Certain Frozen Fish Fillets From Vietnam

Investigation No. 731-TA-1012 (Final)

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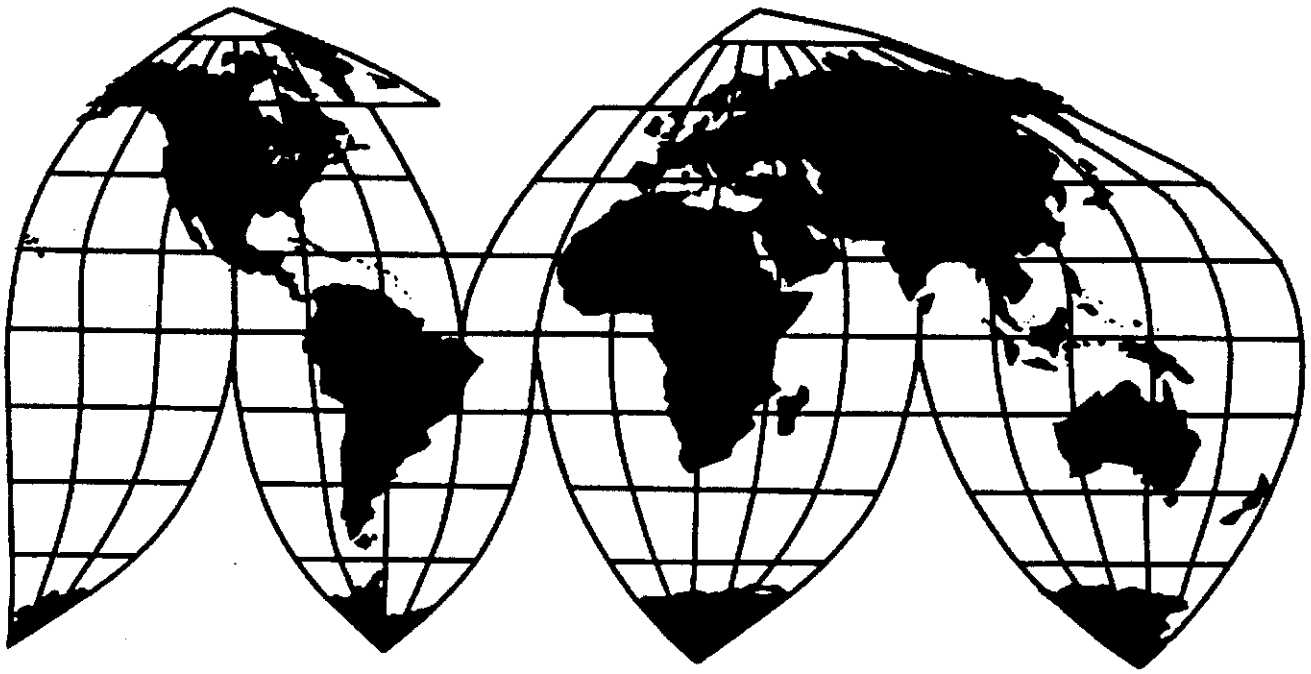
U.S. International Trade Commission



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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-1012 (Final)

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). Concurrently, the Commission finds that critical circumstances do not exist with respect to imports of the subject product from Vietnam.

BACKGROUND

The Commission instituted this investigation effective June 28, 2002, following receipt of a petition filed with the Commission and Commerce on behalf of the Catfish Farmers of America–a trade association of U.S. catfish farmers and processors–and by individual U.S. catfish processors. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of the subject product from Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 12, 2003 (68 FR 7131). The hearing was held in Washington, DC, on June 17, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of certain frozen fish fillets from Vietnam that are sold in the United States at less than fair value ("LTFV").[1] We find that the imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued, and therefore make a negative finding with respect to critical circumstances.

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[2] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[3] In turn, the Act defines "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 . . . ."[4]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[5] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[6] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[7]

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[1] Whether the establishment of an industry is being materially retarded is not an issue in this investigation.

[2] 19 U.S.C. §1677(4)(A).

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(10).

[5] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case' "). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[6] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

[7] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent

Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[8]

B. Product Description

Commerce's final determination defines the imported merchandise within the scope of this investigation as:

> [T]he product covered is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. 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.[9]

The subject frozen fish fillets are processed from basa and tra that are raised in cages on the Mekong River in Vietnam and are transported downriver in cage boats to processing facilities where they are deheaded, eviscerated, and filleted. The fillets are typically, but not always, individually quick frozen before being packed in 15-pound cartons for shipping.[10]

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consideration of an industry adversely affected by the imports under consideration.").

[8] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[9] 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 Fed. Reg. 37116, 37119 (June 23, 2003). Commerce's notice further stated that the "products are classifiable under tariff 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 (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." 68 Fed. Reg. at 37119. Subject frozen fish fillet imports from Vietnam will be referred to herein as basa and tra imports or as subject imports.

[10] Confidential Staff Report ("CR"), INV-00-88, July 7, 2003, at I-5 to I-6; Public Staff Report ("PR"), July 7, 2003, at I-4 to I-5.

C. Domestic Like Product

Where, as in this investigation, there is no domestic product that is "like" the subject imports, the statute requires the Commission to find the domestic product that is "most similar" in terms of physical characteristics and uses.[11] In the preliminary phase of this investigation, the Commission found frozen catfish fillets to be the product most similar to frozen basa and tra fillets. In the final phase of this investigation, petitioners[12] and respondents[13] agreed that frozen catfish fillets are the product "most similar" to frozen basa and tra fillets.[14]

Domestic catfish are raised in man-made, earthen ponds, 10 to 20 acres in size and 3 to 6 feet deep on more than 1,000 farms, located mainly in the Southeast. Ponds are stocked with fingerlings that receive daily feeding until reaching harvesting size in approximately 10 weeks. At harvesting, which takes place year-round, the fish are placed in tank trucks and transported live to processing plants, where they are deheaded, eviscerated, and skinned to produce frozen fish fillets.[15] The U.S. farm-raised catfish industry is the largest aquaculture industry, accounting for more than 80 percent by volume and 60 percent by value of all U.S. aquaculture production of fish in 1999. Catfish was the fifth most popular seafood in the United States in 2000.[16]

The record indicates that basa and tra and domestic catfish are all freshwater, white fish, with similar 6-month shelf lives when frozen, similar texture, and a neutral/mild flavor; each typically is individually quick frozen, typically packaged in 15-pound boxes, and sold in the same size increments, primarily to the food service industry and secondarily to restaurants.[17] During the period examined, frozen basa and tra fillets from Vietnam were widely marketed, sold, and even labeled in the United States as "catfish" under product names similar to U.S. catfish producers' products or that implied domestic origin, such as "Delta Fresh Farm Raised Catfish," "Harvest Fresh Catfish," "Farm Select Catfish," and "Cajun Delight Catfish."[18] In 2001 and 2002, legislation intended to prohibit this practice

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[11] 19 U.S.C. § 1677(10); see also, e.g., Synthetic Methionine from Japan, Inv. No. AA1921-115 (Review), USITC Pub. 3205 (July 1999).

[12] Petitioners are the Catfish Farmers of America ("CFA"), a trade association consisting of domestic catfish farmers and processors, and certain individual domestic 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. See, e.g., Petition at 4-5, Exh. 3.

[13] Respondents are the Vietnam Association of Seafood Exporters and Producers ("VASEP") and Foodcomm International, an importer of the subject merchandise.

[14] Respondents' Posthearing Brief at 2, Id. at Exhibit 1, at 8; Petitioners' Prehearing Brief at 4.

[15] CR at I-4 to I-5, PR at I-4.

[16] Petition at 2.

[17] CR at I-4 to I-7, II-1, PR at I-5, II-1. In 2002, sales to food service distributors and restaurants accounted for 61.5 percent and 9.2 percent respectively of U.S. processor shipments, and *** percent and *** percent of importer shipments, respectively. CR at II-1, PR at II-1.

[18] CR at I-7, PR at I-5; Petitioners' Posthearing Brief, Exhibit G, at Attachments 1 and 2; Transcript of Public Hearing of June 17, 2003, at 45 ("Tr.") (sales of subject imports increased when marketed as catfish and competed

was enacted.[19]

With respect to marinated and breaded frozen fillets, the record continues to indicate that, as the Commission found in the preliminary phase of the investigation, these fillets should be included in the definition of the domestic like product.[20] No new information has been obtained suggesting they should be excluded from the definition.

Respondents in the preliminary phase of this investigation argued for the inclusion of frozen fillets from other white fish, including tilapia, in the definition of the domestic like product. In the final phase of the investigation, the Commission collected information on competition between other frozen fish fillets, including tilapia, with the subject imports and frozen catfish fillets. However, the additional information concerning other types of frozen fish fillets does not indicate that including such products in the definition of the domestic like product would be appropriate.[21] Therefore, we define the domestic like product as we did in the preliminary phase of this investigation, as frozen catfish fillets, whether or not breaded or marinated.

D. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product ... ."[22]

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with domestic catfish); Tr. at 186 (importer marketed subject fillets as catfish). See also Petitioners' Posthearing Brief, Exhibit 2 (Annual Report on the United States Seafood Industry, Tenth Ed., H.M. Johnson & Assoc., 2002) ("[M]arketers soon recognized the opportunity to capitalize on the work done over the years by The Catfish Institute and began calling the product catfish.").

[19] By the end of 2001, federal regulations concerning the labeling of fish as "catfish" were in place. See 2002 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, § 755 (providing "None of the funds appropriated or otherwise made available by this Act to the Food and Drug Administration shall be used to allow admission of fish or fish products labeled wholly or in part as 'catfish' unless the products are taxonomically from the family Ictaluridae.") effective as of November 28, 2001; Farm Security and Rural Investment Act of 2002, P.L. 107-171, § 10806 amending the Food, Drug and Cosmetic Act and the Federal Food, Drug and Cosmetic Act to provide that food shall be deemed to be misbranded if it is represented as catfish unless it is classified within the Ictaluridae family) (enacted on May 13, 2002, but retroactive to January 1, 2002). Further, section 10816 requires as of September 30, 2004 that a retailer of farm-raised fish (among other enumerated agricultural commodities) "shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity," but exempts food service establishments. State labeling laws are also in effect in Mississippi, Louisiana, and Arkansas.

[20] The Commission found that similarities in physical characteristics and uses, channels of distribution, production processes and employees and price all supported inclusion of the breaded and marinated frozen fillets in the definition of the domestic like product. The Commission further found that the semifinished analysis supported this conclusion as well. See USITC Pub. 3533 at 7.

[21] See, e.g., CR at II-10 to II-11, PR at II-7 to II-8; CR at II-10 n.17, PR at II-8 n.17 (12 of 14 processors, 3 of 5 importers, and 23 of 32 purchasers reported that there are no substitutes for frozen fillets made from catfish, basa, or tra). See also Respondents' Posthearing Brief, Exhibit 1, at 8. In the final phase of this investigation, respondents did not pursue any arguments concerning the definition of the domestic like product and did not ask the Commission to gather data on other frozen fish fillets for possible inclusion in the definition of the domestic like product. As we noted in our preliminary determination, while tilapia could be considered a candidate for inclusion in the definition of the domestic like product, tilapia is farm-raised in the United States, but is not sold as a frozen product. CR at I-8, PR at I-6.

[22] 19 U.S.C. § 1677(4)(A).

In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[23]

As we did in the preliminary phase of this investigation, we consider whether to include catfish farmers as part of the domestic industry, along with the processors. In investigations involving processed agricultural products, in this case frozen fish fillets, section 771(4)(E) of the 1988 Omnibus Trade and Competitiveness Act authorizes the Commission to include farmers/growers of a raw agricultural product as producers within the domestic industry producing the processed agricultural product if –

(a) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production, and
(b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interests is based upon any legal relationship).[24]

Under the first prong of the statute, a continuous line of production exists if:

(i) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and
(ii) the processed agricultural product is produced substantially or completely from the raw product.[25]

In addressing coincidence of economic interest under the second prong of the test, the Commission may consider price, added market value, or other economic interrelationships. Further:

(i) if price is taken into account, the Commission shall consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and
(ii) if added market value is taken into account, the Commission shall consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.[26]

When determining whether the raw agricultural product is "substantially or completely devoted" to the production of the processed agricultural product, the Commission generally looks to the percentage of the raw product used in the processed product.[27] Here the raw agricultural product is live food-size

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[23] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F. 3d 1352 (Fed. Cir. 1996).

[24] 19 U.S.C. §1677(4)(E)(i).

[25] 19 U.S.C. § 1677(4)(E)(ii).

[26] 19 U.S.C. § 1677(4)(E)(iii).

[27] See e.g., Red Raspberries from Chile, Inv. No. 731-TA-948 (Final), USITC Pub. 3524 (2002) at 8. In Red Raspberries from Chile, the Commission found that 79 percent of IQF-quality raspberries were used to make the

catfish. Based on the information in the record of the final phase of this investigation, approximately one half (by weight) of the live food-sized catfish acquired by domestic processors was processed into frozen catfish fillets.[28] Several additional products, including fresh fillets, fresh and frozen steaks, and nuggets, also are processed from the raw agricultural product.[29] While neither the statute nor the legislative history establish a specific numeric benchmark, we conclude that devotion of approximately one half of the raw agricultural product to the production of frozen fish fillets is insufficient to satisfy the first prong of the statute.[30]

With respect to whether the processed agricultural product is produced "substantially or completely" from the raw product, the primary raw material in the production of frozen catfish fillets is whole fresh food-size catfish. Whole fresh fish accounted for 67 percent of the cost of goods sold of frozen catfish fillets in 2002.[31]

Regarding whether there is a substantial coincidence of economic interest between the farmers and the producers of the processed agricultural product, the record indicates that there is a substantial amount of cross-ownership among the catfish farmers and processors.[32] Farmers sell virtually all of their live catfish to processors, and processors rely wholly on farmers for their input, since, unlike their counterparts in Vietnam that also process other types of fish and seafood, domestic processors only process catfish.[33] Moreover, based on NASS data, there was a 0.984 correlation between the price of whole fish sold to processors and the price of frozen fish fillets sold by processors between January 2000 and March 2003.[34]

We have considered the statutory criteria contained in section 771(4)(E). However, despite finding a coincidence of economic interest, because the domestic yield of all live food-size catfish is not substantially or completely devoted to the production of frozen catfish fillets, we conclude that there is

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processed product.

[28] CR at I-6 to I-7, III-1, PR at I-5, II-1. This is excluding from consideration the "offal" or waste. While approximately 50 percent of the live catfish is offal, some offal is sold as a byproduct and could be considered a processed product. CR at III-1, PR at III-1. Petitioners argue that the value of frozen catfish fillets is 54.2 percent of all processed products. Petitioners' Prehearing Brief, Exhibit 9. Nonetheless, the data for the value and weight of frozen fish fillets are similar and indicate that this particular product represents about half of the value and weight of products processed from live food-size catfish. See CR at I-7 n.12, PR at I-5 n.12 (57 percent and 49 percent, respectively). Data obtained from the U.S. Department of Agriculture's National Agricultural Statistics Service ("NASS") indicate that frozen catfish fillets accounted for 46 percent by weight of all processed products from catfish sold in 2002. CR at I-7 n.12, PR at I-5 n.12.

[29] CR at I-6, PR at I-5.

[30] The legislative history indicates that "substantially or completely" should be interpreted to mean "all or almost all." See H.R. Rep. 40, Part I, 100th Cong. 1st Sess. (1987) at 121. The Senate Finance Committee also states that "[t]he Committee does not expect this test {i.e., the "single continuous line test"} to be met if the raw product is devoted to production of several different processed products" S. Rep. 71, 100th Cong., 1st Sess. at 109-10 (June 11, 1987).

[31] CR at V-2, PR at V-2.

[32] CR/PR at Table III-1; CR/PR at Table VI-3 (the following processors own, or are themselves owned, in whole, or in part, by catfish farms: ***).

[33] CR at I-6, PR at I-4.

[34] See CR at II-5 n.5, PR at II-4 n.5.

no continuous line of production. Consequently, we do not include catfish farmers within the definition of the domestic industry. Accordingly, we define the domestic industry as processing operations producing frozen catfish fillets (whether or not breaded or marinated), not including catfish farming operations.[35] Nevertheless, because the record demonstrates the importance of catfish farmers to catfish processors and vice versa, we take into account the role of farmers as condition of competition in this industry.

II. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS[36]

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[37] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[38] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[39] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[40] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[41]

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from Vietnam found to be sold in the United States at LTFV.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis of material injury to the domestic industry by reason of subject imports in this investigation.

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[35] We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. While two domestic processors (***) either purchased (through a related firm) or imported directly the subject merchandise, they did not provide useable financial data to the Commission, rendering the question of whether to exclude them largely moot. ***.

[36] The statutory provision for negligible imports, 19 U.S.C. § 1677(24), does not apply in this investigation because subject imports from Vietnam are more than three percent of total imports in the most recent twelve-month period for which data are available that precedes the filing of the petition. See, e.g., CR/PR at Table IV-1.

[37] 19 U.S.C. § 1673d(b).

[38] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also, Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[39] 19 U.S.C. § 1677(7)(A).

[40] 19 U.S.C. § 1677(7)(C)(iii).

[41] Id.

Long-term demand for frozen fillets of catfish, and basa and tra, has expanded markedly.[42] This long-term trend continued during the period examined,[43] as apparent U.S consumption increased by 24.1 percent from 2000 to 2002, rising from 148.4 million pounds in 2000 to 158.6 million pounds in 2001 to 184.2 million pounds in 2002, although it was lower in interim 2003 (40.8 million pounds) than in interim 2002 (46.2 million pounds).[44]

The domestic industry, which consists of approximately 25 processors of live catfish, is the leading source of supply to the U.S. market. As demand continued to increase in the U.S. market, domestic producers expanded capacity from 150.6 million pounds in 2000 to 169.9 million pounds 2002, an increase of 12.8 percent.[45] While subject imports were largely absent from the U.S. market prior to 1999, they have been an increasingly significant source of supply.[46] Nonsubject sources were consistently less than one percent of apparent U.S. consumption.[47]

Processors depend on the catfish farmers for fish, as processors purchase more than 90 percent of farmers' fish by weight and do not themselves process other species of fish.[48] In turn, processors rely on farmers for live food-size catfish to operate their facilities. Processors are able to lower their costs to some extent by paying the farmers lower prices for catfish, but several of the processors are owned by catfish farms, thereby limiting the extent to which lower revenue from depressed prices can be passed down to the farmers.[49]

Although not identical, when processed into fillets, basa, tra and catfish generally are similar in appearance, price, texture, and taste.[50] The subject imports and the domestic product both generally

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[42] Based on NASS data for frozen catfish fillets and import data from questionnaires, and alternatively, official import statistics, apparent consumption grew at an annual rate of 9-10 percent between 1990 and 2002. Petitioners' Prehearing Brief, Exhibit 14.

[43] CR at II-9, PR at II-6 (8 of 18 processors, 4 of 5 importers, and 4 of 6 end users reported increasing demand).

[44] CR/PR at Table IV-1. The interim periods were the first three months of 2002 and 2003. The Department of Commerce's suspension of liquidation in January 2003 led to a decrease in subject imports. See CR/PR at Table IV-1. Accordingly, we place less weight on the interim period comparison. See 19 U.S.C. § 1677(7)(I). As a result of declining prices, the value of apparent U.S. consumption was 2.4 percent lower in 2002 than in 2000. CR/PR at Table C-1.

[45] CR/PR at Table III-2. Capacity was 43.7 million pounds in interim 2002 and 45.8 million pounds in interim 2003. Id. Vietnamese producers expanded their capacity from 45.3 million pounds in 2000 to 66.9 million pounds in 2001 and to 90.1 million pounds in 2002, an increase of 98.8 percent. CR/PR at Table VII-1.

[46] CR at V-4, PR at V-4 (citing official import statistics).

[47] CR/PR at Table V-4. In terms of apparent U.S. consumption (by volume), nonsubject imports were 0.8 percent in 2000, 0.6 percent in 2001, and 0.3 percent in 2002. CR/PR at Table IV-1. In terms of value, nonsubject imports were 0.4 percent in 2000, 0.3 percent in 2001, and 0.2 percent in 2002. Id.

[48] CR at III-1, PR at III-1; CR/PR at Table III-1. See also Petitioners' Prehearing Brief, Exhibit 13 (showing cross-ownership of farms and processors).

[49] CR/PR at Table III-1; CR/PR at Table VI-3 (the following processors own, or are themselves owned, in whole, or in part, by catfish farms: ***.

[50] CR at I-4, PR at I-3; Tr. at 55. The subject merchandise is prepared in such a manner as to maximize the similarities, e.g., trimming of red flesh; filleting in common catfish sizes, especially 2-3 oz. fillets; and use of similar packaging. CR at I-4 to I-6, PR at I-3 to I-6.

consist of fillets in the two- to nine-ounce range.[51] Moreover, both the subject imports and the domestic product are sold frozen in 15-pound boxes.[52]

Prior to the period examined, the Vietnamese subject imports were originally marketed in the United States under names such as swai, china sole, and white river cobbler.[53] These efforts were apparently unsuccessful, so frozen basa and tra fillets from Vietnam were marketed and sold in the United States as "catfish," and even labeled as such,[54] until legislation curbed, but did not eliminate, this practice.[55] The domestic producers campaigned at the state and federal levels for changes in the labeling requirements for catfish in order to ensure that basa and tra from Vietnam were not labeled as catfish.[56] Consequently, section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 provided that effective November 28, 2001, "[n]one of the funds appropriated or otherwise made available by this Act to the Food and Drug Administration shall be used to allow admission of fish or fish products labeled wholly or in part as "catfish" unless the products are taxonomically from the family Ictaluridae." The labeling law was subsequently broadened to encompass all marketing and sales of fish as catfish.[57] Section 10806 of the Farm Security and Rural Investment Act of 2002 states that notwithstanding any other provision of law, for purposes of the Federal Food, Drug, and Cosmetic Act, "the term 'catfish' may only be considered to be a common or usual name (or part thereof) for fish classified within the family Ictaluridae" and only labeling or advertising for such fish may include the term "catfish." There also are state labeling laws in Mississippi, Louisiana, and Arkansas.[58]

While the marketing of frozen fillets of basa and tra may have changed to some extent owing to the labeling law, the record in the final phase of this investigation indicates that the subject imports and the domestic product compete, as consumers view basa and tra as comparable to domestic catfish fillets.[59]

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[51] Tr. at 130. Subject imports are concentrated more in the two to three ounce range. CR at II-10 n.14, PR at II-7 n.14.

[52] CR at I-6, PR at I-5.

[53] CR at I-7, PR at I-5. S ee Petitioners' Prehearing Brief at 36, Exhibit 20.

[54] Petitioners' Prehearing Brief, Exhibit G at Attachment 1; Tr. at 45 (sales of subject imports increased when marketed as catfish and competed with domestic catfish); Tr. at 186 (importer marketed subject fillets as catfish). See also Petitioners' Posthearing Brief, Exhibit 2 (Annual Report on the United States Seafood Industry, Tenth Ed., H.M. Johnson & Assoc., 2002) ("[M]arketers soon recognized the opportunity to capitalize on the work done over the years by The Catfish Institute and began calling the product catfish.")

[55] CR at I-7, PR at I-5. See also, Petitioners' Posthearing Brief, Exhibit 3 (***; 2003 International Boston Seafood Show program of events, listing VASEP as an exhibitor of freshwater catfish, as well as individual product offerings for basa catfish by Vietnamese exporters CATACO and Afiex).

[56] See, e.g., Petition at 2-3, 8.

[57] See Petitioners' Prehearing Brief at 37.

[58] Petitioners' Prehearing Brief at 37.

[59] Eight of 15 food service distributors and 1 of 2 restaurants specifically identified catfish as a substitute for basa and tra, as did 3 of 9 other purchasers. CR/PR at Table II-3. In 2002, sales to food service distributors and restaurants accounted for 61.5 percent and 9.2 percent respectively of U.S. processor shipments, and *** percent and *** percent of importer shipments, respectively. CR at II-1, PR at II-1.

The record indicates that frozen catfish fillets and basa and tra fillets compete for sales at the same accounts and that large purchasers have switched between domestic catfish to the subject imports.[60] Moreover, while the labeling laws address marketing practices, they do not reverse commercial ties that exist in a market which responds to price.[61] Piccadilly Cafeterias, for instance, did not stop serving basa as southern fried fish in response to labeling laws. It did so, in Mississippi only, due to customer pressure.[62]

The record indicates that frozen catfish fillets are primarily consumed in restaurants that feature southern fare.[63] While basa and tra fillets marketed as basa have achieved some limited success in regions of the country such as the Northeast where catfish is not popular,[64] a substantial share of subject imports are sold in the South, the principal market for the domestic product.[65]

The record also indicates that the subject imports and domestic frozen catfish fillets are competing in the same channels of distribution.[66] Nearly 62 percent of domestic frozen catfish fillets are sold to food service distributors, while the subject imports are even more concentrated in this channel of distribution; fully *** percent of importers' shipments were destined for food service distributors.[67]

Finally, individual importers and domestic producers reported that the subject imports and the domestic like product are used interchangeably.[68] In addition, many purchasers also reported that the

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[60] CR at I-7, PR at I-5; CR/PR at Table V-7 (confirmed lost sales of $6.0 million); Purchaser Questionnaire Responses (15 purchasers quantified purchases of both frozen catfish fillets and basa and tra fillets between 2000 and 2002). See also Petitioners' Posthearing Brief, Exhibit 2 (Annual Report on the United States Seafood Industry, Tenth Ed., H.M. Johnson & Assoc., 2002) (indicating low-priced imports of basa and tra depressed the frozen catfish fillet market for U.S. producers). Tr. at 54 (American Seafoods switched from basa to catfish). Furthermore, as noted above, at least two U.S. catfish processors directly or indirectly sell frozen basa fillets from Vietnam. CR at III-3 n.2, PR at III-1 n.2; ***.

[61] It also appears that the marketing of basa and tra in direct competition with catfish continues. See, e.g., Petitioners' Prehearing Brief, Exhibit 5. See also, Petitioners' Posthearing Brief, Exhibit 3 (***; 2003 International Boston Seafood Show program of events, listing VASEP as an exhibitor of freshwater catfish, as well as individual product offerings for basa catfish by Vietnamese exporters CATACO and Afiex).

[62] Tr. at 48; Petitioners' Posthearing Brief, Exhibit 1, at 1 (citing Doreen Muzzi, "Vietnamese Basa Pulled from Menu," Delta Farm Press, April 15, 2003).

[63] Tr. at 55.

[64] Tr. at 179.

[65] See, e.g., importer questionnaire responses of *** indicating a concentration or even exclusive focus on southern States. In addition, the importer questionnaire responses of *** indicate that, while these companies market the subject imports nationally, important customers are located in southern States.

[66] CR at II-10, PR at II-7. During 2002, sales to food service distributors and restaurant chains, accounted for 70.7 percent of the domestic industry's shipments and ***percent of importers' shipments. CR at II-1, PR at II-1.

[67] CR at II-1, PR at II-1; Tr. at 47. Direct sales of frozen catfish fillets and basa fillets to restaurants are the second most common distribution channel. CR at II-1, PR at II-1. More than *** percent of reported sales of the subject imports were through these two channels.

[68] While importers and processors alike indicated that there were differences in product characteristics between the subject imports and the domestic product, 17 of 18 responding processors and 4 of 7 importers reported that the subject imports and the domestic like product are used interchangeably. CR/PR at Table II-4.

domestic like product and subject imports are substitutable.[69]

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[70]

The quantity of subject imports rose from 12.5 million pounds in 2000 to 26.0 million pounds in 2001 and to 36.0 million pounds in 2002, an increase of 187.4 percent from 2000 to 2002.[71] By value, subject imports increased from $23.5 million in 2000 to $41.0 million in 2001 and to $53.3 million in 2002.[72] The value of subject imports rose by 127.5 percent from 2000 to 2002.[73]

Although apparent U.S. consumption grew between 2000 and 2002, the volume of subject imports grew significantly faster. Apparent U.S. consumption grew 24.1 percent, from 148.4 million pounds in 2000 to 184.2 million pounds in 2002, while subject imports increased 187.4 percent, from 12.5 million pounds in 2000 to 36.0 million pounds in 2002.[74] The share of apparent U.S. consumption held by subject imports increased from 8.4 percent in 2000 to 16.4 percent in 2001, and to 19.6 percent in 2002, while the domestic producers' market share decreased from 90.7 percent in 2000 to 83.0 percent in 2001, and to 80.1 percent in 2002.[75] Thus, the subject imports' increase in market share came largely at

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[69] Twelve of 26 purchasers indicated that catfish was a substitute for the subject imports. CR/PR at Table II-3. A somewhat greater percentage of the most significant purchasers, food service distributors, generally indicated that frozen fillets of catfish and basa and tra were substitutable. CR/PR at Table II-3 (8 of 15 responses). Most responding purchasers, processors, and importers indicated that there are no other white fish substitutes for catfish and basa and tra. CR at II-10 n.17, II-11, PR at II-8, II-8 n.17.

[70] 19 U.S.C. § 1677(7)(C)(i).

[71] CR/PR at Table IV-1. In the interim period comparison -- January to March 2002 to January to March 2003 -- subject imports declined from 6.6 million pounds in interim 2002 to 2.3 million pounds in interim 2003, as a result of Commerce's suspension of liquidation at the end of January 2003. Id. Data for the subject imports are from the foreign producers' questionnaires rather than official statistics. Id. As discussed, labeling laws took effect in November 2001 and in May 2002. Subject imports, however, increased by 38.8 percent between 2001 and 2002, and - at least for the firms subject to critical circumstances findings by Commerce - increased by 86.9 percent between the first half of 2002 and the second half of 2002. See CR at IV-4, PR at IV-3; CR/PR at Table IV-1. Even though import volume was lower in interim 2003, price data show January-February 2003 volumes to have been large relative to the first two months of prior years. See CR/PR at Tables V-1 to V-4. These data suggest that the immediate impact of legislation addressing the use of the term "catfish" was limited.

[72] CR/PR at Table IV-1. Subject imports by value declined in the interim period comparison, from $9.3 million to $3.4 million in interim 2003. Id.

[73] CR/PR at Table IV-2.

[74] CR/PR at Tables IV-1 and C-1.

[75] CR/PR at Table IV-1. In terms of value, the market share of the domestic producers fell from 93.6 percent in 2000, to 88.9 percent in 2001, to 86.0 percent in 2002. Id. During the interim period comparison, the domestic industry recovered market share as subject imports declined in the first quarter of 2003 after Commerce's suspension of liquidation. Id. Respondents contend that the increase in subject imports only appears large because there was limited trade with Vietnam prior to 1994 because of the trade embargo. CR at V-4, PR at V-4. Nonetheless, we find the volumes and increase in volumes during the period to be significant.

the expense of the domestic industry, as nonsubject import volumes were insignificant throughout the period.[76] Subject imports increased relative to domestic production as well; subject imports were equivalent to 11.6 percent of domestic production in 2000, 25.2 percent in 2001, and 33.2 percent in 2002.[77]

For the foregoing reasons, we find the volume and increase in volume of subject imports to be significant in absolute terms and relative to production and consumption in the United States.[78]

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[79]

As discussed in conditions of competition, the record evidence indicates that the domestic like product and subject imports are interchangeable and used in the same applications, and that many purchasers consider basa and tra and the domestic product to be substitutable.[80] The evidence in the final phase of this investigation demonstrates that basa and tra from Vietnam competed for sales not only in

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[76] CR/PR at Table IV-1 (nonsubject imports accounted for less than one percent of the U.S. market).

[77] See CR/PR at Table C-1. Subject imports were equivalent to 25.6 percent of domestic production in interim 2002 and 8.8 percent of domestic production in interim 2003.

[78] We decline to adopt respondents' argument that the Commission should view all whitefish fillets as part of overall consumption. See, eg. Respondents' Prehearing Brief at 41. The Commission's assessment of whether there is material injury by reason of subject imports, including the assessment of the significance of the volume of subject imports, must be made with respect to the domestic industry's operations producing the like product, and not with respect to other products not included in the domestic like product. See generally, e.g., General Motors Corp. v. United States, 827 F. Supp. 774, 780 (1993) ("The statute clearly provides that the effect of . . . dumped imports shall be assessed in relation to the United States production of a like product.' " (emphasis in original) (rejecting consideration of the effects on other products that were produced by the firms included in the industry in that case). Respondents' argument ignores the fact that other white fish fillets are not part of the definition of the domestic like product. Respondents' Posthearing Brief at 2.

[79] 19 U.S.C. § 1677(7)(C)(ii).

[80] Respondents argue that purchasers' questionnaires indicated a lack of substitutability between the subject imports and the domestic like product. As noted in conditions of competition, the record indicates that the subject imports were substituted for the domestic like product. T r. at 46; Tr. at 47-48. As previously indicated, twelve of 26 purchasers indicated that catfish was a substitute for the subject imports, and eight of 15 of the most significant purchasers, food service distributors, also indicated general substitutability. CR/PR at Table II-3. Basa and tra had little name recognition, and thus the subject imports were widely marketed as catfish until legislation intended to prohibit this practice was enacted. Tr. at 186; CR at I-7, PR at I-5.

the same regions and through the same channels of distribution, but even at existing customer accounts.[81]

The Commission collected quarterly sales pricing data from the domestic industry and importers for four products during the period examined.[82] Pricing data represented 40.8 percent of domestic production and 13.3 percent of subject imports.[83] Subject imports of basa and tra undersold the domestic product in all 139 monthly price comparisons, by margins ranging from 9.2 percent to 38.6 percent.[84] Based on this consistent pattern of underselling, we find that the underselling was significant.[85]

We also find that significant price depression occurred during the period. Despite increasing demand, average prices for the domestic like product declined over the period examined, decreasing from a high of $2.88 per pound in March and April of 2000 to a low of $2.37 per pound in March and April of 2002, before stabilizing at significantly lower levels.[86] The Commission's pricing data reflect declines for each of the four pricing products. Prices for domestic frozen catfish fillets in the 2-3 ounce range (product 1) fell from a high of $3.03 in March-April 2000 to a low of $2.31 in February 2003. Prices for the subject imports of product 1 fell from $*** in February to May 2000 to a low of $*** in March 2002.[87] Prices for domestic frozen catfish fillets in the 3-5 ounce range (product 2) fell from a high of

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[81] CR at II-10, PR at II-7 (sales nationally and in the Southern United States; products largely compete in the same channels of distribution) and CR at I-7, PR at I-5 (subject import sales to distributors which compete with U.S. processors for sales to restaurants, food service distributors, and other buyers); Tr. at 41 (food service distributors switched); Tr. at 45-46 (losing sales and facing price pressure from basa); Tr. at 47-48 (food service distributors and restaurants switched).

[82] The pricing products were two to three ounce frozen fillets, three to five ounce frozen fillets, five to seven ounce frozen fillets, and seven to nine ounce frozen fillets, all packed in 15 to 22 pound boxes. CR at V-5, PR at V-4.

[83] CR at V-5, PR at V-4. The lower share for subject imports reflects the failure of U.S. importers to respond to the Commission's questionnaires, as only 7 of approximately 25 importers responded with usable information. CR at IV-1, PR at IV-1.

[84] See CR/PR at Tables V-1, V-2, V-3, and V-4.

[85] Margins of underselling for products 1 and 2 in which the Vietnamese product is concentrated were stable and significant. For product 1 (2-3 ounce fillets), underselling margins were 12.0 percent to 27.7 percent. Margins of underselling for product 2 (3-5 ounce fillets) ranged from 13.4 percent to 38.6 percent. For product 3 (5-7 ounce fillets), the margins of underselling were 9.2 percent to 35.5 percent. Margins of underselling for product 4 (7-9 ounce fillets) ranged from 10.3 percent to 36.9 percent. See CR/PR at Tables V-1 to V-4. While respondents argue that such underselling is evidence that the subject imports and domestic product are not substitutable, the record indicates that, as discussed above, many purchasers viewed them as substitutable and in fact switched between domestic catfish to the subject imports.

[86] CR at V-2, PR at V-2; CR/PR at Fig. V-2. The subject import volumes were concentrated in the smaller fillet size and indeed, prices for product 1, the two to three ounce fillet, declined even more than prices for the other three products. See CR/PR at Table V-1, V-2, V-3, and V-4; CR/PR at Figs. D-1, D-2, D-3 and D-4. While prices for fresh catfish fillets fell as well as frozen fillets, the record indicates that the loss of frozen fillet sales increased the supply of fresh fillets, putting downward pressure on prices. See CR at II-2 n.3 (many processors have switched from frozen to fresh); CR/PR at Table II-2; Petitioners' Posthearing Brief, Exhibit 2 (Annual Report on the United States Seafood Industry, Tenth Ed., H.M. Johnson & Assoc., 2002) (suggesting low-priced imports of basa and tra depressed entire domestic catfish market). The gap between fresh and frozen fillet prices also widened during the period, before narrowing in 2003, suggesting price depression of the frozen fillets. See CR at Fig. II-1.

[87] See CR/PR at Table V-1.

$3.11 in March 2000 to a low of $2.34 in February-May 2003. Prices for subject imports of product 2 fell from $*** in March 2000 to a low of $1.59 in March 2002.[88] Prices for domestic frozen catfish fillets in the 5-7 ounce range (product 3) fell from a high of $2.86 in March 2000 to a low of $2.25 in January 2002. Prices for subject imports of product 3 fell from $*** in January to April 2000 to a low of $1.56 in March 2002.[89] Prices for domestic frozen catfish fillets in the 7-9 ounce range (product 4) fell from a high of $2.82 in September 2000 to a low of $2.03 in December 2002. Prices for subject imports of product 4 fell from $*** in June 2001 to a low of $*** in February 2002.[90]

Petitioners alleged 39 lost sales. Nine of these allegations, totaling $6 million, were confirmed.[91] Many of these confirmed lost sales were on an annual basis. Lost sales were confirmed in each full year of the period examined.[92]

Respondents point to trends for other seafood products as evidence of a macroeconomic effect driving all seafood prices lower, but the data do not indicate that prices for all other frozen fish fillets fell and does not outweigh our consideration of the price-depressing effects due to increasing quantities of lower-priced subject imports.[93] Indeed, the average unit value of imported frozen fillets of tilapia fell by less than the average unit value of the subject imports between 2000 and 2002, while the average unit values of frozen trout fillets and Chilean sea bass fillets increased between 2000 and 2002.[94] Similarly, between the first quarter of 2000 and the first quarter of 2003, import average unit values rose for three out of 10 species of fish, and declined only modestly, by between 2.1 percent and 6.6 percent, for four others.[95]

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[88] See CR/PR at Table V-2.

[89] See CR/PR at Table V-3.

[90] See CR/PR at Table V-4.

[91] See CR/PR at Table V-7. Confirmed lost sales occurred after the labeling laws were in effect. Id. Other lost sales and lost revenue allegations were unconfirmed. Id. Testimony at the public hearing also indicated that a large restaurant chain, Piccadilly Cafeterias, switched to subject imports from domestic frozen catfish fillets. Tr. at 48.

[92] See CR/PR at Table V-7.

[93] Respondents' econometric model attributed the price decline in the domestic like product to the effects of prices for imports of other fish fillets, such as pollock. See Respondents' Prehearing Brief at 46. We do not find this argument persuasive as the evidence did not show that other frozen fish fillets were being substituted for frozen catfish fillets. See Tr. at 52; Tr. at 56. Nor was there evidence that these other species of fish were marketed as catfish, as were basa and tra. Indeed, questionnaire responses from purchasers, processors, and importers generally indicated a lack of substitutability between other products and frozen fillets of catfish and basa and tra. CR at II-10 to II-11, PR at II-8.

Finally, we note that the petitioners compared the correlation co-efficients of quarterly import average unit values for 19 varieties of frozen fish fillets to NASS prices for U.S. frozen catfish fillets. Seventeen of the nineteen comparisons resulted in negative or statistically weak correlation co-efficients. See Petitioners' Prehearing Brief, Exhibit 43.

[94] CR/PR at Table V-5. Respondents' assertion that prices of fillets of other species of white fish were declining during the period examined is also undermined by their own data. See Respondents' Prehearing Brief, Attachment A, at Table 8 (indicating rising or stable prices for pollock and cod during 2001 and 2002, though prices fell during 2000).

[95] CR/PR at Table V-6. Respondents also contended that consolidation among seafood purchasers drove domestic prices for catfish lower. The asserted consolidation does not explain the declines in domestic prices for

Respondents further argue that excess capacity of the domestic industry led to declining prices for the domestic like product. Domestic processing capacity increased by 19.3 million pounds between 2000 and 2002, while apparent U.S. consumption increased by 35.7 million pounds.[96] Based on the record, we conclude that the industry's additions to capacity were consistent with the actual growth in consumption during the period.[97]

Given the significant underselling and price-depressing effects of the subject imports, we find that there were significant adverse price effects during the period examined.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[98] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[99] [100]

Consistent with the increase in demand for frozen fillets of catfish, basa, and tra, the domestic industry expanded its capacity between 2000 and 2002, although by less than the increase in apparent U.S. consumption.[101] While the volume of subject imports increased significantly during this period,

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catfish because it occurred late in the period examined while prices began to decline by mid-2000. See Respondents' Prehearing Brief at 37-39.

[96] See CR/PR at Table C-1.

[97] Capacity was 2.4 million pounds lower in 2001 than in 2000, yet prices for frozen catfish fillets fell that year as well. See CR/PR at Table III-2 and Fig. V-2. Although domestic producers increased capacity by 13 percent between 2000 and 2002, apparent U.S. consumption increased by 24 percent during the period. See CR/PR at Table C-1.

[98] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.).

[99] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

[100] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its final determination, Commerce found dumping margins that range from 36.84 percent to 63.88 percent. 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 Fed. Reg. 37116, 37121 (June 23, 2003). Vietnamese exporter Vinh Hoan received a margin of 36.84 percent, Agifish was assigned a margin of 44.76 percent and CATACO received a margin of 45.55 percent. Nam Viet was assigned a margin of 52.90 percent while Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai, and Vinh Long received margins of 44.66 percent. All other Vietnamese producers received a dumping margin of 63.88 percent. 68 Fed. Reg at 37121.

[101] The industry's capacity was 150.6 million pounds in 2000, 148.2 million pounds in 2001, and 169.9 million pounds in 2002. CR/PR at Table III-2. As measured by quantity, apparent U.S. consumption was 148.4 million pounds in 2000, 158.6 million pounds in 2001, and 184.2 million pounds in 2002. CR/PR at Table IV-1.

however, the domestic industry's output fluctuated modestly, with a net increase of only 0.2 percent between 2000 and 2002.[102] As a result, the domestic industry's capacity utilization decreased by 8.1 percentage points between 2000 and 2002.[103]

The domestic industry's sales, like its output, were constrained significantly despite the growth in demand. NASS data indicate that the quantity of total shipments increased by 9.5 percent between 2000 and 2002, while data reported directly by U.S. processors indicate that U.S. shipment quantities grew by only 3.6 percent during this period.[104] Net sales values reported by the domestic industry were $274.7 million in 2000, $247.3 million in 2001, and $223.6 million in 2002, a net decrease of 18.6 percent.[105] Domestic inventories remained high throughout 2000-2002, at 8.1 million pounds at the end of 2000, 10.7 million pounds at the end of 2001, and 8.2 million pounds at the end of 2002.[106]

In light of significant growth in subject import volume, the domestic industry's share of the U.S. market, as measured by quantity, declined by 7.7 percentage points in 2001 and by 2.9 percentage points in 2002, resulting in a net loss of 10.6 percentage points of market share in two years to the subject imports from Vietnam.[107] U.S. processors' market share, as measured by value, exhibited a similar trend.[108]

While rising demand would be expected to result in increased production, U.S. shipments, and net sales, as noted above, these indicators for the domestic industry declined during the early part of the period, before recovering modestly in 2002, a year in which apparent U.S. consumption increased by 16.1 percent.[109] Moreover, the domestic industry's employment levels decreased between 2000 and 2002, as the number of production and related workers fell by 13.3 percent, the number of hours worked fell by 14.1 percent, and wages paid to workers fell by 8.5 percent.[110]

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[102] The industry's production was 108.3 million pounds in 2000, 103.1 million pounds in 2001, and 108.5 million pounds in 2002. Production was modestly higher in the interim period, rising from 25.9 million pounds in interim 2002 to 26.2 million pounds in interim 2003. CR/PR at Table III-2. In comparison, subject import volume increased by 187.4 percent between 2000 and 2002. CR/PR at Table IV-1.

[103] Capacity utilization rates were 71.9 percent in 2000, 69.6 percent in 2001, and 63.8 percent in 2002. CR/PR at Table III-2. In interim 2002, the domestic industry reported capacity utilization of 59.3 percent and in interim 2003, it reported utilization rate of 57.3 percent. Id.

[104] CR/PR at Table C-1. The industry's U.S. shipments were 107.1 million pounds in 2000, 100.1 million pounds in 2001, and 110.9 million pounds in 2002. The interim period comparison shows some recovery from 29.9 million pounds in interim 2002, to 30.2 million pounds in interim 2003. CR/PR at Table III-2.

[105] CR/PR at Table VI-1. Net sales values were $62.7 million in interim 2003, compared to $60.2 million in interim 2002. CR/PR at table VI-1.

[106] CR/PR at Table III-2. At the end of interim 2002, inventories were 6.4 million pounds while at the end of interim 2003, they were 4.3 million pounds. Id.

[107] The domestic industry held 90.7 percent of the market in 2000, 83.0 percent in 2001, and 80.1 percent in 2002. Its U.S. market share was 94.0 percent in interim 2003 compared to 85.6 percent in interim 2002. CR/PR at Table IV-1.

[108] See CR/PR at Table IV-1.

[109] CR/PR at Table IV-1.

[110] The number of production workers decreased from 3,365 in 2000 to 3,056 in 2001 to 2,918 in 2002 and in the interim periods from 2,929 in interim 2002 to 2,758 in interim 2003. CR/PR at Table III-2. The domestic industry

Despite the 24.1-percent growth in apparent U.S. consumption from 2000 to 2002,[111] the domestic industry struggled and its profitability, already near break-even levels, declined. Under the pricing pressure from the subject imports, the domestic industry's net sales values declined sharply on a per-pound basis between 2000 and 2002, falling from $2.82 in 2000 to $2.62 in 2001 and $2.28 in 2002.[112] Although U.S. processors were able to lower their input costs by reducing the prices paid to growers for fresh catfish, by 2002, the domestic industry was unable to lower costs sufficiently to compensate for declining prices.[113] The domestic industry's operating income as a ratio to net sales was 2.3 percent in 2000, 2.6 percent in 2001, and 0.1 percent in 2002.[114] [115] The domestic industry's cash flow was $11.2 million in 2000 and $11.3 million in 2001, but then dropped to $5.9 million in 2002.[116] Capital expenditures fluctuated over the period.[117]

Based on significant declines or stagnation in most of the performance indicators of the domestic industry during a period of increasing demand while the subject merchandise was being imported in significantly increasing quantities and sold at prices significantly below the domestic like product, we find that the subject imports had a significant adverse impact on the domestic industry.

E. Critical Circumstances

In its final determination, Commerce made affirmative findings of critical circumstances with respect to imports from several of the Vietnamese producers.[118] Commerce found critical circumstances

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paid its workers $45.6 million in 2000, $42.2 million 2001, and $41.7 million in 2003, and the total fell from $10.6 million in interim 2002 to $10.4 million in interim 2003. Id.

The industry's productivity was 17.3 pounds per hour in 2000, 18.6 pounds per hour in 2001, and 20.2 pounds per hour in 2002. In interim 2002 and interim 2003, productivity was 17.5 pounds per hour. Id.

[111] See CR/PR at Table IV-5.

[112] CR/PR at Table VI-2.

[113] See CR/PR at Appendix E for a discussion of the initial attempt to shift pricing pressures from the processor to the grower (e.g., responses of ***); CR/PR at Table VI-7 (farmers' net losses in 2001 and 2002 resulting from falling net sales values). See also CR at VI-7 to VI-8, PR at VI-3 to VI-5; CR/PR at Table VI-4 (net sales variance exceeds that of cost of goods sold). There was some recovery in interim 2003 as these trends were reversed. Id.

[114] The ratio was 0.6 percent in interim 2002 and 1.3 percent in interim 2003. Industry financial data are based on information from 14 of the 25 processors, reflecting 73.7 percent of the industry's production. CR at I-2, PR at I-2.

[115] CR/PR at Table VI-1. By 2002, the domestic industry would have recorded an operating loss of *** percent if purchases from related farmers had been reported at the cost of goods sold rather than value paid. See CR/PR at Table VI-3 n.10. The record indicates that processors, to some extent, pass lower prices for their product onto the farmers as lower prices for whole fish. The farmers may feed the fish less in an effort to reduce costs, resulting in lower production yields for processors. CR at II-5, PR at II-4; Tr. at 31-32.

[116] CR/PR at Table VI-1. Cash flow improved in the interim periods from $1.5 million in interim 2002 to $2.7 million in interim 2003. Id.

[117] Capital expenditures were $6.9 million in 2000, $20.9 million in 2001, $12.4 million in 2002, and $4.2 million and $3.3 million in interim 2002 and interim 2003, respectively. CR/PR at Table VI-5.

[118] 68 Fed. Reg. 37116, 37119 (June 23, 2003).

with respect to Nam Viet, Afiex, CAFATEX, Da Nang, QVD, Vinh Long, and those Vietnamese producers subject to the Vietnam-wide rate.[119] Commerce did not find critical circumstances with respect to Agifish, Vinh Hoan, CATACO, Mekonimex, and Viet Hai.[120]

Because we have determined that the domestic industry is materially injured by reason of subject imports, we must further evaluate "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued."[121]

The statute provides that in making this evaluation the Commission shall consider, among other factors it considers relevant:

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[122]

The SAA further indicates that the Commission is to consider "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[123]

Consistent with Commission practice,[124] in considering the timing and volume of subject imports, we consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding exporters for which Commerce has made an affirmative critical circumstance determination.

The Catfish Farmers of America and individual catfish processors filed the petition that led to the initiation of this investigation on June 28, 2002. Comparing the six-month period January 2002 - June 2002 with the six-month period July 2002 - December 2002, imports for which Commerce made affirmative critical circumstances determinations increased from 5.6 million pounds to 10.4 million pounds, or by 86.9 percent.[125]

While post-petition import levels were higher than pre-petition import levels, we do not believe that this increase is likely to undermine seriously the remedial effect of the antidumping duty order, given the prevailing conditions of competition in the U.S. market. Apparent U.S. consumption increased

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[119] Id.

[120] Id.

[121] 19 U.S.C. § 1673d(b)(4)(A)(i).

[122] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[123] SAA at 877.

[124] See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777 to 79 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

[125] CR at IV-4, PR at IV-3 to IV-4. Comparing the three-month period April 2002 - June 2002 with the three-month period July 2002 - September 2002, imports for which Commerce made affirmative critical circumstances determinations increased from 3.9 million pounds to 5.4 million pounds, or by 40.0 percent. Id.

throughout the period 2000 - 2002, rising by 6.8 percent in 2001 and by 16.1 percent in 2002.[126] As discussed in the conditions of competition, the growth in apparent U.S. consumption during this period was consistent with longer-term growth in U.S. demand. Given strong demand, we view the increase in post-petition import levels to be substantial, but insufficient to merit an affirmative finding of critical circumstances.

We also have considered the extent to which there was an increase in inventories of the subject imports. As of December 31, 2002, reported U.S. inventories of frozen basa and tra fillets from Vietnam were 939,000 pounds, or 11.6 percent of reported imports of the subject merchandise from Vietnam. While the absolute level of U.S. inventories of imports of the subject merchandise from Vietnam was higher than in prior years, the relative level was generally comparable to the levels in prior years.[127] [128]

We note that available data do not permit us to evaluate the inventory levels of the imports for which Commerce made affirmative critical circumstances determinations. We observe, however, that U.S. importers did not report substantial inventories of the subject merchandise. Even allowing for under-reporting, inventory levels were far below those held by U.S. processors.[129] Moreover, the limited shelf life of these frozen fillets suggests that inventories of the subject merchandise are unlikely to have a long-term, continuing effect on price levels in the U.S. market.[130] Accordingly, we do not view the U.S. importer inventory levels or movements as sufficient to merit an affirmative finding of critical circumstances.

We also have considered other circumstances relevant to the remedial effect of the antidumping order. Prices for the Vietnamese product in the second half of 2002 exhibited less variability, and generally were higher, than such prices during the first half of 2002.[131] We find that the greater price stability and even modest price increases, albeit from very low levels, support a conclusion that the imports in question are not likely to undermine seriously the remedial effect of the order. Accordingly, we do not view the recent price levels or trends of frozen basa and tra fillets from Vietnam as sufficient to merit an affirmative finding of critical circumstances.

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[126] CR/PR at Table IV-1.

[127] CR at VII-3, PR at VII-1. Reported U.S. inventories of frozen basa and tra fillets from Vietnam were equivalent to 6.0 percent of reported imports in 2001 and 9.6 percent of reported imports in 2000. We note that U.S. processors maintained inventories equivalent to 7.4 percent - 10.6 percent of total shipments between 2000 and 2002. CR/PR at Table III-2.

[128] We note that inventory levels may be understated, as only 7 U.S. importers provided usable data to the Commission in response to its questionnaires. CR at IV-1, PR at IV-1. These importers accounted for approximately 23 percent of subject imports in 2002. Id.

[129] See CR/PR at Table III-2 (reported U.S. processor inventories ranged from 8.1 million pounds to 10.7 million pounds between 2000 and 2002).

[130] The frozen fillets at issue have a shelf life of six months, suggesting that the subject imports that entered into U.S. inventories during the second half of 2002 have already been consumed. See Petitioners' Prehearing Brief at 7 and 14.

[131] Prices for product 1 from Vietnam were $1.79-1.96 during January-June 2002, compared to $1.91-$2.00 during July-December 2002; prices for product 2 were $1.59-1.89 during January-June 2002, compared to $1.82-1.95 during July-December 2002; prices for product 3 were $1.56-2.12 during January-June 2002, compared to $1.88-1.94 during July-December 2002; and prices for product 4 were $1.37-1.81 during January-June 2002, compared to $1.77-1.92 during July-December 2002. CR/PR at Tables V-1 through V-4. By December 2002, prices for each of the four pricing items from Vietnam were higher than in December 2001, albeit only marginally for the large volume pricing items 1 and 2 (2-3 ounce and 3-5 ounce fillets, respectively). Id.

We have evaluated the timing and the volume of the imports, the level and the trend in inventories of the imports, and any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined. Based on the record in this investigation, we find that the imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued, and therefore make a negative finding with respect to critical circumstances.

Conclusion

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of certain frozen fish fillets from Vietnam that are sold in the United States at less than fair value. We find that the imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued, and therefore make a negative finding with respect to critical circumstances.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed with the Commission and the Department of Commerce (Commerce) on behalf of the Catfish Farmers of America--a trade association of U.S. catfish farmers and processors--and by individual U.S. catfish processors,[1] on June 28, 2002, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of certain frozen fish fillets[2] from Vietnam. On November 15, 2002, petitioners also alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to imports of the subject product from Vietnam. Commerce issued preliminary affirmative antidumping duty and partial critical circumstances determinations on January 31, 2003, followed by amendments on March 5, 2003, and additional preliminary critical circumstances determinations on May 28, 2003. Final determinations were published in the *Federal Register* of June 23, 2003. Information relating to the background of this investigation is provided below.[3]

Effective Date	*Action*
June 28, 2002	Petition filed with Commerce and the Commission; institution of Commission investigation (67 FR 45147, July 8, 2002)
July 24, 2002	Commerce's notice of initiation of antidumping investigation (67 FR 48437)
August 19, 2002	Commission's preliminary determination transmitted to Commerce
January 31, 2003 ...	Commerce's preliminary affirmative antidumping duty and partial critical circumstances determinations (68 FR 4986)
January 31, 2003 ...	Commission's notice of scheduling of the final phase of its investigation (68 FR 7131, February 12, 2003)
March 5, 2003	Commerce's amendment to its preliminary affirmative antidumping duty and critical circumstances determinations (68 FR 10440)
May 28, 2003	Commerce's additional preliminary critical circumstances determinations (68 FR 31681)

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[1] America's Catch, Itta Bena, MS; ConFish, Isola, MS; Delta Pride, Indianola, MS; Harvest Select, Uniontown, AL; Heartland Catfish, Itta Bena, MS; Pride of the Pond, Tunica, MS; Simmons, Yazoo City, MS; and Southern Pride, Greensboro, AL.

[2] For purposes of this investigation, the certain frozen fish fillets are frozen 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*, otherwise known and hereinafter referred to collectively as "basa and tra," and currently provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States (HTS). The tariff rate is free for Vietnam and all general-duty-rate countries (prior to December 10, 2001, the tariff rate applicable to Vietnam was the column 2 rate of 5.5 cents per kilogram). The HTS statistical reporting numbers under which this product may have entered the United States are 0304.20.6030 (frozen fillets of catfish), 0304.20.6043 (frozen fillets of freshwater fish other than catfish), 0304.20.6057 (frozen fillets of sole), and 0304.20.6096 (frozen fillets of other (other than freshwater) fish). For a more detailed description of the merchandise subject to this investigation, including the like product produced in the United States, see the subsection of Part I entitled, "The Subject Product."

[3] Selected *Federal Register* notices cited in the tabulation are presented in app. A.

June 17, 2003	Commission's hearing[4]
June 23, 2003	Commerce's notice of final antidumping duty and critical circumstances determinations (68 FR 37116)
July 23, 2003	Commission's vote
August 6, 2003	Commission's determination and views transmitted to Commerce

The product, as defined, has not been the subject of any other Commission investigations.

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C. The data consist of frozen fillets of imported basa and tra and the like product produced and imported in the United States, as determined by the Commission in the preliminary phase of its investigation. Except as noted, U.S. industry data are based on questionnaire responses of 17 processors that accounted for approximately 75 percent of total shipments of U.S. production (in pounds) of the domestic like product in 2002.[5] U.S. imports are based on data provided by the individual members of the Vietnamese Association of Seafood Exporters and Producers and other Vietnamese producers in response to the Commission's questionnaires and on official statistics of Commerce, as noted.

COMMERCE'S FINAL DUMPING MARGINS AND CRITICAL CIRCUMSTANCES DETERMINATIONS

Commerce's final dumping margins and critical circumstances determinations, by Vietnamese company, are shown below:

Producer/exporter	Weighted-average margin (*percent*)	Critical circumstances
Agifish	44.76	No
Vinh Hoan	36.84	No
Nam Viet	52.90	Yes
CATACO	45.55	No
Afiex	44.66	Yes
CAFATEX	44.66	Yes
Da Nang	44.66	Yes
Mekonimex	44.66	No
QVD	44.66	Yes
Viet Hai	44.66	No
Vinh Long	44.66	Yes
Vietnam wide (all others)	63.88	Yes

A full rationale for these calculations is contained in Commerce's notice of preliminary determination in appendix A.

[4] App. B contains a list of witnesses appearing at the hearing.

[5] Some industry-wide data are published by the U.S. Department of Agriculture and, where appropriate, are used and reported herein; however, they do not include corresponding employment and financial data.

THE SUBJECT PRODUCT

The product scope, as hitherto noted, consists of frozen fillets of the three species of fish known collectively as "basa and tra;" however, frozen fillets of such fish are not produced, nor are such fish commercially raised, in the United States. Accordingly, petitioners claim that frozen fillets of a native species of catfish, *Ictalurus Punctatus*, whether breaded or marinated, are most similar in characteristics and uses to basa and tra and are therefore the domestic like product.[6] Other species of catfish are native to the United States, but only *Ictalurus Punctatus* is commercially raised, and virtually all frozen fillets of catfish are processed from commercially-raised fish. In its preliminary determination the Commission determined the domestic like product to be "frozen catfish fillets, whether or not breaded or marinated," effectively including species of catfish other than that commercially raised and grown; however, as indicated, very few such catfish are ever processed into frozen fillets, and such processing is restricted to small, family-owned businesses in Louisiana that primarily process fresh products. References to "the subject product" in this report include the Commission's domestic like product.

Physical Characteristics

Basa/tra and catfish each belong to wholly separate families of freshwater fish with distinct physical characteristics, but they are both regarded in the food industry as mild-tasting, white meat, freshwater fish, and when processed into frozen fillets are considered generally similar in appearance, price, texture, and taste.[7] A fillet is one of two sides of a fish with head, tail, bones, and entrails removed. "Regular" fillets include the belly flap, or "nugget;" "shank" fillets have the flap removed; and "strip" (or "finger") fillets are finger-sized strips cut from regular or shank fillets. Each fillet ranges in size from 2 ounces to over 12 ounces frozen.

The Production Process

Virtually all of the basa/tra and catfish from which the subject fillets are made are commercially raised on farms, which may or may not be related to the processing plants that produce the subject product. Regardless of any joint ownership, farming and processing generally take place at separate locations and are discussed separately below.

Farming and the Farmers

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[6] Fish of the *Pangasiidae* family, such as basa and tra, have been termed Asian catfish (Tyson R. Roberts and Chavalit Vidthayanon, "Systematic Revision of the Asian Catfish Family Pangasiidae, with Biological Observations and Descriptions of Three New Species," Proceedings of the Academy of Natural Sciences of Philadelphia, 143: 97-144, 1991, pp. 97, 101).

[7] It should be noted, however, that "taste" is a subjective judgement and depends on a host of factors, including the individual fillets and how they are prepared for consumption; and subtle differences in other characteristics can appear from fillet to fillet, batch to batch, package to package, and species to species–for example, testimony at the Commission's hearing and other information in the record indicate that basa fillets are generally whiter and thicker than tra fillets, and tra fillets are generally coarser in texture (hearing transcript pp. 136-138 and 208-210, and petitioners' posthearing brief, exhibit J), but the extent to which such differences are universally consistent and recognized is unknown.

Farming and the Farmers

In the United States catfish are raised in man-made, earthen ponds, 10 to 20 acres in size and 3 to 6 feet deep on over 1,000 farms, located mainly in the Southeast (particularly in Mississippi, Alabama, Arkansas, and Louisiana) where climate and topography favor the process. The ponds are stocked with fingerlings 2 to 3 inches in length[8] that receive a daily feeding until they reach a foodsize of at least 0.75 pound and usually not over 3 pounds, which is generally the range that can be processed efficiently. (Yields drop significantly after the fish reaches 2-3 pounds because of the increased cost per pound to raise the fish). Fingerlings reach foodsize in about 10 weeks, and harvesting is year-round, although individual farms may only harvest 2 or 3 times annually. Because several sizes of catfish are in a pond at any one time, harvesting is generally done by nets that allow fish smaller than foodsize to escape. Processors are generally very particular about the size and flavor of the fish they purchase, often testing the fish in specific ponds for flavor and sometimes rejecting a pond's fish on the basis of flavor alone.[9] After harvesting, the fish are placed into tank trucks and are transported live to the processing plant. Based on processors' financial information reported to the Commission, the cost of the live catfish is about two-thirds of the total cost of producing the frozen fish fillets. Catfish farmers in the United States raise no other kinds of fish, and the vast bulk of the fish they raise is sold to processors. The remainder is sold fresh to local markets.

In Vietnam the fish are raised in cages in the Mekong River, mostly in the delta region, and at harvest are transported live downriver in cage boats to processors. The number of individual farms in Vietnam is unknown.

Processing and the Processors

To produce the subject product, U.S. and Vietnamese processing plants perform the same steps, either automatically or manually depending on the individual processor, although most Vietnamese processors are not automated. Currently, 25 processing plants operate in the United States, and 16 are known to operate in Vietnam. The fish, held live in pre-processing tanks, are first deheaded, eviserated, skinned, and filleted, and then, after chilling and sorting by weight, are quick-frozen and glazed.[10] Any breading or marinating is done before freezing. (Approximately 13 percent of the U.S.-produced product, and none of the imported Vietnamese product, is breaded or marinated–processes which add about 4 percent and 9 percent, respectively, to the value of the product).[11] Quick freezing, by which the fillets are reduced from 32 degrees Fahrenheit to 15 degrees Fahrenheit in 30 minutes or less, enables the fish to retain more of its original (fresh) quality. (In the United States the fillets are treated with a tripolyphosphate solution prior to freezing to prevent excessive water loss). Upon leaving the freezer, a

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[8] Some farmers raise fingerlings only, selling these as feedstock to the other farmers.

[9] Off-flavors are generally caused by blooms of certain algae, and such blooms are usually short-lived. If a specific pond's fish are rejected for flavor several times in a row, the farmer may remove the fish to another pond with less algae or apply an algaecide to kill all the algae in the pond. The latter is detrimental to the pond as algae aid in the pond's oxygenation.

[10] The heads, tails, skin, and vicera of the fish are saleable byproducts, usually sold to rendering plants for use in the production of fish meal and oil.

[11] Petitioners report that breading and marinating add about 10 cents per pound and 20-25 cents per pound, respectively, to the price of the frozen fillets. Petitioners' postconference brief for the preliminary phase of the investigation, exh. 2, affidavit of ***.

sprayer or water bath coats the fillets with a thin layer of ice (glaze). Finally, the fillets are packaged according to size in 15-pound cardboard shipping cartons lined with polyethylene bags and warehoused at 0 degrees Fahrenheit or below until shipment. The Vietnamese product is also packaged in 10-pound cartons. The cost of processing in the United States is about one-third of the total cost of producing the frozen fish fillets.

Processors in the United States process catfish exclusively, but into many commercial products other than frozen fillets, including fresh (or "iced") fillets, fresh and frozen whole fish, fresh and frozen dressed fish (deheaded, eviscerated, and skinned), and fresh and frozen steaks (cross sections of large fish). (The nuggets of shank fillets are also sold separately, both fresh and frozen). According to questionnaires received by the Commission, about 24 percent of the weight of the U.S.-grown live catfish that processors used was processed into frozen fillets, about 26 percent was processed into other products, and about 50 percent was offal–unused parts of the fish that were mostly sold for use in fish meal, fertilizer, and oil.[12] Unlike U.S. processors, the Vietnamese processors also process water animals other than the subject product, including various types of mollusks, crustaceans, and other types of fish.

Distribution and Marketing

U.S. processors sell frozen catfish fillets mainly to large restaurant chains and to food service distributors, which serve the smaller restaurants and retailers. (In general, supermarkets and grocery stores restrict their purchases to the fresh product). Sales to club stores, seafood distributors, and local restaurants make up the rest of the processors' market. Mostly on a spot basis, the sales are negotiated either directly or through brokers, and shipments are generally by truck to the buyer's distribution warehouse. For U.S. sales, Vietnamese processors and exporters sell mainly to unrelated seafood distributors, who may or may not be direct customers of the U.S. processors but compete with U.S. processors for sales to the large restaurant chains, food service distributors, and other buyers.

Vietnamese basa and tra were originally and widely marketed, sold, and labeled in the United States as "catfish;" however, Congressional legislation prohibited this practice at all levels of U.S. sales beginning in January 2002 (the legislation was signed into law on May 13, 2002, but was retroactive to January 1, 2002). So far as it is known, distributors and importers have discontinued the practice of labeling or promoting basa and tra as "catfish", but the extent to which the practice may continue at the retail level is unknown. A host of other names have been used in the marketing and labeling of Vietnamese basa and tra, including "swai," "sutchi," "pacific dory," "china sole," "white river cobbler," "cobbler," "shortbarbel," "orange roughy (or ruffy)," "white roughy (or ruffy)," "hypo-grouper," and "grouper," among others. It should be noted, however, that liberal labeling of mild-tasting, white meat fish at the retail level is not uncommon.

[12] Of the total weight and value of responding processors' final processed catfish products shipped in 2002, frozen fillets accounted for about 49 percent and 57 percent, respectively. According to the U.S. Department of Agriculture's National Agricultural Statistics Service (NASS), frozen catfish fillets (including breaded and marinated fillets) accounted for approximately 46 percent, by weight, of all forms of catfish (including fresh) sold by U.S. processors in that year.

DOMESTIC LIKE PRODUCT ISSUES

The Commission must determine what domestic product is like, or in absence of like, most similar in characteristics and uses to, the imported articles as defined in Commerce's scope. The petitioners, as already noted, consider the domestic like product to be frozen catfish fillets, whether or not breaded or marinated. In the preliminary phase of the investigation, Vietnamese respondents contended that domestically-produced frozen fillets (whether breaded or marinated) of farm-raised catfish and tilapia are most similar to the subject basa and tra fillets.[13] They also indicated that frozen fillets of other types of fish, such as cod, grouper, halibut, and pollock, are similar in characteristics and uses to the subject imported product. The standard used by respondents to give most-similar-product status to tilapia (and possibly other types of fish) is that the fish is a fresh water species and farm raised, has flesh of white meat, is sold at relatively low cost, is mild in taste, and is easy to prepare. However, according to Rob Schmid, president of the American Tilapia Association, tilapia farmed in the United States are for live (fresh) sale only and virtually all are sold whole.[14] Frozen fillets of tilapia are sold in the U.S. market, but all are imported. Comparative prices for frozen tilapia fillets in the U.S. market are shown in Part V. In its preliminary determination the Commission considered, but did not include, tilapia in its definition of the domestic like product and defined the domestic like product to be frozen catfish fillets, whether or not breaded or marinated.[15] For the final phase of the Commission's investigation, respondents have acknowledged the paucity of information necessary to argue a domestic like product definition different from that of the Commission and have conceded to the Commission's preliminary determination, but contend that competing frozen fish fillets of other white fish should be part of the Commission's causation analysis.[16]

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[13] Postconference brief of the Vietnamese Association of Seafood Exporters and Producers, p. 5.

[14] Staff telephone notes, preliminary phase of the investigation.

[15] *Certain Frozen Fish Fillets From Vietnam, Investigation No. 731-TA-1012 (Preliminary)*, USITC Pub. 3533, August 2002, p. 7.

[16] Posthearing brief of the Vietnam Association of Seafood Exporters and Producers, exhibit 1, p. 8.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

INTRODUCTION

Apparent U.S. consumption of the subject product increased in quantity and decreased in value between 2000 and 2002. The market share of subject imports increased from 2000 to 2002, and was lower in interim 2003 compared to interim 2002. The market share of nonsubject imports was less than one percent in every period. Domestic product and subject imports from Vietnam are largely sold in the same channels of distribution and in the same geographic areas.

U.S. MARKET SEGMENTS, CHANNELS OF DISTRIBUTION, AND MARKET STRUCTURE

The majority of domestically produced frozen catfish fillets and subject imports from Vietnam is sold to food service distributors. In 2002 sales to food service distributors accounted for 61.5 percent of U.S. commercial shipments by domestic producers on a quantity basis. Sales to restaurant chains accounted for 9.2 percent. Sales to food service distributors accounted for *** percent of shipments by responding importers of the subject product in 2002, and sales to restaurants and restaurant chains accounted for a further *** percent. Sales to retail firms and local restaurants account for a small share of the frozen fillet market, but a larger share of the fresh market.[1]

Most frozen catfish fillets are produced from farm-raised catfish. Frozen fillets are the most important product form, in terms of value. In 2002, frozen fillets (including breaded and marinated fillets) accounted for approximately 50.5 percent of the value of all catfish products (including fresh catfish) sold by responding domestic producers.[2]

Eight domestic processors, accounting for 56.5 percent of domestic production of the subject product in 2002, additionally provided data on the value of sales of frozen catfish fillets as a share of the value of all catfish products (including fresh catfish) sold in calendar years 2000-2002 and the first quarter of 2003; and the share of the weight of live catfish acquired that was devoted to production of the subject product in each of these periods. Data for these processors are shown in table II-1. For these processors, sales of frozen fillets as a share of overall sales declined from 2000 to 2002, in terms of both value and quantity. As frozen fillets are a higher-value product than most other products sold (e.g., whole fish and nuggets), the share of value is above the share of quantity in every period.

Domestic processors have some ability to respond to changes in the relative price of frozen fillets with changes in the product mix of frozen and fresh products.[3] When asked if there had been any changes in marketing the subject product since January 2000, one domestic processor, ***, reported an increase in marketing of both further-processed subject products and ice-packed (fresh) products. One additional processor, ***, reported no sales of frozen fillets in 2002 and interim 2003, but continued sales of other catfish products.

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[1] Petition, pp. 9 and 12.

[2] Compiled from responses to questions III-5 and III-6 of the Commission producer questionnaire.

[3] Although the production of frozen product requires specialized freezing units, "a lot of" processors have tried to shift some production into fresh product in response to increased imports of the subject product. Bill Dauler, Vice President of Sales, Consolidated Catfish, conference transcript, p. 83.

Table II-1
Sales of frozen catfish fillets as a share of all sales of catfish products: Share of sales reported by responding domestic processors, calendar years 2000-2002 and January-March 2003

Measure	Calendar year			January-March
	2000	2001	2002	2003
	Percent	*Percent*	*Percent*	*Percent*
Frozen fillets' share of value sold	55.3	50.6	49.7	50.3
Share of weight acquired devoted to frozen fillets[1]	46.8	43.1	42.8	42.4

[1] These data differ from the ratio of the weight of frozen fillets sold to the weight of catfish acquired, reported in table III-1.

Source: Calculated from responses to Commission questionnaires.

Evidence of the domestic processors' limited ability to shift capacity to the production of other products can be seen by examination of the monthly average prices and sales volumes for fresh and frozen catfish fillets. Data are taken from the NASS publication *Catfish Processing*, and reflect sales by major domestic processors only. Frozen fillets account for the largest share of all sales by domestic catfish processors. Fresh fillets were chosen for the comparison because the fresh fillet is the product form that accounts for the second-largest share of sales by domestic producers, and because production of fresh fillets requires many of the same production steps as production of frozen fillets.

The price of fresh fillets was generally slightly higher than the price of frozen fillets. The price of both products declined from mid-year 2000, but the price of frozen fillets at first fell more rapidly. The premium for fresh fillets reached a maximum in August 2001. The monthly quantity of fresh catfish fillets sold generally increased through 2000 and the first quarter of 2001, and reached a maximum in March 2001. The price of fresh fillets was consistently higher than the price of frozen fillets from mid-2001 through the end of 2002. The share of all fillets accounted for by the fresh product increased slightly to a maximum in March 2001, then generally declined, to a low in December 2002.[4] Sales of fresh fillets increased in the first quarter of 2003, but this is largely due to the seasonal variation. Sales of fresh products typically peak in March. See table II-2 and figure II-1.

[4] Sales of both fresh and frozen fillets show some seasonality, and generally peak in March of each year. The increase in the share of all fillets accounted for by the fresh product may reflect a shift in emphasis on the part of some domestic processors, or a loss of sales in the frozen market.

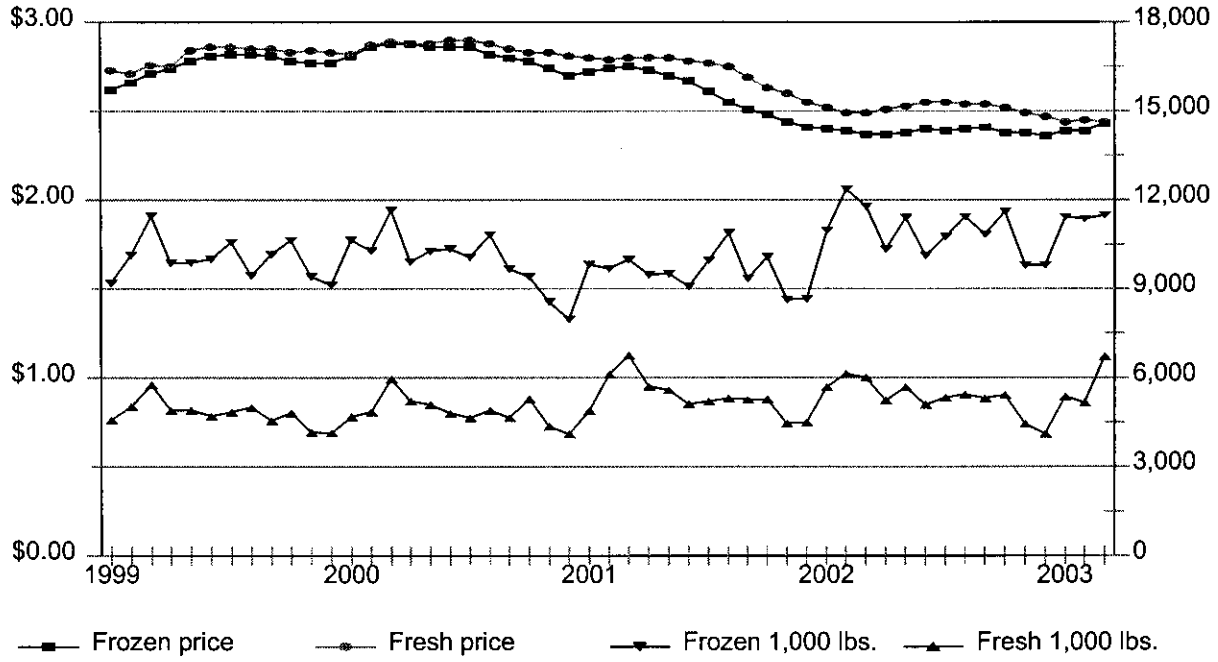
Table II-2
Frozen and fresh catfish fillets:[1] Sales by domestic processors, and fresh fillets' share of all fillets sold, calendar years 1999-2002 and January-March 1999-2003

Period	Calendar year			January-March		
	Frozen (1,000 pounds	*Fresh (1,000 pounds)*	*Fresh share (percent)*	*Frozen (1,000 pounds)*	*Fresh (1,000 pounds)*	*Fresh share (percent)*
1999	134,609	59,626	30.7	34,963	15,931	31.3
2000	134,686	61,104	31.2	36,364	16,100	30.7
2001	131,636	67,107	33.8	34,491	18,531	34.9
2002	147,532	66,823	31.2	39,507	18,670	32.1
2003	NA	NA	NA	38,330	17,893	31.8

[1] Includes breaded and marinated fillets.

Source: NASS, *Catfish Processing*, various issues.

Figure II-1
Frozen and fresh catfish fillets:[1] Average monthly prices (per pound) and quantities sold (1,000 pounds) by domestic processors, January 1999-March 2003



[1] Does not include breaded or marinated fillets.

Source: NASS, *Catfish Processing*, various issues.

U.S. SUPPLY: DOMESTIC PRODUCTION FOR THE U.S. MARKET

Foodsize Catfish Sold by Catfish Farmers

The total number of foodsize fish sold by domestic catfish farmers was 3.4 percent lower in 2002 than in 2000. The total quantity in weight of fish was 6.3 percent higher, and the sales value 19.3 percent lower in 2002 than in 2000. The vast majority of sales by catfish farmers in each year were to processors. Sales to processors accounted for 95.1 percent of sales in 2000, 94.3 percent of sales in 2001, and 94.5 percent of sales in 2002. Prices for live fish and for frozen fillets are highly correlated.[5]

According to data from the NASS, the inventory of foodsize fish held by catfish farmers was 32.9 percent higher in January 2003 than in January 2000.[6] Most of these inventories are held as small foodsize fish (0.75 pound to 1.50 pounds per fish) rather than as medium (1.50 to 3 pounds per fish) or large (over 3 pounds per fish) foodsize fish. Domestic catfish farmers have some ability to withhold fish from the marketplace if the round weight price is too low. However, although the fish continue to gain weight, feeding efficiency declines as the fish gain weight.[7] Some catfish farmers may feed the fish less in an effort to reduce the cost of holding the fish longer. This results in leaner fish and a loss in efficiency for processors.[8] There has been a change in the size of foodsize catfish held in inventory since 1999. NASS reports the total estimated inventory of foodsize fish held by catfish growers at the beginning of each calendar year, by size category. The share of inventory held as large foodsize fish was less than 10 percent in every year since 1999. In January 2003, the share of inventory accounted for by medium foodsize fish was higher, and the share accounted for by small foodsize fish lower, than in any year since 1999. The estimated share held as small foodsize fish was less than 50 percent only in 2003. See figure II-2.

Wild or Commercially Harvested Catfish

Sales of wild or commercially harvested catfish account for a small share of the overall market for catfish. These wild catfish include channel catfish, blue catfish, flathead catfish, and several species of bullheads. All of these are in the family *Ictaluridae*. The National Marine Fisheries Service (NMFS) compiles data on commercial landings of various species of fish. These data do not include aquaculture production. According to NMFS data, reported landings of catfish and bullheads in the years 2000 and 2001 exceeded 16 million pounds annually.[9]

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[5] For the period January 2000-March 2003 the correlation between the monthly average pond-bank price for live fish and the monthly average price for frozen fillets reported by NASS was 0.984.

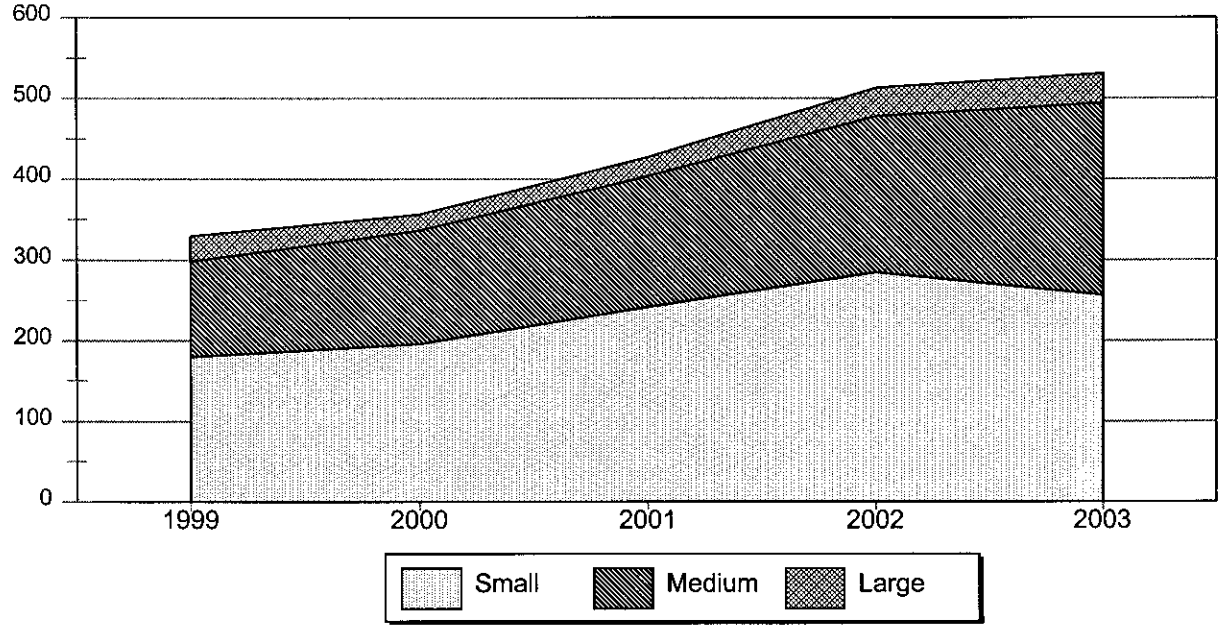
[6] Inventory figures are in terms of total pounds of foodsize fish.

[7] Danny Walker, CEO, Heartland Catfish, conference transcript, pp. 74-75.

[8] Petitioners' posthearing brief, p. 29, citing questionnaire responses of ***, and Randy Rhodes, Vice President of Sales and Marketing, Southern Pride Catfish, conference transcript, pp. 20-21. Processors and one farmer contacted by staff indicated that farmers fed fish less in late 2002, in an effort to control feeding costs. Processors contacted reported lower yields as a result.

[9] In 2001, the commercial catch of catfish and bullheads reported by the NMFS was 16.9 million pounds, valued at $12.5 million. Personal communication from the National Marine Fisheries Service, Fisheries Statistics and Economics Division, Silver Spring, MD.

Figure II-2
Annual inventories of foodsize catfish in the United States, January 1999-January 2003 (million pounds)



Source: NASS *Catfish Production*, various issues.

The NMFS data do not include data from every state. Specifically, there were no data reported for the four states that account for the largest aquaculture production of catfish: Alabama, Arkansas, Louisiana, and Mississippi. Staff contacted relevant agencies in these four states, but Alabama, Arkansas, and Mississippi do not report data on commercial catches of fish by species. The Louisiana Department of Wildlife and Fisheries was able to provide data on the quantity and value of commercial landings of catfish and bullheads for 2001. The total reported catch of catfish and bullheads was 5.5 million pounds for a total value of $2.6 million. Therefore, with the data from NMFS and the state of Louisiana, commercial landings of catfish and bullheads in 2001 were at least 22.3 million pounds with a value of $15.1 million. In comparison, NASS reported that in 2002, major processors of pond-raised channel catfish processed 630.6 million pounds of fish. The share of commercially caught catfish devoted to production of frozen fillets is not known, but given the smaller volume, and the dispersed and uncertain volume of the catch, the share is probably small. Most responding purchasers reported that "wild" catfish are not substitutable for the imported subject product from Vietnam or farm-raised catfish, or had no familiarity with the product. Three purchasers reported that wild catfish are substitutable, and two more reported that wild catfish are substitutable, but with some limitations on substitutability.

Processors' Shipments

Exports account for a very small share of domestic processors' reported sales of subject product. Exports accounted for less than one percent of reported shipments by responding domestic processors in 2002 and in interim 2003, on a quantity basis. Based on these data, domestic processors have little ability to shift sales to or from export markets.

There was a 12.8-percent increase in processing capacity, a 0.2-percent increase in production, and a 3.6-percent increase in U.S. commercial shipments of domestic frozen catfish fillets by responding processors between 2000 and 2002. Based on available information, domestic processors of frozen catfish fillets have the ability to increase shipments to the U.S. market in response to a price increase. Given the relationship between farmers and processors and the current inventories maintained by farmers, domestic processors have less ability to respond to a price decline with decreased shipments.

U.S. SUPPLY: THE POTENTIAL OF SUBJECT IMPORTS TO SUPPLY THE U.S. MARKET

Exports to the U.S. market in 2002 by responding producers/exporters of the subject product from Vietnam totaled 36.0 million pounds. There is a small Vietnamese home market for the subject (frozen) product. Responding producers and exporters of the subject product in Vietnam report that exports to the United States were equivalent to 44.8 percent of all shipments and 53.5 percent of all exports by responding producers/exporters in Vietnam in 2002. Vietnamese producers' ability to shift production to or from the U.S. market in response to a change in price is demonstrated by shipment data for the first quarter of 2003 compared to the first quarter of 2002. Exports to the United States in the first quarter of 2003 were 4.3 million pounds lower than in the first quarter of 2002. Exports to markets other than the United States were 5.5 million pounds higher in the first quarter of 2003 than in the first quarter of 2002. Responding producers of the subject product in Vietnam also produce several alternate products such as other varieties of fish, and shrimp, and therefore presumably have some ability to alter product mix in response to changes in price.[10] Exports of the subject product to the United States by responding exporters increased by 187.4 percent from 2000 to 2002, but were 65.2 percent lower in the first quarter of 2003 compared to the first quarter of 2002.

Official U.S. import statistics indicate that U.S. imports of the subject product from Vietnam increased by 143.1 percent from 2000 to 2002, and were 55.6 percent higher in the first quarter of 2003 compared with the first quarter of 2002.[11] Based on the available information, Vietnamese producers have the ability to respond to price changes with changes in the volume of shipments to the U.S. market.

U.S. SUPPLY: NONSUBJECT IMPORTS

Imports of frozen "catfish" fillets under HTS statistical reporting number 0304.20.6030 from all sources except Vietnam accounted for a small share of apparent consumption in 2000-2002. Nonsubject imports did not exceed 1.0 percent of apparent consumption in any calendar year during the period for which data were collected. The majority of responding processors and importers reported no knowledge of nonsubject imports or reported that nonsubject imports are minimal. One responding processor reported that nonsubject imports are not being marketed as farm-raised catfish.

U.S. DEMAND

Eight of 18 responding domestic processors reported that demand for the subject product has increased since 2000, but that domestic processors' sales have been flat or declining, with the increase in demand captured by subject imports. Seven additional processors reported that demand for domestic product was down due to increased subject imports. Apparent U.S. consumption of the subject product was 24.1 percent higher on a quantity basis in 2002 than in 2000 (see table C-1). Over the same period

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[10] The nature of the relationship between farmers and processors in Vietnam is unknown.

[11] Differences in export and import data may be largely due to transit times.

of time, shipments of frozen catfish fillets by responding domestic processors increased 3.6 percent, and shipment data reported by NASS increased 9.5 percent. The value of U.S. apparent consumption was 2.4 percent lower in 2002 than in 2000. Four of five importers that responded to this question reported that demand for the subject product has increased since 2000.[12] Of six end-use purchasers that answered this question, two (one restaurant chain and one retail grocery chain) reported no change in demand, and four (one restaurant chain and three retail grocery chains) reported increased demand.[13]

One domestic processor reported that buyers now place more emphasis on price rather than service or quality. Two domestic processors reported that the demand for small catfish fillets has declined due to increased subject imports in the small sizes.[14] One domestic processor reported that it has increased the marketing of further-processed products (breaded or marinated) and of fresh or ice-packed products. One importer reported that the imported subject product was being marketed as a separate product and was "gaining its own identity."[15]

SUBSTITUTABILITY ISSUES

Six responding domestic processors and three responding importers reported selling in the entire U.S. market or in the entire continental United States. Eight additional domestic processors reported a focus on sales in the southern or the southeastern United States. Three importers reported sales in the southern United States only. U.S. inland transportation costs reported by domestic processors ranged from 2 to 8 percent of the total cost of the product, and all reporting importers that responded to this question reported that U.S. inland transportation costs accounted for 5 percent of the total cost.

Domestic frozen catfish fillets and imported subject product largely compete in the same channels of distribution. Sales to food service distributors accounted for the majority of sales of both domestic frozen catfish fillets and subject imported product. Sales to customers other than food service distributors and restaurant chains accounted for 29.2 percent of sales by domestic processors in 2002, and a small share of reported shipments by responding importers of the subject product.[16]

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[12] The subject product was defined as all frozen fish fillets made from catfish or from the species Pangasius Bocourti, Pangasius Hypophthalmus, or Pangasius Micronemus (otherwise known as "basa" or "tra").

[13] Of end-use purchasers that reported an increase in demand, *** attributed the increase to the addition of a line of hot sandwiches, *** cited increased customer acceptance of basa, *** reported that demand had increased because basa was less expensive than catfish, and *** cited the superior taste and ease of preparing basa.

[14] Small fillets of two to three ounces (product 1) accounted for a larger share of reported pricing data from responding importers than from responding domestic processors. In 2002, shipments of two-to-three ounce fillets accounted for 45.7 percent of reported pricing data from responding importers of the subject product, compared to 5.9 percent of reported pricing data from responding domestic processors.

[15] *** questionnaire response, p. 12.

[16] Of importers that provided data in the final phase of the investigation, sales to customers other than food service distributors and restaurant chains accounted for 2.7 percent of sales in 2002. One importer, *** that all of its sales were to wholesalers. It is not clear if these firms are food service distributors.

Responses to Commission questionnaires indicate that there are few if any close substitutes for the subject product in its end uses.[17] Twelve of 14 responding domestic processors and three of five importers reported that there are no substitutes for the subject product (or reported no substitutes for catfish other than subject imports). Other fish fillets were mentioned by one domestic processor and two importers as substitutes for the subject product. A witness for the respondents characterized subject imports as an alternative to, rather than a substitute for, catfish.[18] Other alternatives discussed at the conference include fish such as tilapia, trout, striped bass, pike and perch, and poultry products.[19] Respondents also noted that seafood prices in general have declined in recent years.[20] See Part V for a discussion of price trends.

Twenty-three of 32 responding purchasers reported that there are no substitutes for the subject product, and three reported that catfish may be a substitute for the subject product. Six responding purchasers reported that a variety of other frozen fish fillets were possible substitutes for the subject product. The most frequently mentioned substitute was tilapia. Only three responding end users reported that they would use more of another seafood product if the relative price of the subject product increased. One end user did not report a substitute product, one would switch to tilapia, and the other to domestic farm-raised catfish.

Purchasers were also asked if prices for other frozen white fish fillets are relevant or used as leverage when negotiating prices and volumes of the subject product. Of 27 purchasers that answered this question, 22 reported that prices for other frozen fish fillets are not relevant or not used in negotiations. Two purchasers reported that prices for subject imports are compared to prices for domestic catfish. One purchaser, ***, reported that prices for individual species are independent of each other, and that "other species are used only for reference, not leverage." Two purchasers, ***, reported that prices for other frozen fish fillets are a small factor in the decision-making process.

Responding purchasers were split regarding the substitutability of domestic catfish for subject imports. Purchasers were asked if there are any domestically produced frozen fish fillets that may be substituted for the subject imported frozen basa and tra fillets from Vietnam. Of the 26 purchasers that responded to this question, eight reported that frozen fish fillets of catfish may be substitutes for the subject imports. Additionally, four purchasers reported that a variety of domestically produced frozen fish fillets, including catfish, may be substitutes for the subject imports. Three purchasers reported that domestically produced frozen fillets other than catfish may be substitutes for the subject imports. The remaining 11 purchasers reported no substitutes for the subject imports (table II-3).

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[17] The subject product was defined as all frozen fish fillets made from catfish or from the species *Pangasius Bocourti*, *Pangasius Hypophthalmus*, or *Pangasius Micronemus* (otherwise known as "basa" or "tra").

[18] Howard M. Johnson, President, H. M. Johnson and Associates, hearing transcript, pp. 189-190.

[19] Roger Kratz, Seafood Marketing Consultant, Captain's Table, conference transcript, p. 115.

[20] Roger Kratz, conference transcript, p. 118.

Table II-3
Substitutes for subject imports

	Catfish	Multiple products including catfish	Products other than catfish	None
Food service distributors	***	***	***	***
Restaurants	***	***	***	***
Other	***	***	***	***
Total	8	4	3	11

Source: Compiled from responses to Commission purchaser questionnaires.

All but one responding domestic processor and four of seven responding importers reported that domestic frozen catfish fillets and subject product from Vietnam are used interchangeably, i.e., physically used in the same applications (table II-4). Three importers reported that domestic frozen catfish fillets and subject product from Vietnam are not used interchangeably. Fifteen of 18 responding domestic processors and six of seven responding importers reported that there are significant differences in product characteristics or sales conditions between domestic and subject product from Vietnam. Differences reported by domestic processors include a wider product range, better quality, availability, and consumer confidence in the domestic product. Differences reported by importers include taste, texture, and color plus name recognition and the advertising and established distribution channels of the domestic product.

Table II-4
Interchangeability of the domestic and imported product

Item	U.S. processors		Importers	
	Firms reporting "yes"	Firms reporting "no"	Firms reporting "yes"	Firms reporting "no"
Are certain frozen fish fillets from different sources generally used interchangeably?				
U.S. vs. subject Vietnamese	17	1	4	3
U.S. vs. nonsubject sources	6	8	4	2
Subject vs. nonsubject sources	5	7	4	2
Significant differences in product characteristics or sales conditions				
U.S. vs. subject Vietnamese	15	3	6	1
U.S. vs. nonsubject sources	3	11	2	4
Subject product vs. nonsubject sources	2	12	2	4

Source: Compiled from data submitted in response to Commission questionnaires.

ELASTICITY ESTIMATES

This section discusses the estimated supply, demand, and substitution elasticities used to estimate the impact of changes in the U.S. market price on domestic supply, nonsubject supply to the U.S. market, demand, and substitution between the domestic product and subject imports.

Domestic Supply

The domestic supply elasticity measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price for the subject product. The elasticity of domestic supply depends on factors such as the level of excess capacity, the ease with which producers can alter capacity, the ability to shift production to alternate products, the existence of inventories, and the availability of alternate markets. Analysis of these factors suggests that the U.S. domestic industry is able to increase or decrease shipments to the U.S. market in response to a price change. An estimate of 1 to 2 is suggested.

Subject Supply

The ability of foreign subject and nonsubject producers or exporters to respond to a change in the U.S. price of the subject product is enhanced by the existence of the foreign home market and alternate export markets. These alternate markets for the subject product increase the ability of subject producers to respond to price changes in the U.S. market by shifting sales to or from these alternate markets. The ability of subject producers to respond to lower relative prices in the U.S. market with decreased shipments is seen by a comparison of subject import and market share data for interim 2003 compared to interim 2002. The U.S. supply elasticity for subject sources is estimated to be in the range of 5 to 10.

U.S. Demand

The U.S. demand elasticity measures the sensitivity of the overall quantity demanded to a change in the U.S. market price for the subject product. Demand elasticity depends on such factors as the existence, viability, and availability of substitute products. The subject product is primarily sold to foodservice distributors that also carry a variety of other seafood products. However, many purchasers reported no viable substitutes for the subject product. A demand elasticity in the range of 1 to 2 is suggested.

Substitution

The elasticity of substitution depends on the extent of product differentiation between the domestic and imported product. Product differentiation depends on factors such as quality and product range, and conditions of sale such as availability and delivery. Based on the available information, the elasticity of substitution between domestic and imported subject product is estimated to be in the range of 3 to 5.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the final margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of 17 firms that are believed to account for about 75 percent of the quantity of U.S.-produced frozen catfish fillets shipped in 2002.

As indicated previously, at least 25 catfish processors currently operate in the United States. Eighteen of these, including the largest, provided the Commission with questionnaire responses.[1] Their plant locations, positions on the petition, individual shares of total shipments of U.S. production in 2002, and production of frozen catfish fillets (including marinated and breaded fillets) as a share of the total weight of the live catfish they acquired for processing are presented in table III-1. None of the firms processes fish other than catfish; however, all process and sell catfish products other than frozen fillets, including fresh fillets and fresh and frozen whole fish, dressed fish, steaks, and nuggets (the nuggets are a co-product of their production of shank fillets). As indicated previously, about 13 percent of processors' frozen fish fillets (by weight) were marinated or breaded during the period examined. Several processors are owned by catfish farms or farm cooperatives, or by third parties which own both, as noted in table III-1.

According to data published by NASS, over 90 percent by weight of the live fish the farmers sell is sold to these processors, the remainder being sold to fresh markets locally. In turn, about 24 percent of the weight of the live catfish the processors acquire for processing is processed into the subject product (based on questionnaire responses), 26 percent is processed into other catfish products, and about 50 percent is offal that is mostly sold as a byproduct. None of the responding processors imported or purchased the Vietnamese product during the period for which data were collected.[2]

Combined data for the 17 processors responding to the Commission's questionnaires with usable data are shown in table III-2. Producers' overall capacity for the subject product increased substantially in 2000 from earlier levels, largely due to capital expansion projects by ***. Other processors, however, including ***, reduced capacity in the face of increased competition. (***–this was the only significant intracompany change processors reported that adversely affected production). Another processor, Delta Pride, "***" shut down its Belzoni, MS, plant in 2001, citing ***. Capacity increased again in 2002 with Prairie Land's opening of a new facility; the continued, albeit curtailed, expansion of Heartland and America's Catch; and the reopening of Pride of the South's plant. Production, however, has not kept pace with capacity, resulting in declines in capacity utilization during the period examined. U.S. commercial shipments fell somewhat in 2001 from 2000 but more than recovered in 2002 and increased slightly from

[1] One firm, Guidry's Catfish, Inc., Beaux Bridge, LA, was not able to separate frozen fillets from its other catfish products and provided information on its total catfish processing only, which could not be used. Guidry's Catfish supports the petition.

[2] Petitioners contended in their postconference brief in the preliminary phase of the investigation (exh. 1, p. 9) that *** buys and sells the subject Vietnamese product. According to the firm's owner and president, ***.

Table III-1
Frozen catfish fillets: U.S. processors, location of processing facilities, position with respect to the petition, share of shipments of U.S. production, 2002, and share of total catfish processing, January 2000-March 2003

Company	Location of production facilities	Position with respect to the petition	Shipments *(1,000 pounds)*	Share of shipments *(percent)*	Percent of total pounds of live catfish acquired–	
					Frozen fillets	Other[1]
America's Catch[2]	Itta Bena, MS	Petitioner	***	***	***	***
Aquafarms[3]	Holdenville, OK	Support	***	***	***	***
Carolina Classics[4]	Ayden, NC	Support	***	***	***	***
ConFish[5]	Isola, MS	Petitioner	***	***	***	***
Delta Pride[6]	Indianola, MS; Belzoni, MS	Petitioner	***	***	***	***
Fish Breeders[7]	Hagerman, ID	Support	***	([8])	***	***
Haring's Pride[9]	Wisner, LA	Support	***	***	***	***
Harvest Select[10]	Uniontown, AL	Petitioner	***	***	***	***
Heartland Catfish[11]	Itta Bena, MS;	Petitioner	***	***	***	***
Prairie Lands[12]	Pinckneyville, IL	Support	***	***	***	***
Pride of the Pond[13]	Tunica, MS	Petitioner	***	***	***	***
Pride of the South[14]	Brooksville, MS	Support	***	***	***	***
Prime Line[15]	Scooba, MS	Support	***	***	***	***
Seabrook[16]	Kemah, TX	Support	***	***	***	***
Seacat[17]	Lade Village, AR	Support	***	***	***	***
Simmons[18]	Yazoo City, MS	Petitioner	***	***	***	***
Southern Pride[19]	Greensboro, AL	Petitioner	***	***	***	***
Total responding			111,177	75.3	24[20]	76[20]
Total processors[21]			147,532	100.0	Unknown	Unknown

[1] Consists other frozen products, fresh products, and offal. Offal accounts for approximately 50 percent of the weight of the live catfish used to produce catfish products.
[2] America's Catch is not owned, in whole or in part, by any other firm.
[3] Aquafarms is *** owned by Cain & Stanley Fish Farm, McCrory, AR; *** owned by United Farms, Inc., Heber Springs, AR; and *** owned by Arkansas Well Supply, Inc., McCrory, AR.
[4] Firm is not owned, in whole or in part, by any other firm, but owns several catfish farms.
[5] ConFish is *** owned by Country Select Catfish Co., Isola, MS, and *** owned by a number of individual catfish farmers.
[6] Delta Pride is owned by a cooperative of over *** fish farms and others which individually have no more than *** percent interest in the firm.
[7] Fish Breeders is 100-percent family owned.
[8] ***.
[9] Haring's Pride is not owned, in whole or in part, by any other firm.
[10] Harvest Select is *** owned by the Greene Group, Tuscaloosa, AL, which in turn owns several catfish farms from which Harvest Select purchases its fresh catfish.
[11] Heartland Catfish is *** owned by Tackett Fish Farms, Schlater, MS.
[12] Prairie Lands is not owned, in whole or in part, by any other firm.
[13] Pride of the Pond is not owned, in whole or in part, by any other firm.
[14] Pride of the South is not owned, in whole or in part, by any other firm, but owns several catfish farms.
[15] Prime Line is not owned, in whole or in part, by any other firm.
[16] Seabrook is not owned, in whole or in part, by any other firm.
[17] Seacat is owned by a cooperative of over *** fish farms which individually have no more than *** percent interest.
[18] Simmons is *** owned by Phillips Bros., Yazoo City, MS, and *** owned by Harry Simmons, Jr., Yazoo City, MS.
[19] Southern Pride is not owned, in whole or in part, by any other firm.
[20] Weighted on the basis of reporting producers' shipments in 2002.
[21] Based on NASS data for total frozen catfish fillet production, including breaded and marinated product.

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires unless otherwise noted.

Table III-2
Frozen catfish fillets: U.S. processors' production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 2000-2002, January-March 2002, and January-March 2003

(Quantity=*1,000 pounds*; value=*1,000 dollars*)

Item	2000	2001	2002	J-M 2002	J-M 2003
U.S. producers'--					
Capacity quantity	150,565	148,198	169,888	43,710	45,781
Production quantity	108,295	103,112	108,469	25,914	26,225
Capacity utilization[1]	71.9	69.6	63.8	59.3	57.3
U.S. commercial shipments:					
Quantity	107,059	100,101	110,909	29,932	30,191
Value	294,203	257,336	249,107	66,812	69,026
Unit value (*per pound*)	$2.75	$2.57	$2.25	$2.23	$2.29
Export shipments:					
Quantity	369	409	268	92	46
Value	1,040	1,166	732	256	127
Unit value (*per pound*)	$2.82	$2.85	$2.73	$2.78	$2.76
Total shipments:					
Quantity	107,428	100,510	111,177	30,024	30,237
Value	295,243	258,502	249,839	67,068	69,153
Unit value (*per pound*)	$2.75	$2.57	$2.25	$2.23	$2.29
Ending inventory quantity	8,051	10,654	8,195	6,380	4,303
Inventories/total shipments[1]	7.5	10.6	7.4	5.3[2]	3.6[2]
Production workers	3,365	3,056	2,918	2,929	2,758
Hours worked (*1,000 hours*)	6,253	5,534	5,373	1,482	1,500
Wages paid (*1,000 dollars*)	45,556	42,180	41,684	10,631	10,437
Hourly wages	$7.29	$7.62	$7.76	$7.17	$6.96
Productivity (*pounds per hour*)	17.3	18.6	20.2	17.5	17.5

[1] In *percent.*
[2] Based on annualized shipment data.

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

January-March 2002 to January-March 2003. The trend in unit values, which fell noticeably during 2000-2002, reversed somewhat in January-March 2003. Exports were minor. While inventories were somewhat erratic, overall employment appears to have declined throughout the period. Productivity, however, steadily increased, although at a fairly low rate. (Note.–Because of spoilage and other loss, the quantities of production, shipments, and inventories in table III-2 do not completely reconcile).

Except for employment and financial information, the commercial data for the farmers would largely duplicate those for the processors. In addition to the 17 processors, the Commission received questionnaire responses from 53 farmers, all indicating support for the petition; however, the usefulness of their reported employment data is limited. Any useful financial information is reported in Part VI. Their employment information is widely ranging, with 5 providing no employment information, 21 reporting a decline in the number of production and related workers in the period examined, 9 reporting an increase in these workers, and 18 reporting little, if any, change. The number of production and related workers employed by these firms ranges between 1 and 120–the majority employ 20 to 30 workers. Overall, the number of production and related workers reported by these firms averaged 831 in 2000, 855 in 2001, and 777 in 2002. A comparison of farmers' employment data from January-March 2002 to January-March 2003 is inconclusive and potentially misleading because March and April are traditionally months of hiring for the spring and summer season, and the extent to which farmers start and complete their hiring in March or April is variable. For example, the average number of production and related workers at *** declined from *** in January-March 2002 to *** in January-March 2003; however, this is not indicative of a decline in employment–only that in 2003 a great deal more of its workers than in 2002 were hired in April rather than March and could not be included in first quarter data.

Total U.S. processors' shipments of frozen catfish fillets, including breaded and marinated product, based on NASS data are shown below (the data consist of NASS-published catfish processors' sales volume for frozen fish fillets (which includes a small but unknown quantity of exports and excludes breaded products) plus the NASS "other" category for the "weight of breading and other added ingredients"):

				January-March–	
	2000	2001	2002	2002	2003
Quantity (*1,000 pounds*). .	134,686	131,636	147,532	39,507	38,330
Value (*1,000 dollars*). . . .	370,387	338,305	331,952	88,101	87,776

The unit value of total U.S. producers' shipments based on questionnaire responses (table III-2) was applied to the NASS quantities shown to arrive at the corresponding values. If the figures based on NASS data are reasonably accurate, then the Commission's questionnaire respondents represent about 75 percent of total shipments of the U.S.-produced like product. According to NASS data, processors' end-of-period inventories of frozen catfish fillets (including breaded and marinated product) increased from 11.0 million pounds in 2000 to 12.3 million pounds in 2001, then decreased to 8.9 million pounds in 2002, and were 6.0 million pounds in March 2003 compared with 8.7 million pounds in March 2002.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

At least 25 firms imported frozen fillets of Vietnamese basa and tra during the period examined; however, only 7 of these, representing about 23 percent of subject imports in 2002, responded to the Commission with usable questionnaires.[1] All are seafood distributors, and none are related to any Vietnamese processor or grower. Frozen fillets of fish other than basa and tra are also imported from Vietnam, but in much smaller quantities. There is no evidence that the imported product undergoes any further processing in the United States.

Data for Vietnam and other countries as a whole are shown in table IV-1. The source for the volume of imports from Vietnam is the Vietnamese Association of Seafood Exporters and Producers and other Vietnamese producers which collectively represent all known producers of the subject product in Vietnam; the value of these imports is based on an average unit value for imports from Vietnam (landed, duty-paid) reported by importers. There is no separate category for basa and tra in the HTS–according to importers' questionnaires, Vietnamese basa and tra have entered under three of the listed HTS statistical reporting numbers (0304.20.6030, 0304.20.6043, and 0304.20.6096) along with frozen fillets of other types of fish from Vietnam, including grouper and mahi mahi.[2] Although basa and tra are not exclusive to Vietnam (both India and Thailand are known to have commercial industries), Vietnam is believed to be the only country to have exported frozen fillets of basa and tra, or processed basa and tra of any kind, to the United States in more than sample quantities. For purposes of total consumption, however, table IV-1 includes imports from all other countries entered under HTS statistical reporting number 0304.20.6030 for frozen fillets of freshwater catfish, which may or may not be the species grown commercially in the United States, or even catfish at all. In any case, such imports are minor and were mostly from Guyana and Brazil. The data in table IV-1 show increasing U.S. consumption and an increasing share of consumption by Vietnamese basa and tra until January-March 2003, when the volume of imports from Vietnam dropped considerably from the corresponding period in 2002. (Questionnaire data show that whereas imports from large importers declined, imports from smaller importers increased). The Vietnamese share of volume is noticeably higher than that for value, reflecting these imports' lower value per pound. Even allowing for the higher-valued breaded and marinated fillets in the U.S. mix, the unit value for imported Vietnamese basa and tra was well under that for commercial shipments of U.S.-produced catfish throughout the period examined and declined by 21 percent from 2000 to January-March 2003. Because the U.S. Department of Agriculture does not compile production data for the subject product, a calculation of U.S. consumption based on production rather than

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[1] The latter are ***.

[2] Petitioners suggest that the volume of import data based on Vietnamese producers' export data is understated and that total imports from Vietnam under the four HTS statistical headings included in Commerce's scope would more appropriately reflect actual imports of the subject product from Vietnam, even though these items are not specific to the subject product. Aggregate data from Vietnamese producers understates these data by about 20 percent; however, how much of these data can accurately be attributed to the subject product is entirely speculative. Imports of other types of fish are known to have been imported under these item numbers, and none of the responding importers reported importing the subject product under item 0304.20.6096 (frozen fillets of other than fresh-water fish). Given the speculative nature of ascertaining the appropriate proportion of HTS data attributable to the subject product and having what is believed to be relatively complete data from Vietnamese producers, the volume of consumption and imports from Vietnam used herein is based on Vietnamese producers' data.

Table IV-1
The subject product: U.S. imports and apparent U.S. consumption,[1] 2000-2002, January-March 2002, and January-March 2003

(Quantity=*1,000 pounds*; value=*1,000 dollars*)

Item	2000	2001	2002	J-M 2002	J-M 2003
U.S. consumption quantity: Amount	148,428	158,575	184,164	46,158	40,793
Producers' share[2]	90.7	83.0	80.1	85.6	94.0
Importers' share: Vietnam[2]	8.4	16.4	19.6	14.4	5.7
All other countries[2]	0.8	0.6	0.3	([3])	0.4
Total imports[2]	9.3	17.0	19.0	14.4	6.0
U.S. consumption value: Amount	395,615	380,669	385,988	97,411	91,426
Producers' share[2]	93.6	88.9	86.0	90.4	96.0
Importers' share: Vietnam[2]	5.9	10.8	13.8	9.5	3.7
All other countries[2]	0.4	0.3	0.2	([3])	0.3
Total imports[2]	6.4	11.1	14.0	9.6	4.0
U.S. imports from-- Vietnam:					
Quantity	12,540	25,978	36,046	6,638	2,311
Share of total import quantity[2]	91.3	96.4	98.4	99.8	93.8
Value[4]	23,450	41,045	53,348	9,293	3,397
Share of total import value[2]	93.0	96.9	98.7	99.8	93.1
Value per pound	$1.87	$1.58	$1.48	$1.40	$1.47
All other countries:					
Quantity	1,202	961	586	13	152
Share of total import quantity[2]	8.7	3.6	1.6	0.2	6.2
Value[4]	1,778	1,319	688	17	253
Share of total import value[2]	7.0	3.1	1.3	0.2	6.9
Value per pound	$1.48	$1.37	$1.17	$1.29	$1.66
All countries:					
Quantity	13,742	26,939	36,632	6,651	2,463
Value[4]	25,228	42,364	54,036	9,310	3,650
Continued on next page.					

Item	2000	2001	2002	J-M 2002	J-M 2003
Value per pound	$1.84	$1.57	$1.48	$1.40	$1.48

[1] U.S. processors' shipments of frozen catfish fillets, including breaded and marinated product (based on NASS data–tabulation p. III-5) plus imports of frozen basa and tra fillets from Vietnam (based on foreign producers' questionnaires (table VII-1)) and frozen catfish fillets from all other countries (official Commerce statistics for HTS item 0304.20.6030). U.S. processors' shipments include undetermined but very small quantities of exports. Values of U.S. shipments are based on average unit values of questionnaire respondents (table III-2).
[2] In *percent.*
[3] Less than 0.05 percent.
[4] Landed, duty-paid.

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from official Commerce statistics, NASS data, and data submitted in response to Commission questionnaires.

shipments is not available. Calculating such consumption on the basis of production reported in the Commission's questionnaires, which represent about 75 percent of total U.S. processors' shipments, would understate consumption to the same degree as shipments reported in these questionnaires.

As indicated in Part I, Commerce found that critical circumstances exist with respect to several Vietnam producers and also to all others for which Commerce did not make a specific determination. Monthly exports to the United States by the individual firms for which Commerce made affirmative final critical circumstances determinations and the total for all others for which Commerce did not make a specific determination (and for which the Commission was provided monthly export data) are shown in the following tabulation (in 1,000 pounds from August 2001 to March 2003):

Month and year	Afiex	CAFA TEX	Da Nang	Nam Viet	QVD	Vinh Long	Total all others[1]	Total
August 2001	***	***	***	***	***	***	***	1,177
September 2001	***	***	***	***	***	***	***	430
October 2001	***	***	***	***	***	***	***	1,024
November 2001	***	***	***	***	***	***	***	801
December 2001	***	***	***	***	***	***	***	669
January 2002	***	***	***	***	***	***	***	496
February 2002	***	***	***	***	***	***	***	341
March 2002	***	***	***	***	***	***	***	850
April 2002	***	***	***	***	***	***	***	1,466
May 2002	***	***	***	***	***	***	***	1,351
June 2002	***	***	***	***	***	***	***	1,057
July 2002	***	***	***	***	***	***	***	1,859

October 2002	***	***	***	***	***	***	***	1,552
November 2002	***	***	***	***	***	***	***	1,346
December 2002	***	***	***	***	***	***	***	2,073
January 2003	***	***	***	***	***	***	***	471
February 2003	***	***	***	***	***	***	***	148
March 2003	***	***	***	***	***	***	***	287

[1] All other exporters and/or producers for which Commerce effectively made affirmative critical circumstances determinations, non-specific to firm, and which provided the Commission with monthly export data, including two producer/exporters (ANTESCO and THUFICO) and one exporter (Hai Vuong).

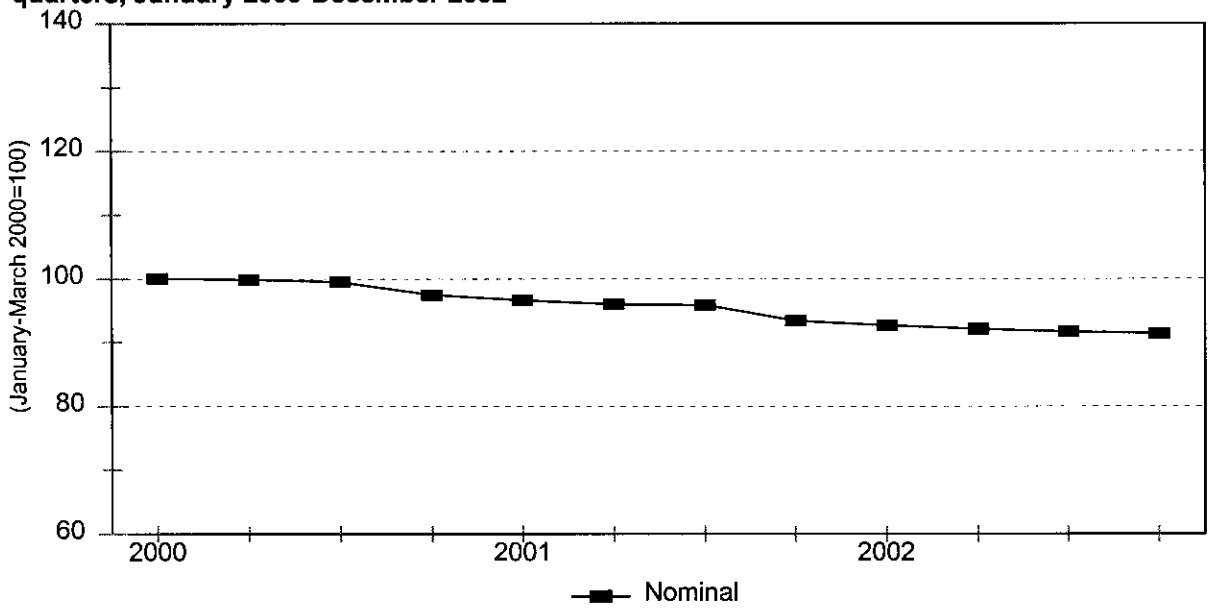
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICING

Exchange Rates

The nominal value of the Vietnamese dong has declined relative to the U.S. dollar since the first quarter of 2000.[1] Most of the decline in the nominal relative value has been since the third quarter of 2000. In the fourth quarter of 2002 the nominal value of the Vietnamese dong relative to the U.S. dollar was 9.6 percent lower than its relative value in the first quarter of 2000. The Vietnamese dong is not a convertible currency. However, a majority of exporters of the subject product from Vietnam are private enterprises, and are free to set prices and make production and trade decisions.[2]

Figure V-1
Indices of the real and nominal exchange rates of the Vietnamese dong relative to the U.S. dollar, by quarters, January 2000-December 2002



Source: International Monetary Fund, *International Financial Statistics*, May 2003.

Transportation Costs to the U.S. Market

Freight and insurance account for a fairly small share of the value of imports of the subject product from Vietnam. In 2002, freight and insurance costs, calculated as the difference between the c.i.f. value and the customs value, were 6.4 percent of the customs value. Imports of the subject product from Vietnam have entered into the United States duty-free since December 10, 2001. Prior to the implementation of the U.S.-Vietnam Bilateral Trade Agreement, subject imports were subject to a tariff of 5.5¢ per kilogram.

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[1] The real exchange rate is not shown because a producer price index is not available.

[2] Letters from the Embassy of Vietnam to the Commission dated July 16 and July 26, 2002.

Raw Material Costs

The primary raw material in the production of frozen fish fillets is whole fresh fish. For domestic catfish processors, whole fresh fish accounted for 66.7 percent of the cost of goods sold of frozen catfish fillets in 2002. The principal variable cost for catfish farmers is catfish feed. Feed costs accounted for 50.0 percent of the net sales value of catfish sold by responding catfish farmers in 2002. Respondents have asserted that the declining price of feed has prompted domestic catfish farmers to put more land into production, leading to an oversupply of fish.[3] Data presented by petitioners indicate that the average annual price of feed declined *** percent from 1997 to 1999, and increased by *** from 1999 to 2001.[4]

NASS monthly publication *Catfish Processing* reports the average prices paid by catfish processors to catfish farmers, the average prices received by catfish processors for frozen fillets, and the landed, duty paid values of subject imports.[5] [6] The average price for whole catfish reached a high of $0.789 per pound in March and April of 2000, and declined to a low of $0.549 per pound in January of 2002 (figure V-2). The average price for frozen catfish fillets sold by processors reached a high of $2.88 per pound in March and April 2000, and a low of $2.37 per pound in March and April 2002.

PRICING PRACTICES

Most responding domestic producers and importers reported few or no sales on a contract basis. The exceptions are domestic producers ***[7] and *** with *** percent of sales under contract, respectively, and importers *** with *** percent of sales under contract, respectively.[8] Most sales are negotiated for each transaction or each customer. Those domestic processors that use published price lists primarily use them as a starting point for negotiations. Two domestic processors, ***, reported that prices for frozen fillets are determined by the live fish cost, and one processor, ***, reported that the starting price for negotiations was based on cost. A variety of discounts may be extended to purchasers. Domestic processors reported quantity discounts and discounts for certain sizes, based on inventory levels.[9] One domestic processor and one importer reported extending discounts for promotions or trade shows. Most responding importers reported that typical sales terms are ***. All responding domestic processors except *** reported shorter terms ranging from c.o.d. to 21 days.[10]

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[3] Roger Kratz, conference transcript, p. 114.

[4] Petitioners' postconference brief, exhibit 1-C.

[5] Data on frozen fillets reported by NASS do not include breaded or marinated fillets.

[6] The landed, duty-paid unit value of subject imports is not directly comparable to prices received by domestic processors as the landed duty-paid value represents the cost to importers rather than their selling price.

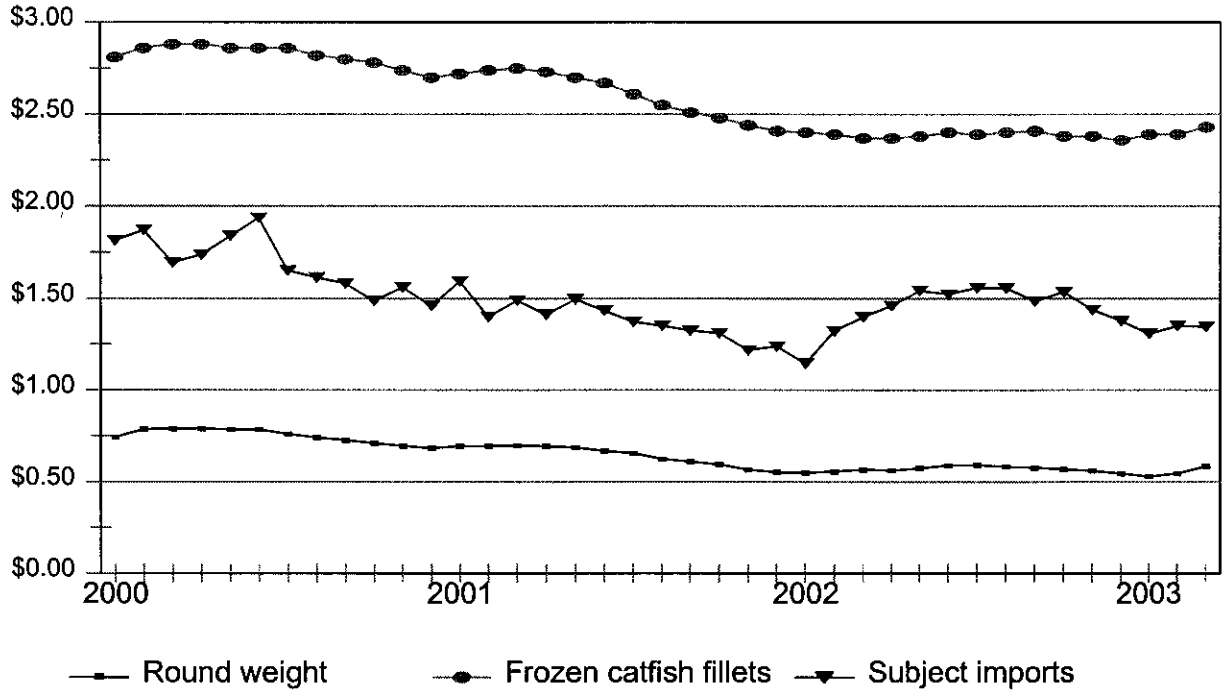
[7] *** inadvertently left this question blank in the response to the final phase questionnaire. The answer was taken from the preliminary phase questionnaire.

[8] *** reported typical contract length is ***, compared to *** for *** and *** for ***.

[9] These sales of overstocked items with a limited shelf life explains some of the variation observed in the pricing data presented.

[10] ***.

Figure V-2
Prices per pound received by U.S. catfish farmers for whole fish (round weight); prices received by U.S. processors for frozen fillets; and landed, duty-paid unit values of subject imports by month, January 2000-March 2003



Note.– Import unit value is based on imports under HTS statistical reporting number 0304.20.6030. The landed, duty-paid unit value of subject imports is not directly comparable to prices received by domestic processors as the landed, duty-paid value represents the cost to importers rather than their selling price.

Source: NASS, *Catfish Processing* and official import statistics.

PRICE DATA

Vietnam was subject to a trade embargo by the United States from 1975 until February 1994. Official import statistics indicate that there were few imports of the subject product from Vietnam prior to 1999. In 1998, imports from Vietnam under HTS reporting number 0304.20.6030 were approximately 0.6 million pounds. In 2002 these imports were approximately 9.6 million pounds. The average unit value of the subject product imported from Vietnam declined in the later part of 2000 and 2001, increased slightly in mid-2002, and has since declined. See Figure V-2.[11] The landed duty-paid average unit value of these imports from Vietnam reached a high of $1.94 per pound in June 2000, declined to a low of $1.14 per pound in January 2002, and in March 2003 was $1.34 per pound.[12] Data from *** indicate that the average unit sales value of U.S. commercial shipments of subject Vietnamese imports in 2002 was *** percent below the average unit value of commercial U.S. shipments of the domestic product.

In this investigation, f.o.b. price and quantity data were collected on four separate pricing products for shipments to all unrelated customers (tables V-1 through V-4 and figures D-1 through D-4 in appendix D). Reported U.S. sales of these products by responding domestic producers in 2002 was 60.2 million pounds, equivalent to 40.8 percent of total domestic production. Reported sales of these subject imported products in 2002 was 4.8 million pounds, equivalent to 13.3 percent of subject imports. The products for which pricing data were requested are as follows:

Product 1.– 2 to 3 ounce frozen fillets, not breaded or marinated, in 15 lb. to 10 kg. (22 lb.) boxes
Product 2.– over 3 ounce to 5 ounce frozen fillets, not breaded or marinated, in 15 lb. to 10 kg. (22 lb.) boxes
Product 3.– over 5 ounce to 7 ounce frozen fillets, not breaded or marinated, in 15 lb. to 10 kg. (22 lb.) boxes
Product 4.– over 7 ounce to 9 ounce frozen fillets, not breaded or marinated, in 15 lb. to 10 kg. (22 lb.) boxes

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[11] One possible explanation for the decline in prices is a change in product mix from basa (*Pangasius Bacourti*) to tra (*Pangasius Hypopthalmus*). According to Ngo Phouc Hau, director of An Giang Fisheries Import/Export Company, the share of basa in exports of subject product from Vietnam by his firm declined from virtually 100 percent in 1999 to approximately 30 percent in 2001, and an estimated 15 percent in 2002. Conference transcript, pp. 100-101. See also hearing transcript, p. 210 (Mr. McCartney and Mr. Fass, indicating that the great majority of the subject imports consist of tra). Tra fillets are reportedly priced up to 75 cents per pound less than basa fillets. "Basa Catfish: Basa and tra are finding their niche in the United States, much to the chagrin of the domestic catfish industry," Seafood Business, November 1, 2001, p. 26, and "Don't let basa sell as catfish," The Baton Rouge Advocate, April 4, 2002, as well as price data reported by *** in response to the Commission's preliminary importer questionnaire, p. 7. See also Christine Ngo, Vice President, H&N Foods International, conference transcript, p. 156.

[12] Imports under HTS statistical reporting number 0304.20.6030.

Table V-1
Weighted-average f.o.b. prices and quantities as reported by U.S. processors and importers of product 1[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2003

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2000:					
January	287,762	***	$2.94	***	***
February	227,587	***	2.98	***	***
March	428,931	***	3.03	***	***
April	218,768	***	3.03	***	***
May	297,080	***	3.00	***	***
June	300,550	***	2.98	***	***
July	260,215	***	2.89	***	***
August	314,433	***	2.93	***	***
September	255,857	***	2.94	***	***
October	262,280	***	2.77	***	***
November	217,005	***	2.62	***	***
December	155,215	***	2.79	***	***
2001:					
January	244,797	***	2.72	***	***
February	236,298	***	2.50	***	***
March	334,197	***	2.85	***	***
April	337,681	***	2.71	***	***
May	252,002	***	2.58	***	***
June	217,144	***	2.73	***	***
July	234,498	***	2.73	***	***
August	193,471	***	2.69	***	***
September	212,868	***	2.52	***	***
October	216,967	***	2.65	***	***
November	207,367	***	2.61	***	***
December	165,535	***	2.52	***	***

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Table V-1--*Continued*
Weighted-average f.o.b. prices and quantities as reported by U.S. processors and importers of product 1[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2003

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2002:					
January	235,092	***	$2.52	***	***
February	271,933	***	2.33	***	***
March	248,635	***	2.41	***	***
April	301,357	***	2.38	***	***
May	298,408	***	2.40	***	***
June	314,780	***	2.37	***	***
July	452,586	***	2.34	***	***
August	400,318	***	2.33	***	***
September	281,275	***	2.41	***	***
October	269,990	***	2.48	***	***
November	254,900	***	2.41	***	***
December	227,620	***	2.41	***	***
2003:					
January	315,455	254,595	2.38	1.92	19.4
February	330,070	***	2.31	***	***
March	459,339	***	2.37	***	***

[1] Product 1 consists of 2 to 3 oz. frozen fillets, excluding breaded or marinated product, in 15 lb. to 10 kg. (22 lb.) boxes.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-2
Weighted-average f.o.b. prices and quantities as reported by U.S. processors and importers of product 2[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2003

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2000:					
January	2,022,755	***	$2.83	***	***
February	2,273,799	***	2.87	***	***
March	2,337,580	***	3.11	***	***
April	2,172,408	***	2.94	***	***
May	2,202,550	***	2.91	***	***
June	2,676,959	***	2.87	***	***
July	2,114,590	***	2.83	***	***
August	2,360,275	***	2.82	***	***
September	2,245,798	***	2.81	***	***
October	2,225,899	***	2.77	***	***
November	2,054,759	***	2.70	***	***
December	1,647,063	***	2.78	***	***
2001:					
January	2,314,008	***	2.69	***	***
February	1,914,987	***	2.75	***	***
March	2,447,931	***	2.76	***	***
April	2,121,512	***	2.72	***	***
May	2,047,411	128,195	2.72	1.85	32.1
June	1,970,699	***	2.65	***	***
July	2,401,077	87,270	2.58	1.83	29.2
August	2,311,472	***	2.54	***	***
September	2,059,904	***	2.58	***	***
October	2,173,663	137,155	2.45	1.78	27.0
November	1,788,546	***	2.43	***	***
December	1,739,764	95,695	2.40	1.81	24.7

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Table V-2--*Continued*
Weighted-average f.o.b. prices and quantities as reported by U.S. processors and importers of product 2[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2003

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2002:					
January	2,439,533	85,201	$2.34	$1.80	23.2
February	2,360,563	***	2.36	***	***
March	2,131,417	160,333	2.41	1.59	34.1
April	1,909,821	89,350	2.41	1.88	22.2
May	2,192,616	184,995	2.38	1.71	28.2
June	2,215,000	93,055	2.41	1.89	21.5
July	2,076,621	97,120	2.41	1.90	21.0
August	2,470,281	109,440	2.38	1.95	18.0
September	2,197,696	116,245	2.39	1.89	20.9
October	2,304,108	101,870	2.40	1.84	23.2
November	1,932,782	89,190	2.40	1.92	19.8
December	1,816,460	157,125	2.38	1.82	23.5
2003:					
January	2,447,315	101,900	2.34	1.83	21.8
February	2,478,175	219,630	2.36	1.72	27.0
March	2,423,247	93,820	2.42	1.89	21.7

[1] Product 2 consists of over 3 oz. to 5 oz. frozen fillets, excluding breaded or marinated product, in 15 lb. to 10 kg. (22 lb.) boxes.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-3
Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers of product 3[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2002

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2000:					
January	1,539,086	***	$2.75	***	***
February	1,660,494	***	2.83	***	***
March	1,772,547	***	2.86	***	***
April	1,592,039	***	2.84	***	***
May	1,706,393	***	2.82	***	***
June	1,776,945	***	2.83	***	***
July	1,559,182	***	2.80	***	***
August	1,832,728	***	2.78	***	***
September	1,551,070	***	2.77	***	***
October	1,633,246	***	2.74	***	***
November	1,579,515	***	2.67	***	***
December	1,427,636	***	2.65	***	***
2001:					
January	1,779,171	***	2.59	***	***
February	1,872,547	***	2.59	***	***
March	2,041,364	***	2.71	***	***
April	1,572,154	***	2.70	***	***
May	1,534,804	118,770	2.69	1.84	31.8
June	1,679,851	70,610	2.62	1.91	27.0
July	1,687,226	93,758	2.44	1.78	27.0
August	1,780,111		2.49		
September	1,722,860	67,150	2.46	1.88	23.4
October	1,693,366	109,370	2.36	1.80	23.7
November	1,355,389	***	2.39	***	***
December	1,344,482	***	2.37	***	***

Continued on next page.

Table V-3--*Continued*
Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers of product 3[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2002

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2002:					
January	1,973,641	47,416	$2.25	$1.90	15.5
February	1,918,329	100,050	2.28	1.57	31.1
March	1,651,387	127,130	2.32	1.56	32.9
April	1,695,364	78,660	2.37	1.89	20.2
May	1,765,872	99,290	2.32	1.78	23.3
June	1,790,948	72,005	2.34	2.12	9.2
July	1,636,403	66,315	2.38	1.94	18.3
August	1,820,420	84,120	2.35	1.88	20.0
September	1,704,391	96,605	2.36	1.90	19.3
October	1,687,678	92,445	2.31	1.91	17.4
November	1,359,703	79,060	2.33	1.93	17.0
December	1,645,324	59,725	2.29	1.93	15.6
2003:					
January	1,862,478	88,450	2.27	1.75	23.0
February	1,764,263	92,900	2.28	1.77	22.4
March	1,993,578	34,590	2.34	1.98	15.4

[1] Product 3 consists of over 5 oz. to 7 oz. frozen fillets, excluding breaded or marinated product, in 15 lb. to 10 kg. (22 lb.) boxes.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-4
Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers of product 4[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2002

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2000:					
January	772,202	***	$2.71	***	***
February	769,451	***	2.77	***	***
March	977,004	***	2.75	***	***
April	787,347	***	2.76	***	***
May	731,960	***	2.77	***	***
June	833,442	***	2.75	***	***
July	683,234	***	2.75	***	***
August	829,752	***	2.67	***	***
September	823,808	***	2.82	***	***
October	698,984	***	2.67	***	***
November	695,641	***	2.60	***	***
December	659,565	***	2.63	***	***
2001:					
January	812,439	***	2.52	***	***
February	672,278	***	2.65	***	***
March	827,135	***	2.68	***	***
April	677,370	***	2.62	***	***
May	866,835	***	2.55	***	***
June	701,626	***	2.50	***	***
July	676,755	***	2.52	***	***
August	889,550	***	2.44	***	***
September	737,436	***	2.31	***	***
October	705,194	***	2.33	***	***
November	625,592	***	2.29	***	***
December	811,623	***	2.16	***	***

Continued on next page.

Table V-4--*Continued*
Weighted-average f.o.b. prices and quantities as reported by U.S. producers and importers of product 4[1] from Vietnam, with margins of underselling/(overselling), by quarters, January 2000-March 2002

Period	Quantity		Price		Margin
	United States	Vietnam	United States	Vietnam	
	Pounds	*Pounds*	*Per pound*	*Per pound*	*Percent*
2002:					
January	769,665	***	$2.22	***	***
February	858,065	***	2.18	***	***
March	813,895	4,815	2.26	1.72	23.7
April	860,188	5,745	2.23	1.77	20.7
May	979,020	14,115	2.22	1.73	22.1
June	968,601	13,860	2.26	1.81	19.7
July	724,277	13,995	2.28	1.92	16.0
August	891,711	***	2.22	***	***
September	744,095	***	2.17	***	***
October	931,696	***	2.15	***	***
November	534,926	***	2.21	***	***
December	898,500	***	2.03	***	***
2003:					
January	859,334	59,455	2.10	1.89	10.3
February	789,135	84,000	2.20	1.79	18.8
March	943,176	***	2.24	***	***

[1] Product 4 consists of over 7 oz. to 9 oz. frozen fillets, excluding breaded or marinated product, in 15 lb. to 10 kg. (22 lb.) boxes.

Source: Compiled from data submitted in response to Commission questionnaires.

Price Trends and Price Comparisons

The prices for all four products declined over the period examined. There was some evidence of increasing prices for all four products, particularly for subject imports from Vietnam, since January 2003. The subject imports undersold the comparable domestic product in all 139 comparisons for which data were available. Margins of underselling for product 1 (2-3 ounce fillets) showed little variation over the period examined, and ranged from 12.0 percent to 27.7 percent through January 2003, *** in February and March of 2003. Margins of underselling for product 2 showed more variation and ranged from 13.4 percent to 38.6 percent. Margins of underselling for product 3 were highest in the third quarter of 2000, and the first quarter of 2002. No sales of subject imported product 4 were reported before mid-year 2001. Margins of underselling were generally highest in the first quarter of 2002 for product 4 (larger-size fillets).

Price Trends for Other Seafood Products

Respondents have argued that prices for many seafood items have declined, driven by a variety of factors including consolidation among purchasers, a decline in demand for seafood products in general, and falling prices for competing seafood products.[13] Fresh-water fish that compete with catfish for sales reportedly include tilapia and trout.[14] The average landed, duty-paid unit value of imports of frozen tilapia fillets from all sources has declined over the period examined, but not as rapidly as the average unit value of subject imports from Vietnam (table V-5 and figure V-3). The monthly average unit value for imports of frozen trout fillets has fluctuated within a range, but the average annual unit value has increased. The average unit value of sales of whole trout by domestic trout producers in 2002 was equal to that in 2000.

[13] VASEP postconference brief, pp. 17-18, and prehearing brief, pp. 57-58 and exh. A.

[14] Roger Kratz, conference transcript, p. 115.

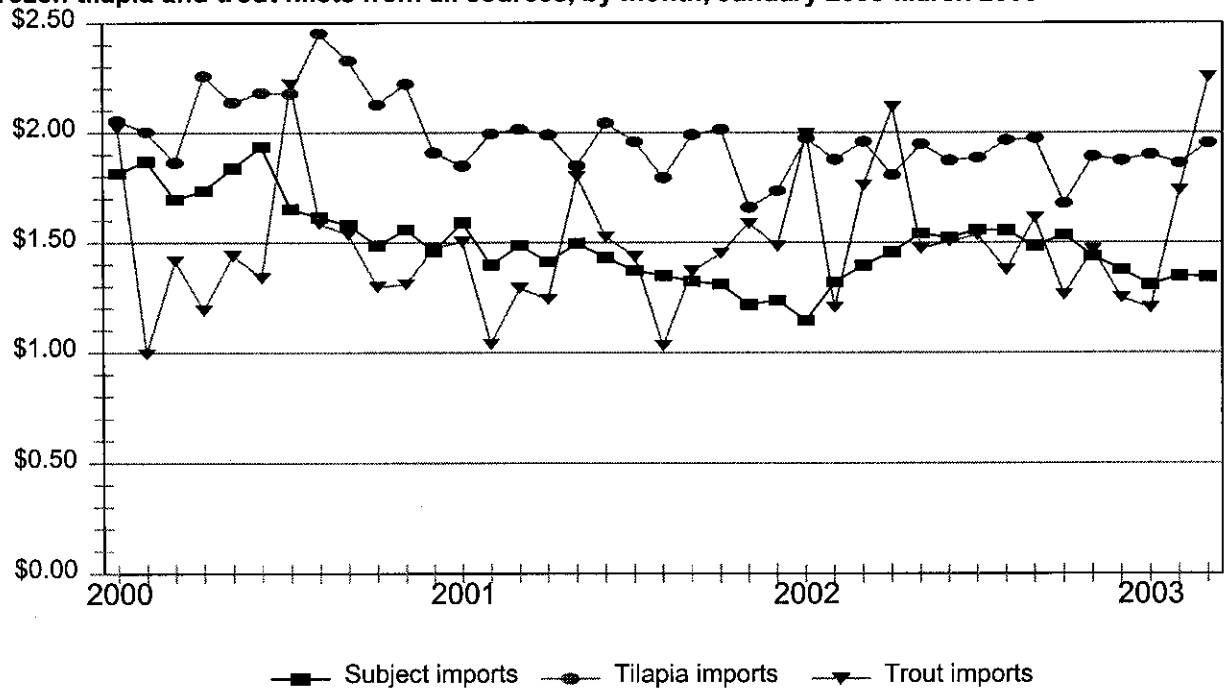
Table V-5
Average unit value (per pound, landed, duty-paid) of subject imports from Vietnam; imported frozen fillets of tilapia, Chilean sea bass, and trout from all sources; and domestic sales of whole trout 12 inches or longer: 2000-2002, January-March 2002, and January-March 2003

Product	2000	2001	2002	January-March 2002	January-March 2003
Subject imports[1]	$1.66	$1.38	$1.37	$1.31	$1.40
Imports of tilapia fillets[2]	2.16	1.89	1.89	1.93	1.90
Imports of trout fillets[3]	1.42	1.38	1.52	1.73	1.64
Imports of Chilean sea bass fillets[4]	5.20	5.09	5.40	5.01	6.15
Domestic whole trout[5]	1.07	1.13	1.07	NA	NA

[1] Imports under HTS statistical reporting number 0304.20.6030.
[2] Imports under HTS statistical reporting number 0304.20.6042.
[3] Imports under HTS statistical reporting number 0304.20.6005.
[4] Imports under HTS statistical reporting number 0304.20.6093.
[5] Data from NASS *Catfish and Trout Production*, 2000 and 2001, and *Trout Production*, 2002 and 2003.

Source: Compiled from official Commerce statistics and from NASS data.

Figure V-3
Average unit value (landed duty-paid per pound) of subject imports from Vietnam and imports of frozen tilapia and trout fillets from all sources, by month, January 2000-March 2003



Source: Official Commerce statistics under HTS statistical reporting numbers 0304.20.6030 for subject product, 0304.20.6042 for tilapia, and 0304.20.6005 for trout.

Prices for many types of frozen fish fillets have declined over the period examined.[15] For some of these products, there have also been increases in import quantity over the period examined. Changes in average import unit value and quantity of a variety of frozen fish fillets from first quarter 2000 to first quarter 2003 are reported in Table V-6 .

Table V-6
Changes in quarterly average unit value (landed, duty-paid) and import quantity of selected frozen fish fillets from all sources, January-March 2000 to January-March 2003

Species	HTS statistical reporting number	Price Change	Quantity change
		percent	*percent*
Pollack	0304.20.3068	-6.6	+42.1
Trout	0304.20.6005	+13.0	+92.6
Atlantic salmon	0304.20.6006	-22.7	+222.4
Tilapia	0304.20.6042	-4.4	+270.1
Sole	0304.20.6057	-5.1	+0.4
Flounder	0304.20.6058	-31.5	-2.0
Halibut	0304.20.6059	+35.9	-11.5
Orange roughy	0304.20.6075	-2.1	-16.9
Mahi mahi	0304.20.6091	-17.6	+87.5
Chilean sea bass	0304.20.6093	+20.1	-36.4
Source: Official import statistics.			

[15] Respondents conclude that the price and quantity of other seafood products greatly influenced the prices and quantities of the domestic frozen catfish fillets over the period examined, and that subject imports had a very modest impact on domestic prices and volumes. VASEP posthearing brief, exh. A, p. 15.

LOST SALES AND LOST REVENUES

Petitioners reported 39 lost sales allegations totaling $23.2 million and six allegations of lost revenues totaling *** due to import competition by the subject product at lower prices. Additionally, domestic producers provided information concerning six instances in which domestic producers allegedly lost opportunities to bid on a sale to customers purchasing lower-priced subject imports from Vietnam. Staff received information from 23 of the 29 purchasers involved, and four firms were unable to confirm or deny the allegations. Purchasers contacted were able to confirm nine of the lost sales allegations, totaling $6.0 million, and no lost revenues allegations. Details are reported in table V-7.

Table V-7
Lost sales and revenues allegations

* * * * * * *

PART VI: FINANCIAL CONDITION OF U.S. PROCESSORS AND FARMERS

BACKGROUND

Fourteen U.S. processors[1] provided usable financial data on their operations on frozen catfish fillets. These data accounted for 73.7 percent of U.S. production[2] of frozen catfish fillets in 2002. Forty-six U.S. farmers[3] provided usable financial data on their operations on foodsize raw catfish. These data accounted for 33.9 percent of the live weight of foodsize raw catfish[4] sold by farmers in 2002.[5]

PROCESSORS' OPERATIONS ON FROZEN CATFISH FILLETS

Results of operations of the U.S. processors on their frozen catfish fillet operations are presented in table VI-1; data on a per-pound basis are shown in table VI-2.

The net sales quantity, net sales value, and the net sales value per pound decreased in 2001 compared to 2000; however, operating income per pound increased by 1 cent, in part because the per-pound cost of foodsize raw catfish decreased by 2 cents more than the decrease in the per-pound net sales value. The quantity sold increased from 2001 to 2002 while the net sales value decreased as a result of a decrease in the per-pound net sales value. The decrease in the per-pound net sales value also contributed to a decrease in the operating income per pound from 7 cents in 2001 to less than one-half of a cent in 2002. The quantity sold, net sales value, and the net sales value per pound increased in interim 2003 compared to interim 2002. The operating income margin and the operating income per pound increased slightly in interim 2003 compared to interim 2002, because the per-pound net sales value increased more than the increase in the per-pound value of the combined cost of goods sold and SG&A expenses.

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[1] ***.

[2] Based on NASS data for total frozen catfish fillet production in 2002 of 147,532,000 pounds, including breaded and marinated product.

[3] Forty-one farmers have December 31 as their fiscal year end; one each have fiscal year ends of January 31; March 31; July 31; August 31; and October 31.

[4] Based on NASS data for foodsize catfish processed in 2002 of 630,601,000 pounds.

[5] Processors, representing 81.7 percent of the net sales value of the combined companies, provided annual statements and/or internal documents for overall catfish operations which were compared to the operations of frozen catfish fillets for reasonableness.

Table VI-1
Results of operations of U.S. processors in the production of frozen catfish fillets, fiscal years 2000-2002, January-March 2002, and January-March 2003

Item	Fiscal year			January-March	
	2000	2001	2002	2002	2003
	Quantity (*1,000 pounds*)				
Net sales	97,319	94,288	97,918	26,374	27,174
	Value (*1,000 dollars*)				
Net sales	274,654	247,283	223,589	60,166	62,706
Cost of goods sold	244,283	215,934	198,507	54,159	55,805
Gross profit	30,371	31,349	25,082	6,006	6,901
SG&A expenses	24,132	24,799	24,860	5,643	6,091
Operating income or (loss)	6,239	6,550	222	363	810
Interest expense	1,500	1,898	1,325	295	398
Other expense	396	672	371	189	122
Other income items	1,278	1,506	1,384	277	262
Net income or (loss)	5,621	5,486	(90)	156	552
Depreciation/amortization[1]	5,537	5,797	5,941	1,314	2,169
Cash flow	11,158	11,283	5,851	1,469	2,721
	Ratio to net sales (*percent*)				
Cost of goods sold	88.9	87.3	88.8	90.0	89.0
Gross profit	11.1	12.7	11.2	10.0	11.0
SG&A expenses	8.8	10.0	11.1	9.4	9.7
Operating income or (loss)	2.3	2.6	0.1	0.6	1.3
	Number of firms reporting				
Operating losses	7	7	9	7	7
Data	13	14	14	14	14

[1] *** did not provide depreciation expense.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-2
Results of operations (per pound) of U.S. processors in the production of frozen catfish fillets, fiscal years 2000-2002, January-March 2002, and January-March 2003

Item	Fiscal year			January-March	
	2000	2001	2002	2002	2003
	Value (*per pound*)				
Net sales	$2.82	$2.62	$2.28	$2.28	$2.31
Cost of goods sold:					
Foodsize raw catfish	1.84	1.62	1.38	1.40	1.38
Direct labor	0.27	0.26	0.25	0.27	0.25
Other factory costs[1]	0.39	0.41	0.40	0.38	0.42
Total cost of goods sold	2.51	2.29	2.03	2.05	2.05
Gross profit	0.31	0.33	0.26	0.23	0.25
SG&A expenses	0.25	0.26	0.25	0.21	0.22
Operating income or (loss)[2]	0.06	0.07	(3)	0.01	0.03

[1] Commission staff reclassified revenue from byproducts for some of the firms to other factory costs for consistency among the companies.

[2] If purchases from related parties were recorded in the cost of goods sold of *** at the cost of the related party rather than value paid, the operating income per pound for all combined companies would be 10 cents in 2000 and 7 cents in 2001. The combined companies would have incurred an operating loss of 2 cents per pound in 2002.

[3] An operating income of less than one-half cent per pound.

Source: Compiled from data submitted in response to Commission questionnaires.

Selected frozen catfish fillet financial data, by firm, are presented in table VI-3. Eight companies had lower net sales values in 2002 compared to 2001 and five companies had lower net sales values in interim 2003 compared to interim 2002. Eleven companies had lower operating income margins in 2002 compared to 2001 and eight companies had lower operating income margins in interim 2003 compared to interim 2002. Six companies had operating losses in all periods reported while five companies had operating income in all periods.

Table VI-3
Results of operations of U.S. processors in the production of frozen catfish fillets, by firm, fiscal years 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

The variance analysis for processors' frozen catfish fillets, as shown in table VI-4, indicates that the decrease in operating income from 2000 to 2002 and from 2001 to 2002 was due to the reductions in the per-pound net sales value exceeding the reductions in costs per pound. The increase in operating income from 2000 to 2001 was caused by decreases in costs per pound exceeding the per-pound decreases in net sales value. The increase in operating income from January-March 2002 to January-March 2003 was due to the increase in the average net sales value per pound exceeding the increase in the costs per pound.

Table VI-4
Variance analysis on results of operations of U.S. processors in the production of frozen catfish fillets, fiscal years 2000-2002, and January-March 2002-2003

Item	Fiscal years			January-March
	2000-2002	2000-2001	2001-2002	2002-2003
	Value (*1,000 dollars*)			
Net sales:				
Price variance	(52,757)	(18,816)	(33,216)	715
Volume variance	1,691	(8,555)	9,522	1,825
Total net sales variance	(51,065)	(27,371)	(23,694)	2,540
Cost of goods sold:				
Cost variance	47,280	20,741	25,741	(3)
Volume variance	(1,504)	7,609	(8,314)	(1,643)
Total cost of goods variance	45,776	28,349	17,427	(1,646)
Gross profit variance	(5,289)	978	(6,267)	894
SG&A expenses:				
Expense variance	(580)	(1,419)	894	(276)
Volume variance	(149)	752	(955)	(171)
Total SG&A variance	(728)	(667)	(61)	(447)
Operating income variance	(6,017)	311	(6,328)	447
Summarized as:				
Price variance	(52,757)	(18,816)	(33,216)	715
Net cost/expense variance	46,701	19,322	26,635	(279)
Net volume variance	38	(194)	252	11

Note.--Unfavorable variances are shown in parenthesis; all others are favorable. The data are comparable to changes in operating income as presented in table VI-1.

Source: Compiled from data submitted in response to Commission questionnaires.

The responding firms' aggregate data on capital expenditures, research and development (R&D) expenses, and the value of their property, plant, and equipment related to frozen catfish fillets are shown in table VI-5. Capital expenditures by firm are shown in table VI-6. Capital expenditures increased in 2001 compared to 2000, decreased in 2002 compared to 2001, and also decreased in interim 2003 compared to interim 2002. The processors either reported that they had zero research and development expenses or left the questionnaire blank for research and development.

Table VI-5
Value of assets, capital expenditures, and research and development expenses of U.S. processors of frozen catfish fillets, fiscal years 2000-2002, January-March 2002, and January-March 2003

Item	Fiscal year			January-March	
	2000	2001	2002	2002	2003
	Value (*1,000 dollars*)				
Capital expenditures	6,879	20,923	12,431	4,185	3,312
R&D expenses	0	0	0	0	0
Fixed assets:[1]					
Original cost	118,250	127,550	127,705	123,341	121,684
Book value	55,173	60,200	62,147	57,632	59,659

[1] Eleven processors provided usable data for fixed assets for the fiscal years; 9 provided usable data for the interim periods.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-6
Capital expenditures of U.S. processors, by firm, fiscal years 2000-2002, January-March 2002, and January-March 2003

* * * * * * *

FARMERS' OPERATIONS ON FOODSIZE RAW CATFISH

Results of operations of the U.S. farmers on their foodsize raw catfish operations are presented in table VI-7. The net sales value per pound followed the same trend as that of the processors, falling in 2001 compared to 2000 and in 2002 compared to 2001 and then rising slightly in interim 2003 compared to interim 2002. The farmers sold a greater quantity in 2001 compared to 2000 and in 2002 compared to 2001. The farmers realized lower net income margins in 2001 compared to 2000 and in 2002 compared to 2001 due primarily to lower sales prices. The larger net income ratio to net sales and larger per-pound net income in the interim periods compared to the full years are caused by a decrease in feed costs during the winter months. Capital expenditures decreased in 2001 compared to 2000, and in 2002 compared to 2001. Capital expenditures increased in interim 2003 compared to interim 2002.

Table VI-7
Results of operations of U.S. farmers in the production of foodsize raw catfish, fiscal years 2000-2002, January-March 2002, and January-March 2003

Item	Fiscal year			January-March	
	2000	2001	2002	2002	2003
	Quantity (*1,000 pounds*)				
Net sales	189,723	205,666	213,639	49,448	50,728
	Value (*1,000 dollars*)				
Net sales	142,248	134,518	124,085	26,891	28,435
Expenses:					
Feed[1]	57,761	59,310	62,070	1,957	1,864
Interest	6,729	6,722	5,682	1,592	1,220
Other	74,398	81,298	72,476	20,353	21,158
Total expenses	138,888	147,331	140,228	23,901	24,242
Other income[2]	5,494	3,639	2,844	696	1,711
Net income or (loss)	8,854	(9,174)	(13,299)	3,685	5,904
Capital expenditures[3]	12,395	12,050	7,416	1,293	2,399
	Ratio to net sales (*percent*)				
Feed[1]	40.6	44.1	50.0	7.3	6.6
Interest	4.7	5.0	4.6	5.9	4.3
Other expenses	52.3	60.4	58.4	75.7	74.4
Total expenses	97.6	109.5	113.0	88.9	85.3
Other income	3.9	2.7	2.3	2.6	6.0
Net income or (loss)[1]	6.2	(6.8)	(10.7)	13.7	20.8
	Value (*per pound*)				
Net sales	$0.75	$0.65	$0.58	$0.54	$0.56
Expenses:					
Feed[1]	0.30	0.29	0.29	0.04	0.04
Interest	0.04	0.03	0.03	0.03	0.02
Other	0.39	0.40	0.34	0.41	0.42
Total expenses	0.73	0.72	0.66	0.48	0.48
Other income	0.03	0.02	0.01	0.01	0.03
Net income or (loss)[1]	0.05	(0.04)	(0.06)	0.07	0.12

See footnotes at end of table.

Table VI-7--Continued
Results of operations of U.S. farmers in the production of foodsize raw catfish, fiscal years 2000-2002, January-March 2002, and January-March 2003

Item	Fiscal year			January-March	
	2000	2001	2002	2002	2003
	Number of firms reporting				
Net losses	15	26	31	12	15
Data	45	46	46	43	43

[1] Feed expenses were low during the interim periods, resulting in a larger net income ratio to net sales and a larger net income per pound compared to the full year. Some of the farmers explained that there is little feed expense during the winter months. One farmer stated that feed expense normally occurs from mid-April to mid-October. David Pearce, President, Pearce Catfish Farm, Inc. stated (conference transcript, p. 64) that the fish do not grow year-round, and in the cold weather months growth slows down like with all warm-water species.

[2] Other income includes feed rebates, co-op dividends, interest income, labor for other farms, custom hauling, fingerling sales, and machine hire to other farms.

[3] Capital expenditures were provided by 34 farmers during the fiscal years and 18 farmers in the interim periods.

Source: Compiled from data submitted in response to Commission questionnaires.

Selected data for reporting farmers, grouped by value of foodsize raw catfish sales, are presented in table VI-8. All sales ranges had net income in 2000 except the under $1 million range. All ranges realized decreased net income margins in 2001 compared to 2000. All ranges except the $3-5 million range had net losses in 2002.

Table VI-8
Selected data for reporting U.S. farmers grouped by sales value of foodsize raw catfish, fiscal years 2000-2002

* * * * * * *

The variance analysis for farmers' foodsize raw catfish, as shown in table VI-9, indicates that the decrease in net income from 2000 to 2002, from 2000 to 2001, and from 2001 to 2002 was primarily a result of the reduction in the per-pound net sales value.

Table VI-9
Variance analysis on results of operations of U.S. farmers in the production of foodsize raw catfish, fiscal years 2000-2002

Item	Fiscal years		
	2000-2002	2000-2001	2001-2002
	Value (*1,000 dollars*)		
Net sales:			
Price variance	(36,094)	(19,684)	(15,647)
Volume variance	17,931	11,954	5,214
Total net sales variance	(18,163)	(7,731)	(10,432)
Expenses, net of other income:			
Cost variance	12,826	912	11,878
Volume variance	(16,815)	(11,210)	(5,570)
Total expense variance	(3,989)	(10,298)	6,308
Net income variance	(22,152)	(18,028)	(4,124)
Summarized as:			
Price variance	(36,094)	(19,684)	(15,647)
Net cost/expense variance	12,826	912	11,878
Net volume variance	1,116	744	(356)

Note.--Unfavorable variances are shown in parenthesis; all others are favorable. The data are comparable to changes in net income as presented in table VI-7.

Source: Compiled from data submitted in response to Commission questionnaires.

CAPITAL AND INVESTMENT

The Commission requested U.S. processors and farmers to describe any actual or potential negative effects of imports of the subject product from Vietnam on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix E.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE VIETNAMESE INDUSTRY

The Vietnamese industry is concentrated in the Mekong Delta region and consists of at least 16 producers, 11 which belong to the Vietnam Association of Seafood Exporters and Producers. Their identities and combined data are shown in table VII-1. Unlike U.S. producers, which process catfish only, Vietnamese producers process mollusks and crustaceans (particularly shrimp, cuttlefish, and squid) as well as other types of fish. Basa and tra account for the majority of sales of only three producers (***). The data show rapid capacity increases in 2000-2002 to about half the aggregate level of reporting U.S. producers, and many new producers came on line; however, ***. The industry appears to be export oriented: in 2000-2002 exports averaged 84 percent of total shipments, with a large and increasing share exported to the United States. In the first quarter of 2003, however, the United States' share of Vietnam's total shipments was considerably lower than in the first quarter of 2002, while the share going to other markets correspondingly increased. Vietnamese basa and tra are exported all over the world. Markets in addition to the United States include China, Korea, Taiwan, Southeast Asia, Canada, Australia, and many countries of the European Union. The industry's projections for 2003-2004 are less optimistic than data for the preceding periods might suggest. Production and overall shipments are expected to change only marginally from levels in 2002, with a much greater proportion of exports going to countries other than the United States. Capacity is expected to remain at current levels.

REMEDIES IN THIRD-COUNTRY MARKETS

Vietnamese frozen fillets of basa and tra are and have been exported to many countries all over the world; however, so far as it is known such exports are not subject to any antidumping orders or any other trade remedies to date.

U.S. INVENTORIES OF IMPORTED PRODUCT AND U.S. IMPORTERS' IMPORTS SUBSEQUENT TO MARCH 31, 2003

Usable data the Commission received on importers' end-of-period inventories of the Vietnamese product are shown in the tabulation below:

				January-March--	
	2000	2001	2002	2002	2003
Inventories (*1,000 pounds*). . . .	532	340	939	516	545
Ratio of inventories to imports (*percent*).	9.6	6.0	11.6	2.9	6.6

No clear trend is evident in the data; however, the data are from importers that represent less than a quarter of the volume of subject imports in 2002 and may not be representative of importers as a whole.

Of the importers responding to the Commission's questionnaires, ***, reported that they had imported or arranged for the importation of the subject product from Vietnam for delivery after March 31, 2003. ***.

Table VII-1
Basa and tra: Vietnam's production capacity, production, shipments, and inventories, 2000-2002, January-March 2002, January-March 2003, and projections for 2003 and 2004[1]

Item	Calendar year			January-March		Projected	
	2000	2001	2002	2002	2003	2003	2004
	Quantity (*1,000 pounds*)						
Capacity	45,340	66,919	90,116	21,525	21,596	91,309	91,720
Production	31,322	52,885	77,050	13,549	16,362	77,709	79,829
End-of-period inventories	4,638	6,086	5,092	4,984	4,694	3,466	2,561
Shipments:							
Internal consumption/ intercompany transfers	163	29	20	12	15	50	50
Home market	5,682	6,811	12,279	2,415	3,055	13,882	13,819
Exports to--							
United States	12,540	25,978	36,046	6,638	2,311	17,973	18,691
All other markets	12,347	21,028	32,053	6,140	11,649	48,198	49,164
Total exports	24,887	47,006	68,099	12,778	13,960	66,171	67,855
Total shipments	30,732	53,846	80,398	15,205	17,030	80,103	81,724
	Ratios and shares (*percent*)						
Capacity utilization	69.1	79.0	85.5	62.9	75.8	85.1	87.0
Inventories/production	14.8	11.5	6.6	9.2	7.2	4.5	3.2
Inventories/shipments	15.1	11.3	6.3	8.2	6.9	4.3	3.1
Share of total shipments:							
Internal consumption/ intercompany transfers	0.5	0.1	0.0	0.1	0.1	0.1	0.1
Home market	18.5	12.6	15.3	15.9	17.9	17.3	16.9
Exports to--							
United States	40.8	48.2	44.8	43.7	13.6	22.4	22.9
All other markets	40.2	39.1	39.9	40.4	68.4	60.2	60.2
Total exports	81.0	87.3	84.7	84.0	82.0	82.6	83.0

[1] Data shown are for An Giang Fisheries Import & Export Joint Stock Co. (Agifish Co.); A. Seafood Industry (Afiex); Sea Products Import-Export Corp. (Sea Products Danang); Can Tho Animal Fishery Products Processing Export Enterprise (CAFATEX Vietnam); Can Tho Agricultural and Animal Products Imex Co. (CATACO); Vietnam Fish-One Co., Ltd.; Mekong Fisheries Joint Stock Co. (Mekonimex); QVD Food Co.; Nam Viet Fish Co. (Navifish Co.); Vinh Hoan Co., Ltd.; Vinh Long Import/Export Co. (Imex Cuu Long); Thanh Viet Co., Ltd.; Thuan Hung Co. (THUFICO); Seaprodex Saigon Co.; An Giang Agricultural Technology Service Co. (ANTESCO); and Gepimex 404 Co.

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX A

FEDERAL REGISTER NOTICES

Issued: February 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–3506 Filed 2–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Final)]

Certain Frozen Fish Fillets from Vietnam

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1012 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain frozen fish fillets from Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 28, 2002, by the Catfish Farmers of America—a trade association of U.S. catfish farmers and processors—and by individual catfish processors.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 4, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 17, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 10, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. If unable to allocate hearing time among themselves, all parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference scheduled for 9:30 a.m. on June 13, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 11, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 24, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 24, 2003. On July 11, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 15, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "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."

Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 7, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3507 Filed 2–11–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Village Voice Media, LLC, & NT Media, LLC*; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed final judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District court for the Northern District of Ohio in *United States of America* v. *Village Voice Media, LLC, and NT Media, LLC,* Civil Action No. 1:03CV0164. On January 27, 2003, the United States filed a Complaint alleging that the market allocation agreement between New Times and Village Voice Media was *per se* illegal under section 1 of the Sherman Act, 15 U.S.C. 1. The proposed final judgment, filed the same time as the complaint, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their *per se* illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the *New Times LA*, New Times's alternative newsweekly in Los Angeles, and the *Cleveland Free Times,* Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's *LA Weekly,* or New Times's *Cleveland Scene,* for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions, or sales of, alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement. Copies of the complaint, proposed final judgment, and competitive impact statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., on the Department of Justice's web site at *http://www.usdoj.gov/atr/,* and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, in Cleveland, Ohio.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616–5935).

Constance K. Robinson,

Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and Agreed by and between the undersigned parties, subject to approval and entry by this court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

(A) "Acquirer" or "acquirers" means the entity or entities to which defendants divest the Divestiture assets.

(B) "Alternative newsweekly" means a publication (such as the Cleveland Scene or LA Weekly) that posses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspaper to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) "Cleveland Free Times assets" means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal right from, the third party controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databates;

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the Cleveland Free Times;

3, 2003, respectively. In a letter dated March 27, 2003, Siyang informed the Department that the correct company name of its producer of subject merchandise is Anhui Golden Bird Agricultural & Side-Line Products Development Co., Ltd., and noted that the words "& Side-Line" were inadvertently missing from the name of the producer that was used in previous submissions. In the Department's memorandum to the file entitled *Siyang Foreign Trade Corporation's New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Intent to Rescind New Shipper Review (Intent to Rescind Memo)*, dated May 19, 2003, we stated our intention to rescind Siyang's new shipper review because the initiation of this new shipper review was not based on complete and accurate information, thereby impairing the Department's ability to properly analyze and investigate certain information contained in Siyang's request for new shipper review. *See Intent to Rescind Memo* at 2.

On May 22, 2003, the Domestic Interested Parties [1] submitted a letter to the Department requesting that Siyang's new shipper review be rescinded as soon as possible in order to prevent further shipments of subject merchandise to the United States from entering under bond using the Siyang/Golden Bird exporter/producer combination antidumping duty rate. This letter also requested the Department to notify the U.S. Bureau of Customs and Border Protection (Customs) forthwith of this action in order to prevent circumvention of the order by allowing shipments to enter under bond for a lengthy period of time.

Rescission of Review

Siyang did not provide the Department with the correct certifications required under section 351.214(b)(2) of the Department's regulations for a new shipper review. Specifically, section 351.214(b)(2)(ii)(B) of the Department's regulations states that, if the company requesting the review is the exporter but not the producer of the subject merchandise, then the request from this company must contain a certification stating that the producer did not export subject merchandise to the United States during the POI. In addition, section 351.214(b)(2)(iii)(A) of the Department's regulations requires that the request for the new shipper review contain a certification that the producer has never been affiliated with any exporter or producer that exported subject merchandise to the United States during the POI. Moreover, section 351.214(b)(2)(iii)(B) of the Department's regulations further specifies that in an antidumping proceeding involving imports from a nonmarket economy country, the request for a new shipper review must also contain a certification that the export activities of the exporter or producer are not controlled by the central government.

As noted above, Siyang failed to identify the correct name of the producer of the subject merchandise for purposes of its required certifications. Furthermore, an official of Golden Bird submitted certifications that did not accurately identify the company's name. Therefore, we find it appropriate to rescind Siyang's new shipper review based on its failure to provide the proper certifications pursuant to 19 CFR 351.214(b)(2).

Notification

The Department will notify Customs that bonding is no longer permitted to fulfill security requirements for shipments using the Siyang/Golden Bird exporter/producer combination antidumping duty rate for freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 223.01 percent *ad valorem* should be collected for any entries exported by Siyang.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: June 16, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–15796 Filed 6–20–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] The term "Domestic Interested Parties" refers collectively to the following: the Crawfish Processors Alliance and its members as listed in the December 4, 2002 Application for Administrative Protective Order; the Louisiana Department of Agriculture and Forestry; and, Bob Odom, Commissioner.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552–801]

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

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

ACTION: Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

THE APPLICABLE STATUTE:

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 ("the Act"') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR 351 (2001).

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION

We determine that certain frozen fish fillets from the Socialist Republic of Vietnam are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 31, 2003. *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 ("*Preliminary Determination*"), 68 FR 4986 (January 31, 2003). Since the *Preliminary Determination*, the following events have occurred:

On January 29, 2003, An Giang Fisheries Import and Export Joint Stock Company ("Agifish"), Vinh Hoan Company Limited ("Vinh Hoan"), Nam Viet Company Limited ("Nam Viet") and Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), hereinafter collectively referred to as "Mandatory Respondents," timely filed allegations that the Department made ministerial errors in the *Preliminary Determination*.

On January 29, 2003, for purposes of a preliminary critical circumstances determination, the Department requested monthly shipment data from An Giang Agriculture and Food Import Export Company ("Afiex"), Can Tho Animal Fishery Products Processing Export Enterprise ("Cafatex"), Da Nang Seaproducts Import-Export Corporation ("Da Nang"), Mekongfish Company ("Mekonimex"), QVD Food Company Limited ("QVD"), Viet Hai Seafood Company Limited ("Viet Hai"), and Vinh Long Import-Export Company ("Vinh Long"), hereinafter referred to collectively as the "Voluntary Section A Respondents".

On January 30, 2003, the Voluntary Section A Respondents, the Mandatory Respondents, and the Vietnam Association of Seafood Exporters and Producers ("VASEP"), hereinafter referred to collectively as the "Respondents," requested a one-week extension for the critical circumstances monthly shipment data. The Department granted this request on February 3, 2003. The Voluntary Section A Respondents requested a further two-day extension on February 7, 2003, which was granted by the Department on February 10, 2003. Also, on February 3, 2003, the Department granted to the Voluntary Section A Respondents and the Mandatory Respondents a one-week extension for submission of the Sales Reconciliation information.

On February 3, 2003, 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 "Petitioners," timely filed allegations that the Department made ministerial errors in the preliminary determination.

On February 6, 2003, the Ministry of Trade of the Socialist Republic of Vietnam ("MOT") requested a two-week extension of the deadline to submit a request for an agreement suspending the present antidumping duty investigation. On February 10, 2003, the Department granted that request, making the deadline February 25, 2003.

On February 7, 2003, Petitioners submitted comments outlining the information relevant to the Department for an additional supplemental questionnaire.

On February 10, 2003, CATACO, Agifish, and Vinh Hoan submitted sales reconciliation information. Nam Viet requested a three-day extension to submit its sales reconciliation, which was granted by the Department on February 11, 2003. Also on February 10, 2003, the Voluntary Section A Respondents submitted monthly shipment data pursuant to the Department's January 29, 2003 request.

On February 11, 2003, the Department issued a request for information and supplemental questionnaire in three sections, with a deadline of February 25, 2003. Section I contained a request for comments or information from all interested parties regarding the Department's methodology for calculating normal value in the *Preliminary Determination*; specifically, whether the Department should continue to value live fish using a surrogate value or use the Respondents' reported upstream factors for producing live fish. The second section contained a supplemental Section D questionnaire to further clarify the four Mandatory Respondent companies' factor of production information. Finally, Section III contained supplemental questions arising from other portions of the four Mandatory Respondents' questionnaire responses.

In a letter dated February 12, 2003, the MOT protested the surrogate values and methodologies the Department used in the *Preliminary Determination* and requested that the Department reconsider certain issues. Also on February 12, 2003, the Voluntary Section A Respondents submitted their sales reconciliation data.

On February 13, 2003, Nam Viet requested a one-day extension to file its sales reconciliation information, which was granted by the Department on February 14, 2003. On February 14, 2003 Nam Viet submitted its sales reconciliation.

On February 19, 2003, the Department requested a more detailed sales reconciliation from the Mandatory and Voluntary Section A Respondents, including monthly sales data to allow the Department to reconcile the companies' reported U.S. sales figures to their annual financial statements and sales ledgers.

On February 21, 2003, the Mandatory and Voluntary Section A Respondents requested one-week extensions of the deadlines to file the more detailed Sales Reconciliation information and the February 11, 2003 request for comments and supplemental questionnaire. On February 21, 2003, Petitioners requested a one-month extension of the deadline to file comments related to Section I of the February 11, 2003 request for information.

On February 24, 2003, the Department granted the Petitioners and the Respondents a one-week extension of the deadline to file information related to the February 11, 2003 request for information and supplemental questionnaire, until March 4, 2003. Finally, the Department granted a one-week extension to the Respondents to file the more detailed sales reconciliation information, until March 5, 2003.

On February 25, 2003, the Department granted to the Government of Vietnam ("GOV") a second extension of the deadline to file a proposed agreement to suspend the present antidumping duty investigation, for ten days until March 7, 2003.

On February 28, 2003, the Respondents submitted a letter requesting a public hearing pursuant to section 351.310 of the Department's regulations.

On March 3, 2003, Sunnyvale Seafood Corporation, an importer, requested a scope clarification to determine whether Basa "cutlets" are included in the scope of this investigation.

On March 3, 2003, the Department granted the Petitioners' request of an extension of the deadline to submit comments on the Department's use of factor input valuations in the *Preliminary Determination* until March 21, 2003 and the Department granted the Petitioners' request for an extension to submit comments addressing the normal value methodology (referenced in Section I of the February 11, 2003 request for information) until March 7, 2003. Also, on March 3, 2003, the Department granted the Respondents' request for an extension of the deadline to submit all responses pertaining to the February 11, 2003 request for information until March 4, 2003, and the more detailed sales reconciliation until March 5, 2003.

On March 3, 2003, the Petitioners submitted a letter requesting a hearing

pursuant to section 351.310 of the Department's regulations. The Petitioners requested to address the Department's LTFV margin calculations, choice of surrogate country, surrogate value data, and other issues pursuant to the *Preliminary Determination*.

On March 4, 2003, the Mandatory Respondents submitted their supplemental questionnaire responses related to Section II and Section III of the February 11, 2003 request for information.

On March 5, 2003, the Respondents submitted the more detailed sales reconciliation information for the four mandatory and seven voluntary respondents, as requested by the Department on February 19, 2003.

On March 5, 2003, we published the amended preliminary determination in the Federal Resister. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Amended Preliminary Determination*"), 68 FR 10440 (March 5, 2003).

On March 7, 2003, the Department issued the verification outlines to the Mandatory Respondents.

On March 7, 2003, the GOV submitted a proposal for an agreement to suspend the current antidumping duty investigation in accordance with section 734(l) of the Act and section 351.208 of the Department's regulations.

On March 7, 2003, the Respondents submitted a response to Section I of the Department's February 11, 2003 request for information, regarding the appropriate methodology for calculating the normal value in the final determination, in which the Respondents argue that the Department should value the subject merchandise using the upstream factors, as reported by Respondents.

On March 7, 2003, the Petitioners also submitted their response to the Department's request for comments regarding the normal value methodology. The Petitioners argued the Department should continue to apply a surrogate value to the live fish input, as in the *Preliminary Determination*.

On March 7, 2003, the Respondents submitted factors of production databases for the Mandatory Respondent companies, reflecting both the gross and net-weight factors of production, as requested by the Department.

On March 10, 2003, the Petitioners submitted a letter certifying that they omitted certain pages from their March 7, 2003 methodology comments. In a separate filing on March 10, 2003, the Petitioners filed the replacement pages for those comments.

On March 10, 2003, Nam Viet submitted additional factor consumption information. Nam Viet previously had overlooked its consumption of coal, and reported the total consumption of coal for the twelve-month period reported in the March 4, 2003 supplemental questionnaire response.

On March 10, 2003, Agifish submitted additional factor consumption information.

On March 12, 2003, the Petitioners submitted a request for a one-week extension of the deadline to submit publicly available factor value information. On March 13, 2003, the Department granted the request.

On March 13, 2003, the Petitioners submitted verification comments for the Mandatory Respondents.

On March 14, 2003, Sunnyvale Seafood Corporation, an importer, requested a scope clarification to determine whether certain Basa "nuggets" are included in the scope of this investigation.

The Department conducted verification of the responses submitted to the record by the Mandatory Respondents from March 17 through March 28, 2003.

On March 19, 2003, in a memo to the file, the Department placed on the record information gathered in the course of this investigation, including information from Respondents' web sites, statistical and trade information, and other information relevant to this investigation. Also on March 19, 2003, in a separate memo to the file, the Department extended the due date for case briefs and rebuttal briefs to April 16, 2003, and April 23, 2003, respectively.

On March 27, 2003, the Respondents certified that they served the Petitioners copies of the verification exhibits for CATACO. On April 7, 2003, the Respondents served the verification exhibits for Agifish and Vinh Hoan, and on April 8, 2003, they served the verification exhibits for Nam Viet.

On March 28, 2003, the Petitioners and the Respondents submitted to the record additional comments on the valuation of factors of production for the final determination.

On April 10 and April 11, 2003, the Department released the verification reports for CATACO and Vinh Hoan, and Nam Viet and Agifish, respectively.

On April 11, 2003, the Petitioners requested extensions of the deadlines to submit case and rebuttal briefs. On April 14, 2003, the Department granted these extensions until April 30, 2003 and May 7, 2003, respectively.

On April 14, 2003, the Department requested that the Respondents submit missing information from Vinh Hoan's verification Exhibits. On April 15, 2003, the Department requested that the Respondents submit Nam Viet's missing verification exhibit 50.

On April 24, 2003, the Petitioners requested a one-week extension for the purposes of submitting their final case and rebuttal briefs.

On May 1, 2003, the Department placed information gathered during the course of this investigation on the record.

On May 5, 2003, the Petitioners, the Respondents, and the GOV filed their respective case briefs. On May 6, 2003, the Petitioners filed certain replacement pages for Petitioners' May 5, 2003 case brief. The Respondents and Petitioners submitted their respective rebuttal case briefs on May 12, 2003.

On May 12, 2003, the Department placed on the record letters from importers Picadilly Cafeterias, Inc. and Ryan Family Steakhouses, Inc. commenting on the present antidumping duty investigation.

On May 23, 2003, the Department held a public hearing in accordance with section 351.310(d)(l) of the Department's regulations. Representatives for the Respondents, the Petitioners, the GOV, and Piazza Seafood World, an importer, were present.

On May 28, 2003, we published the preliminary critical circumstances determination for the Section A Voluntary Respondents. *See Notice of Affirmative Preliminary Critical Circumstances Determination for Voluntary Section A Respondents: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Section A Voluntaries Critical Circumstances*"), 68 FR 31681 (May 28, 2003). In addition, on June 12, 2003, the Department published a correction to the Voluntary Section A Respondents' Critical Circumstances. *See Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam; Correction* 68 FR 35197 (June 12, 2003).

Suspension Agreement

As discussed above under "Case History," on March 7, 2003, the GOV submitted a proposed suspension agreement in accordance with the Department's regulations at 19 CFR 351.208. The Department and the GOV engaged in lengthy, intensive discussions regarding a possible suspension agreement, and both sides

made multiple settlement offers. However, we were unable to reach an agreement that fulfilled the Department's statutory requirements.

Scope of the Investigation

The Department has clarified the scope for purposes of the final determination to read as follows:

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

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 tariff 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 (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.

Period of Investigation

The period of investigation ("POI") is October 1, 2001 through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 28, 2001). *See* Section 351.204(b)(1) of the Department's regulations.

Analysis of Comments Received

All issues raised in the case brief by parties to this investigation are addressed in detail in the *Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Sectretary for Import Administration, Group III, Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, (June 16, 2003), ("*Final Decision Memorandum*"), which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Final Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B-099. In addition, a complete version of the *Final Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the *Final Decision Memorandum* are identical in content.

Nonmarket Economy Country Status

On November 8, 2002, the Department determined under section 771(18)(A) of the Act, after analyzing comments from interested parties, that based on the preponderance of evidence on the record related to economic reforms in Vietnam to date, analyzed as required under section 771(18)(B) of the Act, that Vietnam should be treated as a non-market economy country under the U.S. antidumping law, effective July 1, 2001. *See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration from Shauna Lee-Alaia, George Smolik, Athanasios Mihalakas and Lawrence Norton, Office of Policy through Albert Hsu, Senior Economist, Office of Policy, Import Administration, Jeffrey May, Director, Office of Policy, Import Administration, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Determination of Market Economy Status* ("*Market Status Memo*"), dated November 8, 2002.

A designation as a non-market economy remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

Separate Rates

In our *Preliminary Determination*, we found that the Mandatory Respondents and all Voluntary Section A Respondents, including Vinh Long, met the criteria for the application of separate, company-specific antidumping duty rates. For purposes of the final determination, we continue to grant separate, company-specific rates to the eleven exporters which sold certain frozen fish fillets to the United States during the POI. For a complete discussion of the Department's determination that the Respondents, including Vinh Long, are entitled to a separate rate, please see the *Final Decision Memorandum* at Comments 5 and 6.

Critical Circumstances

Based on new information on the record of this investigation and information provided in our preliminary affirmative critical circumstances determinations, we have determined for purposes of the final determination, that critical circumstances exist for Nam Viet, Afiex, Cafatex, QVD, Da Nang, and the Vietnam-wide entity. For further details, see the *Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam* 68 FR 31681 (May 28, 2003), the *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), and the *Final Decision Memorandum* at Comment 7.

Additionally, because we have determined that Vinh Long had sales of subject merchandise during the POI and merits a separate rate, we must therefore, conduct a critical circumstances analysis for Vinh Long. We have found that critical circumstances exist for Vinh Long. For a more detailed discussion, please see the *Final Decision Memorandum* at Comment 6.

Vietnam-Wide Rate

All exporters and the GOV were given an opportunity to provide information showing they qualify for separate rates. Consequently, we are applying a single antidumping rate the Vietnam-wide rate to all producers/exporters that failed to respond to the Department's Q&V questionnaire and demonstrate entitlement to a separate rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The Vietnam-wide rate applies to all entries of the merchandise under investigation except for entries from Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai and Vinh Long.

For the reasons set forth in the *Preliminary Determination* and reaffirmed in the *Final Decision Memorandum* at Comment 8, we continue to find that the use of adverse facts available for the Vietnam-wide rate is appropriate. As adverse facts available, the Vietnam-wide rate is not intended to be a reflection of the antidumping duty margins applied as separate rates to the respondent companies. Consistent with our *Preliminary Determination* and with previous cases in which the respondent is considered uncooperative, as adverse facts available, we have applied a rate of 63.88 percent, the highest rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department). *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847 (March 5, 1998). The information used to calculate this Vietnam-wide rate was corroborated independently with some small changes in accordance with Section 776(c) of the Act. *See Memorandum to Edward C. Yang, Director, Office IX from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager, Preliminary Determination in the Investigation of Certain Frozen Fish Fillets from Vietnam, Corroboration Memorandum* ("*Corroboration Memo*"), dated January 24, 2003.

Surrogate Country

For purposes of the final determination, we continue to find that Bangladesh is the appropriate primary surrogate country. For further discussion and analysis regarding the surrogate country selection, *see* the Department's *Preliminary Determination.*

Verification

As provided in section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the Respondents. For company-specific changes from the *Amended Preliminary Determination as a result of verification, see Memorandum to the File, from Alex Villanueva, Case Analyst, Final Analysis Memorandum for Agifish* April 11, 2003 ("*Final Analysis Memo for Agifish*"), *Memorandum to the File, from Joe Welton, Case Analyst, Final Analysis Memorandum for Nam Viet* April 11, 2003 ("*Final Analysis Memo for Nam Viet*"), *Memorandum to the File, from Lisa Shishido, Case Analyst, Final Analysis Memorandum for Vinh Hoan* April 10, 2003 ("*Final Analysis Memo for Vinh Hoan*"), *Memorandum to the File, from Paul Walker, Case Analyst, Final Analysis Memorandum for CATACO* April 10, 2003 ("*Final Analysis Memo for CATACO*").

Facts Available

For purposes of this final determination, we have determined that the use of facts available is appropriate for certain elements of the Respondents' dumping margin calculations. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. For a further discussion of the facts available applied to the Respondents, please see the *Final Decision Memorandum* at Comments 2 and 12.

Changes Since the Preliminary Determination

Based on our findings at verification, additional information placed on the record of this investigation, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. For discussions of the company-specific changes made since the preliminary determination to the final margin programs, see Final Analysis Memo for Agifish, Final Analysis Memo for Nam Viet, Final Analysis Memo for Vinh Hoan, and Final Analysis Memo for CATACO.

Margins for Cooperative Exporters Not Selected

For those exporters who responded to Section A of the Department's antidumping questionnaire and had sales of the merchandise under investigation, but were not selected as Mandatory Respondents in this investigation, the Department has calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 64 FR 24101 (May 11, 2001). For further discussion, see the *Preliminary Determination.*

Surrogate Values

The Department made changes to the surrogate values used to calculate the normal value from the *Preliminary Determination.* For a complete discussion of the surrogate values, *see Memorandum to the File from Lisa Shishido, Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Office Director, regarding Factor Valuations for the Final Determination* ("*Final Factor Value Memo*"), dated June 16, 2003.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("Customs") to continue to suspend liquidation of all entries of subject merchandise from Vietnam, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* for Agifish, CATACO, Vinh Hoan, Mekonimex, and Viet Hai. With respect to Nam Viet, QVD, Da Nang, Afiex, Cafatex, Vinh Long and all other Vietnam exporters, the Department will direct Customs to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination.* Customs shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

Final Determination

We determine that the following weighted-average dumping margins exist for the period October 1, 2001 through March 30, 2002:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/Manufacturer/Exporter	Weighted-Average Margin (Percent)
Agifish	44.76
Vinh Hoan	36.84
Nam Viet	52.90
CATACO	45.55
Afiex	44.66
Cafatex	44.66
Da Nang	44.66
Mekonimex	44.66
QVD	44.66
Viet Hai	44.66
Vinh Long	44.66
Vietnam Wide Rate	63.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation. This determination is issued and published in accordance with sections 735 (d) and 777(i)(1) of the Act.

Dated: June 16, 2003.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix: Issues in the Final Decision Memorandum

Comment 1: Total Adverse Facts Available
Comment 2: Partial Adverse Facts Available
Comment 3: Valuation of Factors of Production
Comment 4: Catfish Article
Comment 5: Separate Rates for Respondents
Comment 6: Vinh Long[1]'s Separate Rate
Comment 7: Critical Circumstances for Mandatory Respondents[2]
Comment 8: Critical Circumstances for the Voluntary Section A Respondents[3]
Comment 9: Vietnam-Wide Rate
Comment 10: Company Names for Customs[4] Instructions
Comment 11: Scope Clarification
Comment 12: By-Product Offsets
Comment 13: Proper Reporting Periods
Comment 14: Selection of Surrogate Values
Comment 15: Valuation of River Water
Comment 16: Containerization and Warehousing
Comment 17: Correction of Inadvertent Errors
Comment 18: Species-Specific Information

[FR Doc. 03–15794 Filed 6–20–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final court decision and amended final results of antidumping duty administrative reviews.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning at (202) 482–3936 or (202) 482–5253, respectively; AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On March 18, 2003, the Court of Appeals for the Federal Circuit (CAFC) denied a petition for panel rehearing subsequent to its decision affirming the United States Court of International Trade (CIT), which had sustained the remand determination of the Department of Commerce (the Department) in the administrative review of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC), covering the period February 1, 1998, through January 31, 1999. *See Shandong Huarong General Group Corp., Liaoning Machinery Import & Export Company, and Tianjin Machinery Import & Export Corp.* v. *United States,* No. 02–1095 (Fed. Cir. 2003). As there is now a final court decision, we are amending the amended final results of the review in this matter. We will instruct the Bureau of Customs and Border Protection (BCBP) to liquidate entries subject to these amended final results.

Background

On July 13, 2000, the Department published the final results of its eighth antidumping duty administrative review of HFHTs from the PRC. *See Heavy Forged Hand Tools from the People's Republic of China: Notice of Final Results and Partial Rescission of*

[1] Vinh Long Import-Export Company

[2] The Mandatory Respondents in this case are Agifish, CATACO, Nam Viet and Vinh Hoan.

[3] The Voluntary Section A Respondents in this case receiving a separate rate are Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai, and Vinh Long (see Comment 6).

[4] U.S. Bureau of Customs and Border Protection.

APPENDIX B

CALENDAR OF HEARING

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	Certain Frozen Fish Fillets from Vietnam
Inv. No.:	731-TA-1012 (Final)
Date and Time:	June 17, 2003 - 9:30 a.m.

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

Congressional appearance

The Honorable Blanche L. Lincoln, United States Senator, State of Arkansas

Foreign Government appearance

Nguyen Huu Chi, Director General, Competition Management Administration, Ministry of Trade, Government of Vietnam

In Support of the Imposition of Antidumping Duties

Akin Gump Strauss Hauer & Feld LLP
Washington, DC
on behalf of

Catfish Farmers of America and its individual members

Danny Walker, CEO, Heartland Catfish Co.
Randy Rhodes, Senior Vice President and Chief Sales and Marketing Officer, American Pride Seafoods LLC
Jack Perkins, Vice President, Sales and Marketing, Consolidated Catfish Cos., LLC
Bill Allen, Senior Vice President, Bank Plus
Jeff Davis, COO, American Seafoods Group LLC
David Pearce, Owner, Pearce Catfish Farm, Inc.
Seymour Johnson, Owner, Marie Planting Co.
Daniel W. Klett, Economist, Capital Trade, Inc.
Thomas L. Rogers, Economist, Capital Trade, Inc.

Valerie A. Slater – OF COUNSEL
J. David Park
Thea D. Rozman

In Opposition to the Imposition of Antidumping Duties

White & Case LLP
Washington, DC
on behalf of

Vietnam Association of Seafood Exporters and Producers ("VASEP") and its individual members

Dr. Nguyen Huu Dzung, General Secretary, VASEP
Vo Dong Duc, Director, Can Tho Agricultural and Animal Products (CATACO) (Member of VASEP)
Virginia B. Foote, President and Co-Founder, U.S.-Vietnam Trade Council
Matthew Fass, Vice President, Maritime Products International
Howard M. Johnson, President, H.M. Johnson & Associates
Wally Stevens, President, and COO, Slade Gorton & Co., and President, American Seafood Distributors Association
Sal DiMauro, Head Buyer, Porky Products
Ron McCartney, President, Black Tiger Company, Inc.
Mike Sabolyk, Chief Financial Officer, Piazza Seafood World L.L.C.
Brian C. Becker, President, Precision Economics, LLC

Lyle B. Vander Schaaf – OF COUNSEL
Edmund W. Sim
Albert Lo
Jonathan Seiger

Baker & McKenzie
Washington, DC
on behalf of

Foodcomm International

Lisa A. Murray – OF COUNSEL

APPENDIX C

SUMMARY DATA

Table C-1
The subject product: Summary data concerning the U.S. market, 2000-2002, January-March 2002, and January-March 2003

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
				January-March					Jan.-Mar.
	2000	2001	2002	2002	2003	2000-2002	2000-2001	2001-2002	2002-2003
U.S. consumption quantity:									
Amount	148,428	158,575	184,164	46,158	40,793	24.1	6.8	16.1	-11.6
Producers' share (1)	90.7	83.0	80.1	85.6	94.0	-10.6	-7.7	-2.9	8.4
Importers' share (1):									
Vietnam	8.4	16.4	19.6	14.4	5.7	11.1	7.9	3.2	-8.7
Other sources	0.8	0.6	0.3	(2)	0.4	-0.5	-0.2	-0.3	0.4
Total imports	9.3	17.0	19.9	14.4	6.0	10.6	7.7	2.9	-8.4
U.S. consumption value:									
Amount	395,615	380,669	385,988	97,411	91,426	-2.4	-3.8	1.4	-6.1
Producers' share (1)	93.6	88.9	86.0	90.4	96.0	-7.6	-4.8	-2.9	5.6
Importers' share (1):									
Vietnam	5.9	10.8	13.8	9.5	3.7	7.9	4.9	3.0	-5.8
Other sources	0.4	0.3	0.2	(2)	0.3	-0.3	-0.1	-0.2	0.3
Total imports	6.4	11.1	14.0	9.6	4.0	7.6	4.8	2.9	-5.6
U.S. imports from:									
Vietnam:									
Quantity	12,540	25,978	36,046	6,638	2,311	187.4	107.2	38.8	-65.2
Value	23,450	41,045	53,348	9,293	3,397	127.5	75.0	30.0	-63.4
Unit value	$1.87	$1.58	$1.48	$1.40	$1.47	-20.9	-15.5	-6.3	5.0
Ending inventory quantity	532	340	939	516	545	76.5	-36.1	176.2	5.6
All other sources:									
Quantity	1,202	961	586	13	152	-51.2	-20.0	-39.0	1050.0
Value	1,778	1,319	688	17	253	-61.3	-25.8	-47.8	1388.2
Unit value	$1.48	$1.37	$1.17	$1.29	$1.66	-20.7	-7.3	-14.5	29.4
Ending inventory quantity	0	0	0	0	0	(3)	(3)	(3)	(3)
All sources:									
Quantity	13,742	26,939	36,632	6,651	2,463	166.6	96.0	36.0	-63.0
Value	25,228	42,364	54,036	9,310	3,650	114.2	67.9	27.6	-60.8
Unit value	$1.84	$1.57	$1.48	$1.40	$1.48	-19.7	-14.3	-6.2	5.9
Ending inventory quantity	532	340	939	516	545	76.5	-36.1	176.2	5.6
U.S. processors' (based on USDA/NASS data):									
Total shipments:									
Quantity	134,686	131,636	147,532	39,507	38,330	9.5	-2.3	12.1	-3.0
Value (4)	370,387	338,305	331,952	88,101	87,776	-10.4	-8.7	-1.9	-0.4
U.S. processors' (based on questionnaire data):									
Average capacity quantity	150,565	148,198	169,888	43,710	45,781	12.8	-1.6	14.6	4.7
Production quantity	108,295	103,112	108,469	25,914	26,225	0.2	-4.8	5.2	1.2
Capacity utilization (1)	71.9	69.6	63.8	59.3	57.3	-8.1	-2.3	-5.7	-2.0
U.S. shipments:									
Quantity	107,059	100,101	110,909	29,932	30,191	3.6	-6.5	10.8	0.9
Value	294,203	257,336	249,107	66,812	69,026	-15.3	-12.5	-3.2	3.3
Unit value	$2.75	$2.57	$2.25	$2.23	$2.29	-18.3	-6.5	-12.6	2.4
Export shipments:									
Quantity	369	409	268	92	46	-27.4	10.8	-34.5	-50.0
Value	1,040	1,166	732	256	127	-29.6	12.1	-37.2	-50.4
Unit value	$2.82	$2.85	$2.73	$2.78	$2.76	-3.1	1.2	-4.2	-0.8
Ending inventory quantity	8,051	10,654	8,195	6,380	4,303	1.8	32.3	-23.1	-32.6
Inventories/total shipments (1)	7.5	10.6	7.4	5.3	3.6	-0.1	3.1	-3.2	-1.8
Production workers	3,365	3,056	2,918	2,929	2,758	-13.3	-9.2	-4.5	-5.8
Hours worked (1,000s)	6,253	5,534	5,373	1,482	1,500	-14.1	-11.5	-2.9	1.2
Wages paid ($1,000s)	45,556	42,180	41,684	10,631	10,437	-8.5	-7.4	-1.2	-1.8
Hourly wages	$7.29	$7.62	$7.76	$7.17	$6.96	6.5	4.6	1.8	-3.0
Productivity (pounds per hour)	17.3	18.6	20.0	17.3	17.6	15.6	7.5	7.5	1.6
Unit labor costs	$0.42	$0.41	$0.39	$0.41	$0.39	-7.9	-2.7	-5.3	-5.3
Net sales:									
Quantity	97,319	94,288	97,918	26,374	27,174	0.6	-3.1	3.8	3.0
Value	274,654	247,283	223,589	60,166	62,706	-18.6	-10.0	-9.6	4.2
Unit value	$2.82	$2.62	$2.28	$2.28	$2.31	-19.1	-7.1	-12.9	1.2
Cost of goods sold (COGS)	244,283	215,934	198,507	54,160	55,805	-18.7	-11.6	-8.1	3.0
Gross profit or (loss)	30,371	31,349	25,082	6,006	6,901	-17.4	3.2	-20.0	14.9
SG&A expenses	24,131	24,799	24,860	5,643	6,091	3.0	2.8	0.2	7.9
Operating income or (loss)	6,240	6,550	222	363	810	-96.4	5.0	-96.6	123.2
Capital expenditures	6,879	20,923	12,431	4,185	3,312	80.7	204.2	-40.6	-20.9
Unit COGS	$2.51	$2.29	$2.03	$2.05	$2.05	-19.2	-8.8	-11.5	0.0
Unit SG&A expenses	$0.25	$0.26	$0.25	$0.21	$0.22	2.4	6.1	-3.5	4.8
Unit operating income or (loss)	$0.06	$0.07	$0.00	$0.01	$0.03	-96.5	8.3	-96.7	116.6
COGS/sales (1)	88.9	87.3	88.8	90.0	89.0	-0.2	-1.6	1.5	-1.0
Operating income or (loss)/ sales (1)	2.3	2.6	0.1	0.6	1.3	-2.2	0.4	-2.5	0.7

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Less than 0.05 percent.
(3) Not applicable.
(4) Calculated on the basis of average unit value of total shipments based on questionnaire data.

Note.—Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires, from official Commerce data, and from official USDA/NASS data.

APPENDIX D

PRICE AND QUANTITY DATA

Figure D-1
Product 1: Weighted average f.o.b. prices (per pound) and quantities (pounds) reported by U.S. producers and importers of subject product from Vietnam, by month, January 2000-March 2003

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Source: Compiled from data submitted in response to Commission questionnaires.

Figure D-2
Product 2: Weighted average f.o.b. prices (per pound) and quantities (pounds) reported by U.S. producers and importers of subject product from Vietnam, by month, January 2000-March 2003

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Source: Compiled from data submitted in response to Commission questionnaires.

Figure D-3
Product 3: Weighted average f.o.b. prices (per pound) and quantities (pounds) reported by U.S. producers and importers of subject product from Vietnam, by month, January 2000-March 2003

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Source: Compiled from data submitted in response to Commission questionnaires.

Figure D-4
Product 4: Weighted average f.o.b. prices (per pound) and quantities (pounds) reported by U.S. producers and importers of subject product from Vietnam, by month, January 2000-March 2003

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Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX E

EFFECTS OF SUBJECT IMPORTS ON PROCESSORS' AND FARMERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

Responses of U.S. processors to the following questions:

1. Since January 1, 1999, has your firm experienced any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of the subject product from Vietnam?

Comments provided by the processors regarding actual negative effects are:

* * * * * * *

2. Does your firm anticipate any negative impact of imports of the subject product from Vietnam?

Comments provided by the processors regarding anticipated negative effects are:

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Responses of U.S. farmers to the following question:

Since January 1, 2000, has your firm experienced or do you expect to experience any actual negative effects on its return on investment or its growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of the subject product from Vietnam? (Actual negative effects may include, for example, cancellation or rejection of expansion projects, denial or rejection of investment proposals, reduction in the size of capital investments, rejection of bank loans, or lowering of credit rating). If yes, please explain.

Comments provided by the growers are:

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