vietnam. See Initiation Checklist.

The Petitioners selected India as their surrogate country. The Petitioners argued that pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the Petitioners, we believe that the

Petitioners' use of India as a surrogate country is appropriate for purposes of initiation of

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this investigation. See Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the Petitioners used import statistics from India, as reported in Indian Monthly Statistics of Foreign Trade of India, Vol. II-Imports, Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, Calcutta, excluding those values from countries previously determined by the Department to be NME countries. For inputs valued in Indian Rupiah and not contemporaneous with the period of investigation ("POI") (i.e., October 2001--March 2002), the Petitioners used information from the wholesale price indices ("WPI") in India as published by the Office of the Economic Adviser in the Indian Ministry of Commerce and Industry, March 2002, to determine the inflation adjustment.

To value live fish, the major input, the Petitioners stated that since Indian Monthly Statistics of Foreign Trade of India were not specific to the merchandise subject to this investigation, the surrogate value was based on the average price of catfish in India from the United Nations Food and Aquaculture Organization ("FAO") FishStat Plus Database. The Petitioners explained their efforts in obtaining alternative surrogate values and the reliability of the FAO data in Exhibit 22 of the Petition. The Petitioners noted that because the FAO price is reported in dollars, they deflated the price to the October 2001 to March 2002 period by using the United States purchase price index ("PPI"), as published by the United States Bureau of Labor Statistics. See Initiation Checklist.

The Petitioners explained that the production of frozen catfish fillets generates waste, as the head, tail, skin and viscera are all discarded. According to the Petitioners, in the United States, processors recover the waste and sell it to rendering plants where it may be used for further processing into products such as fish meal or fish oil. Furthermore, according to the Petitioners, the Vietnamese processors require 3.51 pounds of live fish to produce one pound of fillets, and therefore, the waste quantity would be 2.51 pounds for every pound of fish fillet. Because the Petitioners could not obtain any information on the recovery of offal by Vietnamese processors, they deducted from the total material cost an amount for waste recovery based on their own experience. The Petitioners were also unable to obtain a value for fish offal in India. Therefore, pursuant to 19 CFR 351.202(b)(7)(i)(B), the value of offal is based on the experience of a

U.S producer's average for year 2000 and 2001. See Initiation Checklist.

For water, the Petitioners calculated a surrogate value based on price data in India as reported by the Second Water Utilities Data Book, Asian and Pacific Region, published the Asian Development Bank. The Petitioners applied the WPI to inflate the water price to the POI. See Initiation Checklist. Data from the Asian Development Bank has previously been used by the Department. See Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of a New Shipper Review, Fresh Water Crawfish Tail Meat from the People's Republic of China ("Crawfish") 65 FR 60399, 60404 (October 11, 2000).

To value electricity in India, the Petitioners relied upon the Organization for Economic Cooperation and Development's ("OECD") Energy Prices and Taxes data. The Petitioners applied the Indian WPI to inflate the electricity price to the POI. See Initiation Checklist.

Pursuant to 19 CFR 351.408(c)(3), the Department calculates and publishes the surrogate values for labor to be used in non-market economy cases. The Petitioners explained that because the Department has not yet published a labor rate for Vietnam, they have applied the regression formula published on the Department's website to derive the Vietnamese labor rate that would be calculated using the Department's methodology. See Initiation Checklist.

The Petitioners calculated a simple average for factory overhead, selling, general and administrative expenses (SG&A), interest, and profit, which were derived from the 2000-2001 financial statements of NCC Blue Water Products, Ltd., Integrated Rubian Exports, Ltd. and Uniroyal Marine Exports, Ltd., Indian producers of frozen fish fillets.

We made adjustments to NV for sodium tripolyphosphate, propane and the packing materials. For further information, see the Initiation Checklist.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for certain frozen fish fillets from Vietnam applying the non-market economy methodology is 190.20 percent.

#### Normal Value: Market Economy

The price and cost data provided by the Petitioners was examined for reasonableness and accuracy. The Petitioners stated that they were unable to obtain information on home market or third country prices of Vietnamese frozen fish fillets, despite extensive research using the Internet and data sources published by organizations such as the World Bank, International Monetary Fund, Asian Development Bank, and Bureau of Labor Statistics.

Pursuant to 19 CFR 351.202(b)(7)(i)(B), the Petitioners calculated the NV based on constructed value ("CV"), using U.S. production costs and factors that have been adjusted for known differences in production in Vietnam. See Initiation Checklist. The Petitioners calculated the production costs and factors provided by a domestic U.S. producer of frozen fish fillets where the Petitioners were unable to obtain Vietnamese pricing information. Specifically, the Petitioners were only able to obtain published Vietnamese input prices for live fish, labor, electricity, and water. To value the fish waste offset, sodium tripolyphosphate, propane, and packing materials, the Petitioners used U.S. producer input costs. To value factory overhead, SG&A and Profit, the Petitioners used a U.S. producer's financial statement information. See Initiation Checklist. The values submitted by the Petitioners to calculate the CV consist of information reasonably available, and are therefore acceptable for purposes of initiation.

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For purposes of initiation we are accepting the Petitioners' use of a U.S. catfish processor's financial statement information to derive the financial and profit ratios, but note that in the event that we rely on Petition information as facts available, we may re-examine the appropriateness of the U.S. producers' information as the basis for calculating the financial and profit ratios.

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Based on comparisons of EP to NV, calculated in accordance with section 773(a)(c) of the Act, the estimated recalculated dumping margin for certain frozen fish fillets from Vietnam applying the market economy methodology is 143.7 percent.

#### Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value.

#### Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like

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product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The Petitioners contend that the industry's injured

condition is evident in (1) reduced shipments; (2) reduced prices; (3) declining employment; (4) declining production and capacity utilization; (5) growing inventories; and (6) significant financial losses.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

#### Initiation of Antidumping Investigation

Based upon our examination of the Petition on frozen fish fillets from Vietnam, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of frozen fish fillets from Vietnam are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to the government representatives of Vietnam. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as appropriate.

#### International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 12, 2002, whether there is a reasonable indication that imports of frozen fish fillets from Vietnam are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 18, 2002.  
Faryar Shirzad,  
Assistant Secretary for Import Administration.

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