

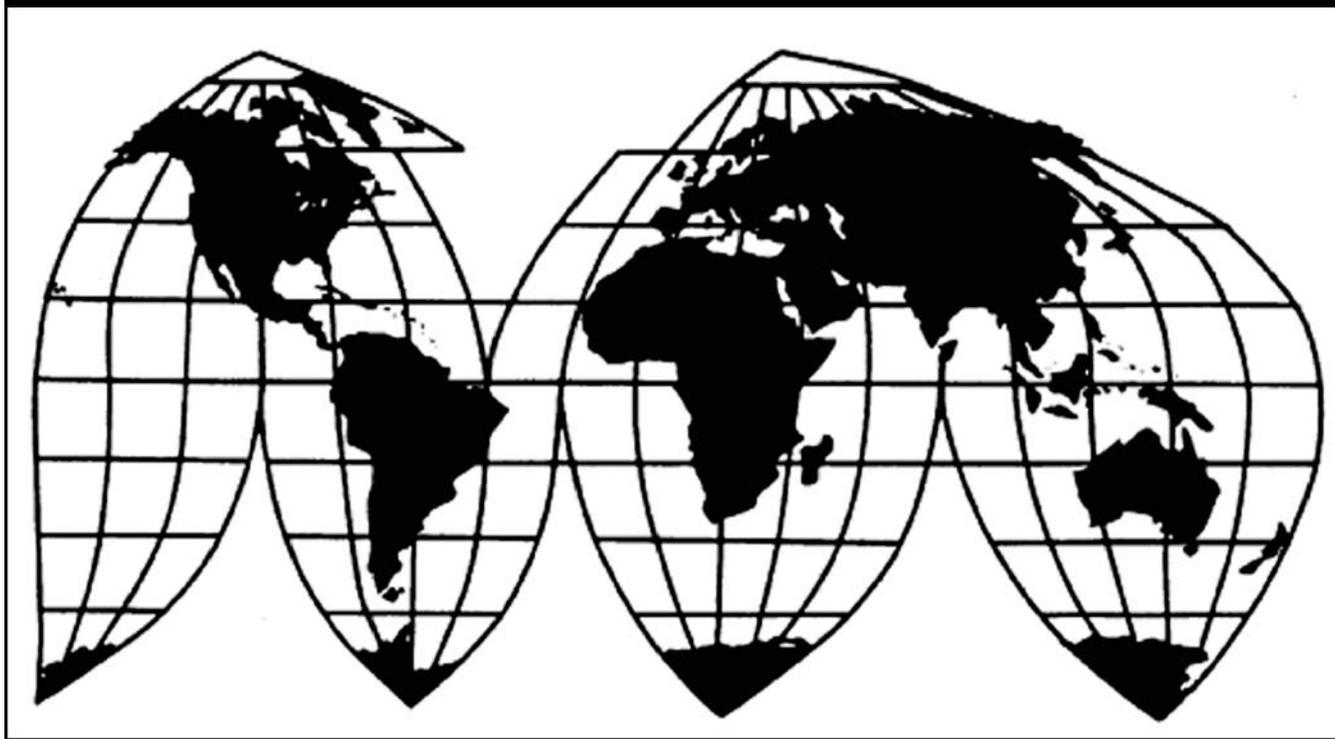
Certain Frozen Fish Fillets from Vietnam

Investigation No. 731-TA-1012 (Review)

Publication 4083

June 2009

U.S. International Trade Commission



Washington, DC 20436

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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 (Review)

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on July 1, 2008 (73 F.R. 37487) and determined on October 6, 2008 that it would conduct a full review (73 F.R. 62318, October 20, 2008). Notice of the scheduling of the Commission's review 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* on January 15, 2009 (74 F.R. 2616). The hearing was held in Washington, DC, on May 6, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Tariff Act”), that revocation of the antidumping duty order on imports of certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In August 2003, the Commission determined that an industry in the United States was materially injured by reason of imports of certain frozen fish fillets sold at less than fair value from Vietnam.¹ Commerce then issued an antidumping duty order on imports of certain frozen fish fillets from Vietnam on August 12, 2003.²

The Commission instituted this review on July 1, 2008; the Commission received two submissions in response to its notice of institution.³ The first response was filed on behalf of the Catfish Farmers of America and the following U.S. catfish processors: America’s Catch, Inc; Consolidated Catfish Companies, LLC, dba Country Select Catfish; Delta Pride Catfish, Inc.; Alabama Catfish Inc., dba Harvest Select Catfish, Inc.; TT&W Farm Products, Inc., dba Heartland Catfish Co.; Magnolia Processing, Inc., dba Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co. LLC (collectively referred to as “Domestic Parties”). The second response was filed on behalf of the Vietnam Association of Seafood Exporters and Producers (“VASEP”) and 24 participating member companies that produce and/or export the subject merchandise.

On October 6, 2008, the Commission found the domestic interested party and respondent interested party responses to the notice of institution to be adequate, and it determined that it would conduct a full review pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended.⁴ Only the Domestic Parties, however, filed briefs with the Commission and appeared at the Commission's public hearing.

Fourteen of 20 active U.S. processors of frozen catfish fillets, accounting for 82.4 percent of U.S. shipments in 2008, provided usable financial information.⁵ The Commission received importers’ questionnaires from 11 firms regarding imports of certain frozen fish fillets; these firms accounted for *** percent of subject imports in 2008.⁶ Although only one foreign producer accounting for a very small portion of production in Vietnam provided a questionnaire response, the Commission received export

¹ Certain Frozen Fish Fillets, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 (August 2003) (“Original Determination”) at 3.

² Antidumping Duty Order: Certain Frozen Fish Fillets from Vietnam, 68 Fed. Reg. 47909 (Aug. 12, 2003).

³ Certain Frozen Fish Fillets From Vietnam, 73 Fed. Reg. 37487 (July 1, 2008).

⁴ See Explanation of Commission Determination on Adequacy. On February 5, 2009, the Domestic Parties asked the Commission to reconsider its adequacy determination and decision to conduct a full review because of VASEP’s withdrawal as a party. On February 13, 2009, the Commission rejected the request for reconsideration. Letter from the Commission (Feb. 13, 2009).

⁵ Confidential Staff Report, INV-GG-046 (June 1, 2009), as amended by INV-GG-048 (June 8, 2009) (“CR”) at I-12, Table I-8; Public Report (“PR”) at I-10, Table I-8. Four U.S. processors ceased production during the period examined, two U.S. processors merged to form a new company, and one processor closed several plants. CR at I-25; PR at I-19.

⁶ CR at I-28, IV-1; PR at I-22, IV-1.

data from VASEP representing a substantial share of Vietnamese production and exports.⁷ Twenty-six purchasers of the subject imports and/or frozen catfish fillets also provided questionnaire responses.⁸

U.S. processors provided pricing data accounting for 43.9 percent of U.S. commercial shipments of frozen catfish fillets, and importers provided data accounting for 27.3 percent of total subject imports from Vietnam during the period for which the Commission requested data (2003-2008).⁹

II. DOMESTIC LIKE PRODUCT

In making its determination under section 751(c) of the Tariff Act, the Commission defines “the domestic like product” and the “industry.”¹⁰ The Tariff 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 under this subtitle.”¹¹ The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any previous reviews and consider whether the record indicates any reason to revisit that definition.¹²

A. Product Description

In its expedited sunset determination, Commerce defined the subject merchandise as follows:

The product covered by this Order 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 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”). This Order covers all frozen fish fillets

⁷ CR at IV-10; PR at IV-7; VASEP’s response to the notice of institution at 3; and VASEP’s submission of March 9, 2009, “Introduction: About VASEP.”

⁸ CR at I-30; PR at I-23.

⁹ CR at V-13; PR at V-10.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10); see, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); 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); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (Dec. 2005); Crawfish Tail Meat From China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (Jul. 2003); Steel Concrete Reinforcing Bar From Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.¹³

Commerce's scope definition for the subject frozen fish fillets is essentially unchanged from its original scope determination. "Basa" and "tra," the common names for the species *Pangasius Bocourti* and *Pangasius Hypophthalmus*, respectively,¹⁴ are farm-raised in cages on the Mekong River in Vietnam and are transported downriver in cage boats to processing facilities for processing into the frozen fillets that are the subject merchandise. They are deheaded, eviscerated, filleted, and frozen.¹⁵ A fillet is one of two sides of a fish with head, tail, bones, and entrails removed.¹⁶ Although basa, tra, and domestic catfish belong to different families of freshwater fish, they are all considered mild-tasting white-fleshed fish of comparable size fillets.¹⁷ The species of catfish farm-raised in the United States, catfish of the family *Ictaluridae*, is not raised in Vietnam.¹⁸

B. Analysis and Conclusion

In the original investigation, the Commission found that there was no domestic product that was "like" the subject imports, so the Commission found a domestic like product that was "most similar" in terms of physical characteristics and uses.¹⁹ The Commission found that the record indicated that basa, tra, and domestic catfish are all freshwater white fish, with similar 6-month shelf lives when frozen, similar texture, and a neutral/mild flavor.²⁰ Further, it found that basa, tra, and domestic catfish are all typically individually quick frozen, packaged in 15-pound boxes, and sold in the same size increments, primarily to the food service industry and secondarily to restaurants. As additional support, the Commission noted that during the original investigation 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.²¹ For these reasons, the Commission concluded that frozen catfish fillets were the product most similar to the subject imports of frozen basa and tra fillets.²²

¹³ Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order, 74 Fed. Reg. 5819-20 (Feb. 2, 2009).

¹⁴ CR at IV-8; PR at IV-6.

¹⁵ CR at I-21; PR at I-17.

¹⁶ CR at I-19; PR at I-16.

¹⁷ CR at I-19; PR at I-16.

¹⁸ CR at IV-13; PR at IV-10.

¹⁹ Original Determination, USITC Pub. 3617 at 5.

²⁰ Original Determination, USITC Pub. 3617 at 5.

²¹ Original Determination, USITC Pub. 3617 at 5. The Commission also noted that it had included catfish fillets that were breaded and marinated in the definition of the domestic like product. The Commission found that similarities in physical characteristics and uses, channels of distribution, production processes and employees, and price all supported inclusion of breaded and marinated frozen fillets in the definition of the domestic like product. Original Determination, USITC Pub. 3617 at 6 n. 20.

²² Original Determination, USITC Pub. 3617 at 5. In the final phase of the investigation, the Commission collected information on competition among the subject imports, domestic frozen catfish fillets, and other types of frozen fish fillets, including tilapia. It found, however, that the additional information concerning other types of frozen fish fillets did not indicate that including such products in the definition of the domestic like product would be appropriate. In particular, it declined to expand the like product beyond the scope of the investigation to include tilapia, because tilapia was not sold as a frozen product. Original Determination, USITC Pub. 3617 at 6 n. 21.

In this review, the Domestic Parties have indicated that they agree with the Commission's definition of the domestic like product in the original investigation.²³ Moreover, there is no new information obtained during this review that would suggest any reason to revisit the Commission's domestic like product definition from the original investigation.²⁴ Consistent with our domestic like product definition in the original investigation, we define the domestic like product as frozen catfish fillets, whether plain, breaded, or marinated.

III. DOMESTIC INDUSTRY

Section 771(4)(A) of the Tariff Act defines the relevant industry as the domestic "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."²⁵ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our finding that the domestic like product is frozen catfish fillets, whether breaded or marinated, we define a single domestic industry consisting of all domestic producers of the domestic like product.

As we did in the original investigation, we have also considered whether to include catfish farmers in the domestic industry pursuant to the processed agricultural product provision of the statute.²⁶ The information collected in this review again indicates that the statutory test is not satisfied.²⁷ We do, however, consider the relationship and interdependence of catfish farmers and processors to be an important condition of competition, and we address this point further in our discussion of the conditions of competition.

²³ Domestic Parties' Prehearing Brief at 8.

²⁴ Purchasers indicated that tilapia is considered a substitute for frozen fish fillets. CR at II-3, II-22; PR at I-2, II-15. There is reportedly no U.S. production, however, of frozen tilapia fillets. See Public Hearing Transcript ("Tr.") at 121 (trout reported to be the only other farm-raised freshwater fish processed into frozen fillets). This is consistent with the information obtained in the original investigation. Original Determination, USITC Pub. 3617 at 6 n.21 (indicating tilapia is farm-raised in the United States, but not processed into frozen fillets).

²⁵ 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677. There are no related party issues in this review. The related party provision provides that producers that are related to an exporter or importer of subject merchandise or which are themselves importers may be excluded in appropriate circumstances. 19 U.S.C. § 1677(4)(B).

²⁶ In the original investigation, the Commission considered whether to include catfish farmers in the domestic industry, along with the processors, pursuant to the processed agricultural product provision. 19 U.S.C. § 1677(4)(E)(i). The Commission, however, determined that the first prong of the statute, the "continuous line of production" test, was not satisfied because the raw agricultural product was not "substantially or completely devoted to the production of the processed agricultural product." 19 U.S.C. § 1677(4)(E)(ii). The Commission noted that the legislative history indicated that the "substantially or completely" language of the statute defining a continuous line of production should be interpreted to mean "all or almost all." Original Determination, USITC Pub. 3617 at 8 n. 30 (citing H.R. Rep. 40, Part I, 100th Cong. 1st Sess. (1987) at 121). The Commission found that only about one-half of the fresh raw catfish was devoted to frozen catfish fillets, with the remaining portion devoted to products such as fresh fillets, fresh and frozen steaks, and nuggets.

²⁷ The information collected in this review indicates that 23 percent of the weight of the U.S. farm-raised live catfish that processors used was processed into frozen fillets, 29 percent was processed into other products, and 48 percent was offal (unused parts of the fish that were mostly sold for use in fish meal, fertilizer, and oil). CR at I-21; PR at I-17. Thus, less than half (or much less if the offal is considered a product) of the raw catfish is used for frozen catfish fillets.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER ON CERTAIN FROZEN FISH FILLETS FROM VIETNAM WERE REVOKED

For the reasons stated below, we determine that revocation of the antidumping duty order on subject imports from Vietnam would be likely to lead to continuation or recurrence of material injury to the domestic industry producing frozen catfish fillets within a reasonably foreseeable time.

A. Legal Standards

In five-year reviews conducted under section 751(c) of the Tariff Act, Commerce will revoke an antidumping or countervailing duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”²⁸ The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994) (“SAA”) states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the *status quo* – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”²⁹ Thus, the likelihood standard is prospective in nature.³⁰ The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Tariff Act, means “probable,” and the Commission applies that standard in five-year reviews.^{31 32 33}

²⁸ 19 U.S.C. § 1675a(a).

²⁹ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” *Id.* at 883.

³⁰ Although the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

³¹ See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”, aff’d mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

³² For a complete statement of Commissioner Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 (Review) and 731-TA-707 to 710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

³³ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape From Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”³⁴ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”³⁵

Although the standard in a five-year review is not the same as the standard applied in original antidumping and countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”³⁶ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).³⁷ The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination.³⁸

Because we have limited information concerning the Vietnamese basa/tra industry, we have relied on the facts otherwise available when appropriate in this review, which consist primarily of information from the original investigation, information submitted in this five-year review (which includes export data from VASEP), and information available from published sources.^{39 40}

³⁴ 19 U.S.C. § 1675a(a)(5).

³⁵ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

³⁶ 19 U.S.C. § 1675a(a)(1).

³⁷ 19 U.S.C. § 1675a(a)(1).

³⁸ 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

³⁹ 19 U.S.C. § 1677e(a) authorizes the Commission to “use the facts otherwise available” in reaching a determination when (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to 19 U.S.C. § 1677m(i). The verification requirements in 19 U.S.C. § 1677m(i) are applicable only to Commerce. *See Titanium Metals Corp. v. United States*, 155 F. Supp. 2d 750, 765 (Ct. Int’l Trade 2002) (“the ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of Commission investigations.”).

⁴⁰ Commissioner Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. *See* 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” SAA at 869.

B. Conditions of Competition and the Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴¹

1. Original Investigation

In the original investigation, which covered the full years 2000-2002 and interim period January-March 2003, the Commission found the following conditions of competition relevant to its material injury analysis.

The Commission noted that demand for frozen fillets of catfish, basa, and tra had expanded greatly and this long-term trend had continued during the period examined. Subject imports were largely absent from the U.S. market prior to 1999, but were an increasingly significant source of supply. Nonsubject sources were consistently less than one percent of apparent U.S. consumption.⁴²

The Commission found that, although they were not identical, basa, tra, and catfish generally were similar in appearance, texture, and taste when processed into fillets. Domestic catfish fillets and the subject imports were in the two- to nine-ounce range and were sold frozen in 15-pound boxes.⁴³ Individual importers and domestic producers reported that the subject imports and the domestic like product were used interchangeably. In addition, many purchasers reported that the domestic like product and the subject imports were substitutable.⁴⁴

The Commission found that frozen basa and tra fillets from Vietnam were marketed and sold in the United States as “catfish,” and even labeled as such, until legislation curbed, but did not eliminate, this practice.⁴⁵ The domestic producers and catfish farmers had 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. The Commission noted that 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*.”⁴⁶ The labeling law was subsequently broadened to encompass all marketing and sales of other fish as catfish. State labeling laws also were enacted in Mississippi, Louisiana, and Arkansas.⁴⁷

The Commission concluded that the marketing of frozen fillets of basa and tra had changed to some extent as a result of the labeling law, but the record indicated that the subject imports and the domestic product still competed because consumers viewed basa and tra as comparable to domestic catfish fillets.⁴⁸ Further, the Commission found that frozen catfish fillets and basa and tra fillets competed for sales at the same accounts and that large purchasers switched from domestic catfish to the subject imports.⁴⁹ The Commission observed that even if the labeling laws addressed marketing practices, they did not reverse the commercial ties that existed in a market that responded to price.

⁴¹ 19 U.S.C. § 1675a(a)(4).

⁴² Original Determination, USITC Pub. 3617 at 10.

⁴³ Original Determination, USITC Pub. 3617 at 11.

⁴⁴ Original Determination, USITC Pub. 3617 at 11.

⁴⁵ Original Determination, USITC Pub. 3617 at 11.

⁴⁶ Original Determination, USITC Pub. 3617 at 11.

⁴⁷ Original Determination, USITC Pub. 3617 at 11.

⁴⁸ Original Determination, USITC Pub. 3617 at 11.

⁴⁹ Original Determination, USITC Pub. 3617 at 12.

The Commission also found that a substantial share of subject imports were sold in the South, the principal market for the domestic product. The record indicated that frozen catfish fillets were primarily consumed in restaurants that feature southern fare.⁵⁰ Subject imports and domestic frozen catfish fillets were also competing in the same channels of distribution, as 62 percent of domestic frozen catfish fillets were sold to food service distributors, while *** percent of importers' shipments were destined for food service distributors.⁵¹

The Commission found that U.S. processors were able to lower their costs to some extent by paying the farmers lower prices for catfish, but several of the processors were owned by catfish farms, thereby limiting the extent to which lower revenue from depressed prices could be passed down to the farmers.⁵²

2. Current Review

The current five-year review covers the period 2003 through 2008. We have considered a number of conditions of competition in the U.S. market that inform our analysis of the likely impact on the domestic industry if the antidumping duty order were revoked.

a. Demand Characteristics

Demand for certain frozen fish fillets is driven largely by consumer preferences. Frozen fillets of other whitefish may be both substitutes for and complements to certain frozen fish fillets (they are complements as there is some consumer preference for variety).⁵³ Tilapia, cod, and pollock are all reported to be substitutes for certain frozen fish fillets, as they are mild-tasting whitefish fillets.⁵⁴ Processors and purchasers indicated that tilapia, especially from China, is low-priced and competes aggressively for sales to food service companies.⁵⁵

Demand was strong in the U.S. market for certain frozen fish fillets during the period examined. Apparent U.S. consumption increased irregularly, from 161 million pounds in 2003 to 212 million pounds in 2008, representing an increase of more than 30 percent.⁵⁶ With regard to historical demand for certain frozen fish fillets, firms that indicated increased demand cited a number of reasons, including the desire for healthier food, an increase in availability, affordability, and the mild taste of the product.⁵⁷ The outlook for future demand is reportedly strong as well, with the great majority of purchasers, processors and importers anticipating increased demand or no change in demand.⁵⁸ Demand exhibits some seasonal variation; demand is high during the Lenten pre-Easter season and low during the holiday months of November and December.⁵⁹

⁵⁰ Original Determination, USITC Pub. 3617 at 12.

⁵¹ Original Determination, USITC Pub. 3617 at 12.

⁵² Original Determination, USITC Pub. 3617 at 10.

⁵³ CR at II-3; PR at II-2.

⁵⁴ CR at II-22; PR at II-15.

⁵⁵ CR at II-22; PR at II-15.

⁵⁶ CR/PR at Table I-11.

⁵⁷ CR at II-20; PR at II-15.

⁵⁸ CR at II-19; PR at II-13. Firms expecting increased demand cited reasons that included the concern that wild whitefish may not be sustainable, the continuing growth of aquaculture throughout the world, healthier eating habits, better food safety, and the maturing of the Baby Boom generation. CR at II-20; PR at II-14.

⁵⁹ CR at II-16; PR at II-10.

The level of substitutability between frozen catfish fillets and frozen basa and tra fillets from Vietnam may have decreased somewhat in the U.S. market as a result of the stricter labeling requirements at the federal and state levels noted by the Commission in the original investigation.⁶⁰ Twenty of 26 responding purchasers indicated that the subject imports and frozen catfish fillets are not substitutable, although most cited laws requiring accurate labeling and identification of the products rather than differences in physical characteristics or market positioning.⁶¹ State labeling laws and community pressure in catfish producing regions may deter the substitution of the subject imports for catfish in those locations. Moreover, 15 of the 26 responding purchasers indicated that buying the domestic product rather than imports is important.⁶²

On the other hand, distributors, sellers, and restaurant owners still appear to be marketing the subject imports as a substitute for catfish in oral communications, price lists, and menus.⁶³ Basa and tra reportedly are sold to customers in restaurants in generic terms such as “southern fried fish.”⁶⁴ We note also that the market share of subject imports increased during the period of review while the market share of domestic catfish declined. Given the record as a whole, including the similarities in physical characteristics of the products, and the contrasting trends in market share, there appears to be at least moderate substitutability between domestic frozen catfish fillets and frozen basa and tra fillets from Vietnam.⁶⁵

b. Supply Characteristics

Despite the growth in apparent U.S. consumption during the period examined, the U.S. industry has contracted as processors have consolidated or gone out of business. Four domestic catfish processors (Aquafarms, Arkansas Catfish Growers LLC dba SEACAT, Prairie Lands, and Pride of the South Catfish Company) have ceased operations, and one other domestic processor, Southern Pride Catfish Co. LLC, has closed several plants.⁶⁶

There is a high degree of interdependence between U.S. processors and catfish farmers, and most U.S. processors are farmer-owned. U.S. processors report that being vertically integrated helps ensure a consistent supply of live catfish.⁶⁷ Only two responding firms reported that all of their live catfish purchases were from unrelated farms.⁶⁸ Because one of these firms was a major processor of live catfish, over half of U.S. processors’ purchases of live catfish were from unrelated farmers.⁶⁹

⁶⁰ See Original Determination, USITC Pub. 3617 at 11. As discussed above, the Farm Security and Rural Investment Act of 2002 included a provision that limits the use of the name “catfish” in food product labeling to fish of the *Ictaluridae* family, which is the species of catfish raised in the United States. In addition, the 2002 farm bill included catfish in country-of-origin (“COOL”) labeling requirements that apply to retail sales, but specifically exempted restaurants. Six states have laws regarding catfish labeling, but only Mississippi, Arkansas, and Louisiana have laws that regulate the use of the term “catfish” on restaurant menus. CR at II-3 to II-4 n.10; PR at II-3, II-3 n.10. See also Domestic Parties’ Prehearing Brief at Exh. 8.

⁶¹ CR at II-23; PR at II-16.

⁶² CR at II-26; PR at II-18.

⁶³ CR at I-22; PR at I-18. See also Tr. at 20, 25-26 (Rhodes, Walker).

⁶⁴ CR at I-22; PR at I-18.

⁶⁵ CR at II-26; PR at II-18.

⁶⁶ CR at I-25; PR at I-19.

⁶⁷ CR at III-27 n.30, III-32 n.53; PR at III-13 n.30, III-15 n.53.

⁶⁸ CR at I-25; PR at I-19.

⁶⁹ CR/PR at Table III-10.

U.S. processors faced increasing purchase prices for catfish during the period examined, as U.S. catfish farmers' feed costs increased due to higher prices for corn and soybeans.⁷⁰ Moreover, some catfish farmers have not been able to increase the selling price of their live catfish sufficiently to cover their increased costs and, as a result, have reduced operations or stopped raising live catfish.⁷¹ Total acreage dedicated to ponds for raising catfish fell steadily during the period of review, and it has declined by over 25 percent since its peak in 2002.⁷² Thus, the supply of live farm-raised catfish available to U.S. processors consistently fell during the period examined. The reduced supply of live fish creates cost-side pressures for processors due to the higher prices they must pay for the fish.⁷³ Supply also tends to be lower during the summer months when the number of food-size fish in the ponds is lower and feeding is the heaviest.⁷⁴ Although the domestic product has a six-month shelf life, food service companies tend to concentrate their purchases during periods of peak supply.⁷⁵

U.S. processors and importers sell to food service distributors, grocery chains, warehouse clubs, and directly to restaurants.⁷⁶ Food service distributors in turn generally sell to restaurants, where consumers purchase the vast majority of certain frozen fish fillets. Food service distributors also reported selling to hotels, school systems, healthcare facilities, nursing homes, the military, and casinos.⁷⁷ Most U.S. sales of the domestic product and the subject merchandise are made on a spot basis, with some sales arranged on a short-term basis either by contract or oral agreement.⁷⁸

A major change in the conditions of competition since the original investigation is the growth in nonsubject imports, and in particular frozen catfish fillets from China. The same species of catfish that is farm-raised in the United States is now being farm-raised in China.⁷⁹ Since the imposition of the antidumping duty order, China has become the second largest source of imports of certain frozen fish fillets, including catfish, basa, and tra.⁸⁰ Nonsubject imports from China accounted for over one-quarter of total imports of certain frozen fish fillets by quantity, but only 13 percent of apparent U.S. consumption.⁸¹

⁷⁰ CR at V-2 to V-3; PR at V-2 to V-3. Feed costs typically account for *** percent of catfish farmers' production costs. CR at V-3 n.7; PR at V-2 n.7.

⁷¹ CR at V-3 to V-4; PR at V-2 to V-3.

⁷² CR at II-9, Fig. II-1; PR at II-6, Fig. II-1.

⁷³ Processors' average cost to obtain live fish rose from \$1.38 per pound in 2003 to \$1.94 per pound in 2008. CR/PR at Table III-8.

⁷⁴ CR at II-8; PR at II-5.

⁷⁵ CR at II-3 n.6, II-5 to II-6; PR at II-2 n.6, II-4.

⁷⁶ Ten food service distributors accounted for 74.5 percent of the quantity of total purchases of certain frozen fish fillets reported during the period examined, and 5 restaurant chains accounted for 12.1 percent of the quantity reported. One food service company, ***, alone accounted for approximately *** of all purchases during the period. CR at I-30; PR at I-23.

⁷⁷ CR at I-30 n.63; PR at I-23 n.63.

⁷⁸ CR at V-9; PR at V-7.

⁷⁹ CR at IV-13; PR at IV-10. In 2008, three-quarters of U.S. imports of certain frozen fish fillets from China consisted of catfish, with the remaining one-quarter consisting of basa and tra. CR at IV-5; PR at IV-3.

⁸⁰ CR/PR at Table IV-1. In referring to nonsubject imports, we use the term "certain frozen fish fillets" to refer to the subject merchandise as well as frozen fillets of catfish.

⁸¹ CR/PR at Tables I-11 and IV-1.

C. **Revocation of the Antidumping Duty Order on Subject Imports Is Likely to Lead to Continuation or Recurrence of Material Injury**

1. **Likely Volume of Subject Imports**

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁸² In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁸³

In the original investigation, the Commission found that the quantity of subject imports rose from 12.5 million pounds in 2000 to 26.0 million pounds in 2001 and 36.0 million pounds in 2002, an increase of 187.4 percent from 2000 to 2002.⁸⁴ The Commission noted that although apparent U.S. consumption grew between 2000 and 2002, the volume of subject imports grew significantly faster and captured an increasing share of the U.S. market. Moreover, the Commission found that the subject imports’ increase in market share came largely at the expense of the domestic industry, as nonsubject import volumes were insignificant throughout the period. Subject imports increased relative to domestic production as well; they were equivalent to 11.6 percent of domestic production in 2000 but rose to 33.2 percent by 2002.⁸⁵ The Commission concluded that the increased volumes of subject imports were significant both in absolute terms and relative to production and apparent consumption in the United States.⁸⁶

During the period examined in this review, subject imports maintained a growing and significant presence in the U.S. market, even with the order in place. Subject imports increased from 19.7 million pounds in 2003 to 53.3 million pounds in 2008, an increase of 171 percent.⁸⁷ By quantity, subject imports increased their U.S. market share from 12.2 percent in 2003 to 25.1 percent in 2008.⁸⁸

The domestic industry lost more market share during the period examined than it did in the original investigation; its market share fell from 87.1 percent in 2003 to 54.1 percent in 2008.⁸⁹ With the order in place, nonsubject imports gained an even greater portion of the domestic industry’s lost market share than the subject imports, increasing from 0.7 percent in 2003 to 20.8 percent in 2008, but continued to hold a smaller share of the U.S. market than subject imports.⁹⁰

In assessing the likely volume of subject imports if the order is revoked, we consider whether the subject producers’ planned additions to capacity or existing unused production capacity would likely be a significant source of increased exports to the United States within a reasonably foreseeable time. We also consider whether subject exporters are likely to shift exports away from existing markets to the United States.

⁸² 19 U.S.C. § 1675a(a)(2).

⁸³ 19 U.S.C. § 1675a(a)(2).

⁸⁴ Original Determination, USITC Pub. 3617 at 13.

⁸⁵ Original Determination, USITC Pub. 3617 at 14.

⁸⁶ Original Determination, USITC Pub. 3617 at 14.

⁸⁷ CR/PR at Table IV-1.

⁸⁸ CR/PR at Table I-1.

⁸⁹ CR/PR at Table I-11. In contrast, the domestic industry lost 10.6 percentage points of market share from 2000 to 2002. See CR/PR at Table I-1.

⁹⁰ CR/PR at Table I-11.

Information concerning the basa and tra industry in Vietnam is limited due to the failure of the Vietnamese industry to respond to Commission questionnaires. As noted above, only one producer in Vietnam submitted a questionnaire response in this review.⁹¹ VASEP, however, provided information concerning its members' production and exports of the subject merchandise.⁹² That information indicates that the industry in Vietnam is much larger than it was at the time of the original investigation and remains export-oriented. Production of basa and tra in Vietnam was reported to be over six times greater in 2007 than it was in 2002.⁹³

The record also indicates that there is significant excess capacity in Vietnam for the production of the subject merchandise. During 2002, the final year of the original investigation, the Vietnamese industry had excess capacity equivalent to 14.5 percent of its total capacity.⁹⁴ Given the greatly increased capacity of the Vietnamese industry since imposition of the order, we find that it likely still has significant excess capacity that could be the source of increased exports to the United States should the order be revoked.⁹⁵

The industry in Vietnam plans to grow even larger. Four Vietnamese processing plants have announced capacity expansion plans in 2009 totaling 656 million pounds.⁹⁶ These significant additions to capacity would, in and of themselves, be more than triple the size of apparent U.S. consumption in 2008, and we determine that, given the export orientation of the Vietnamese industry, Vietnam is likely to be a source of significantly increased exports to the United States in the reasonably foreseeable future.⁹⁷

While the record does not contain updated information as to the amount of basa and tra sold in the Vietnamese home market, during the original investigation, the Vietnamese industry exported 84 percent of its production.⁹⁸ The Vietnamese industry remains export-oriented, as demonstrated by its surging exports.⁹⁹ Data on the Vietnamese industry's exports demonstrate the remarkable, export-based growth of the Vietnamese basa/tra industry.¹⁰⁰ Although total Vietnamese exports of basa and tra were 73 million pounds in 2003, exports surged to 1.4 billion pounds in 2008, an increase of over 18-fold during the period examined.¹⁰¹

This rapid increase in exports, destined for the European Union and other markets such as Australia, Russia, and Ukraine, indicates a likely increase in shipments to the United States should the order be revoked. The European Union was the largest export market for Vietnamese basa and tra during 2004-07, but Russia and Ukraine have recently become the largest export markets.¹⁰² The Vietnamese

⁹¹ CR at IV-10; PR at IV-7. A questionnaire response was received from one producer in Vietnam, ***.

⁹² See CR/PR at Tables IV-4 and IV-5.

⁹³ CR/PR at Table IV-4. Vietnamese production of whole basa and tra has increased from 359 million pounds in 2003 to 1.9 billion pounds in 2007. *Id.*

⁹⁴ Original Determination, USITC Pub. 3617 at Table VII-1.

⁹⁵ While the Vietnamese industry's total capacity is unknown, we note that, based on 2008 export figures from Vietnam, 14.5 percent of those exports, or 205 million pounds, would have been equivalent to 97 percent of apparent U.S. consumption for that year. See CR/PR at Tables I-1 and IV-5.

⁹⁶ CR at IV-9; PR at IV-7.

⁹⁷ See CR/PR at Table I-1.

⁹⁸ Original Determination, USITC Pub. 3617 at VII-1.

⁹⁹ See CR/PR at Table IV-5.

¹⁰⁰ CR/PR at Table IV-5.

¹⁰¹ See CR/PR at Table IV-5. For comparison's sake, based on USDA data, the U.S. industry's total shipments in 2008 were 115 million pounds. CR/PR at Table I-1.

¹⁰² CR at IV-10; PR at IV-7 to IV-8. It appears that one of the Vietnamese industry's main export markets is becoming less favorable to exports of the subject merchandise. In December 2008, Russia banned all basa and tra imports from Vietnam following the discovery of some contaminated products. Although the ban was recently partially lifted, only 10 Vietnamese processing plants are currently authorized to export to Russia. There are reportedly 80 processors in the Mekong delta region of Vietnam. CR at IV-9, IV-12; PR at IV-7, IV-9. The Russian
(continued...)

industry increased its exports to the European Union from 272 million pounds in 2006 to 495 million pounds in 2008.¹⁰³ The Vietnamese industry also rapidly increased its exports to other markets, including Australia, Russia, and Ukraine, from 205 million pounds in 2006 to 749 million pounds in 2008.¹⁰⁴ The increase was accompanied by declining unit values for the merchandise shipped, indicating a desire to increase exports even in the face of lower prices.¹⁰⁵ Given the ease and speed with which the Vietnamese industry has expanded its exports, the United States would likely be a market to which the Vietnamese industry would increase exports significantly upon revocation of the order.¹⁰⁶

The record indicates that the Vietnamese industry continues to be interested in the U.S. market. The subject imports maintained a significant and growing U.S. presence throughout the period examined, even with the antidumping duty order in place. In addition, the unit values of the Vietnamese exporters' shipments of frozen fish fillets to the United States are higher than those of their shipments to other markets such as the European Union, suggesting that market prices in the United States are relatively attractive.¹⁰⁷ Therefore, the Vietnamese industry has an incentive to shift exports from third countries to the United States. The fact that the Commerce Department has found that exporters have circumvented the antidumping duty order by shipping through third countries and mislabeling the subject merchandise as other species of fish further demonstrates the attractiveness of the U.S. market.¹⁰⁸

We find that the Vietnamese industry has significant excess capacity, significant planned additions to its capacity, and a large volume of current production that can be shifted to the United States. The record also indicates that the U.S. market is attractive to Vietnamese exporters and that the Vietnamese industry has a pattern of rapidly increasing its exports at ever lower prices. We therefore conclude that the likely volume of subject imports, both in absolute terms and relative to production and consumption in the United States, would be significant if the antidumping duty order is revoked.

2. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the order under review were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.¹⁰⁹

¹⁰² (...continued)

Government's actions therefore make it likely that the subject exporters will seek to shift their exports to other markets.

¹⁰³ CR/PR at Table IV-5.

¹⁰⁴ CR/PR at Table IV-5.

¹⁰⁵ CR/PR at Table IV-5. See also Domestic Parties' Posthearing Brief at Exh.13.

¹⁰⁶ We have also considered inventories of the subject merchandise and the potential for product-shifting. Importers' inventories of subject imports were relatively steady at a low level relative to apparent U.S. consumption in the last two years of the period examined, and they are not likely to be a significant source of subject imports. CR/PR at Table IV-3. There is no indication that Vietnamese processors can shift from the processing of other fish to basa and tra production.

¹⁰⁷ See CR/PR at Table IV-5.

¹⁰⁸ In 2006, the Department of Commerce found that two related Vietnamese firms circumvented the antidumping order by importing whole, live basa and tra into Cambodia and processing them into frozen fish fillets for export to the United States. CR at I-3; PR at I-2. Furthermore, basa and tra from Vietnam has been mislabeled as other species of fish in order to avoid paying antidumping duties. Prosecutions of this activity have resulted in imprisonment and fines. CR at I-3; PR at I-2.

¹⁰⁹ See 19 U.S.C. § 1675a(a)(3). The SAA states that "{c}onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely (continued...)

In the original investigation, the Commission found that the domestic like product and subject imports were interchangeable and were used in the same applications and that many purchasers considered basa and tra and the domestic product to be substitutable.¹¹⁰ Moreover, basa and tra competed with catfish for sales not only in the same U.S. regions and through the same channels of distribution, but at the same customer accounts.¹¹¹

The Commission found that 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, and concluded that the underselling was significant.¹¹²

The Commission also found that significant price depression occurred during the period examined. Despite increasing demand, average prices for the domestic like product declined from a high of \$2.88 per pound in March and April 2000 to a low of \$2.37 per pound in March and April 2002, before stabilizing at significantly lower levels.¹¹³

The evidence in this review indicates, as it did in the original investigation, that once acceptable levels of quality are met, the domestic like product and subject imports can be used interchangeably¹¹⁴ and that price is an important factor in purchasing decisions.¹¹⁵

The pricing information on the record indicates that the subject imports are still consistently underselling domestic product even with the order in place. The Commission collected pricing data on the same four pricing products that were used in the original investigation.¹¹⁶ These products accounted for 43.9 percent of U.S. shipments and 27.3 percent of subject imports between 2003 and 2008.¹¹⁷ The data indicate that, despite the discipline of the order, the subject imports undersold the domestic like product in all 74 comparisons at margins of underselling that ranged from 17.5 to 50.7 percent.¹¹⁸ Thus, under the antidumping duty order the margins of underselling were greater than during the original investigation.¹¹⁹

Quarterly prices for domestic frozen catfish fillets fluctuated, but generally increased from 2003 to 2008.¹²⁰ Quarterly prices for the subject imports also fluctuated and increased over the 2003 to 2008 period, but generally decreased from their peak prices in 2006 through the last quarter of 2008.¹²¹

¹⁰⁹ (...continued)

on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

¹¹⁰ Original Determination, USITC Pub. 3617 at 14.

¹¹¹ Original Determination, USITC Pub. 3617 at 14.

¹¹² Original Determination, USITC Pub. 3617 at 15.

¹¹³ Original Determination, USITC Pub. 3617 at 15.

¹¹⁴ U.S. processors and importers generally reported that the subject imports and the domestic product are always or frequently interchangeable, while purchasers reported that they are never or sometimes interchangeable. CR/PR at Table II-3a. However, *** provided somewhat contradictory responses. Although they both reported that the U.S. and subject frozen fish fillets were, at best, sometimes interchangeable, *** indicated that the physical characteristics of basa and tra lend themselves to be substituted for catfish, and *** indicated that there was no restriction against substituting catfish for basa and tra. Id. at n.1.

¹¹⁵ CR/PR at Table II-2. All 25 purchasers indicated that price is either “very important” or “somewhat important.” Id.

¹¹⁶ The pricing products were two to three ounce frozen fillets (Product 1), three to five ounce frozen fillets (Product 2), five to seven ounce frozen fillets (Product 3), and seven to nine ounce frozen fillets (Product 4), all packed in 15 to 22 pound boxes. CR at V-13; PR at V-10.

¹¹⁷ CR at V-13; PR at V-10.

¹¹⁸ CR/PR at Table V-6.

¹¹⁹ Compare CR/PR at Table V-6 with Table V-7.

¹²⁰ CR at V-24; PR at V-10; CR/PR at Figs. V-4, V-5, V-6, V-7.

¹²¹ CR at V-24; PR at V-20; CR/PR at Figs. V-4, V-5, V-6, V-7.

We have also considered whether subject imports from Vietnam suppressed prices of the domestic like product to a significant degree. As explained above, the cost of live catfish increased substantially over the period. Although prices also increased, they were not sufficient to cover this increasing cost. The domestic industry's average unit cost of goods sold ("COGS") increased from \$2.02 in 2003 to \$2.59 in 2008, an increase of \$0.57.¹²² The domestic industry's average unit sales value increased from \$2.41 in 2003 to \$2.91 in 2008, an increase of \$0.50.¹²³ Consequently, the industry experienced a cost-price squeeze through 2008 as is also shown by trends in the ratio of COGS to net sales, which increased overall from 83.7 percent in 2003 to 90.4 percent in 2007, before declining slightly to 89.0 percent in 2008.¹²⁴ Significantly, these trends occurred while apparent U.S. consumption increased by 31.4 percent from 2003 to 2008. In light of such strong demand, the domestic industry should have been able to pass these cost increases to purchasers by way of higher prices, but was unable to do so.

Although domestic producers were able to increase their prices somewhat during the period to offset their increasing cost of goods sold, which was primarily attributable to the rising prices for live catfish, their net sales values did not keep pace with rising unit costs, leading to lower profit margins for the domestic producers.¹²⁵ Given that raw material costs account for approximately 72 percent of the cost of production, it was difficult for processors to lower their costs in order to compete with low-priced imports.¹²⁶ If the order were revoked and domestic producers were forced to compete against greater volumes of low-priced imports from Vietnam, it would be even more difficult for the domestic producers to raise prices to cover their increasing costs, which would likely lead to even greater price suppressing effects.

We find that the subject exporters are likely to price their product even more aggressively if the order is revoked in order to export large volumes of subject merchandise to the United States and increase their share of the U.S. market. Frozen basa and tra fillets from Vietnam have competed aggressively at low prices in order to sell large volumes in Europe and other markets. The unit values of the Vietnamese exporters' shipments of the subject merchandise fell in the European Union and other markets such as Australia, Russia, and Ukraine as the subject exporters substantially increased their exports to those markets.¹²⁷ In contrast, with the antidumping duty order in effect, the unit values of the subject exporters' shipments to the United States increased.¹²⁸ Absent the antidumping duty order, the subject exporters are likely to price their product lower, as they have in their other export markets, in order to increase their market share in the United States.¹²⁹ The experience of Vietnamese exporters in other markets and their consistent underselling in the U.S. market during the period examined, even under the discipline of the order, indicate that underselling is likely to be significant if the order is revoked.¹³⁰

¹²² CR/PR at Table C-1.

¹²³ CR/PR at Table C-1.

¹²⁴ CR/PR at Table C-1. Production declined from 106.6 million pounds in 2003 to 97.1 million pounds in 2008. CR/PR at Table C-1. Thus, the increase in costs was also spread over a reduced production over the course of the period.

¹²⁵ CR at III-24; PR at III-12; CR/PR at Table III-8. The ratio of cost of goods sold to the value of net sales generally rose during the period, except for 2008 when this ratio declined slightly. See CR/PR at Table I-1.

¹²⁶ CR at V-1; PR at V-1.

¹²⁷ See CR/PR at Table IV-5.

¹²⁸ See CR/PR at Table IV-5.

¹²⁹ The majority of Vietnamese exports are shipped to markets at unit values that are only 62 percent of the unit values for export shipments to the United States. See CR/PR at Table IV-5.

¹³⁰ Commerce made an affirmative finding of duty absorption with respect to one Vietnamese exporter and its U.S. affiliate. CR at I-13 n.20; PR at I-10 n.20; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 Fed. Reg. 11349 (March 17, 2009). The SAA, at 886, indicates that duty absorption "may indicate that the producer or exporter

(continued...)

In light of the above, were the antidumping duty order revoked, we find that significantly larger quantities of low-priced subject imports would likely be priced aggressively in order to gain market share. This underselling likely would significantly suppress and/or depress U.S. prices for frozen catfish fillets. For the foregoing reasons, we conclude that subject imports from Vietnam are likely to have significant adverse price effects in the event that the order is revoked.

3. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹³¹ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.¹³² As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order were revoked.¹³³

In the original investigation, the Commission noted that the domestic industry expanded its capacity between 2000 and 2002, but by an amount that was less than the increase in apparent U.S. consumption.¹³⁴ The Commission found that as the volume of subject imports increased significantly during this period, the domestic industry's capacity utilization decreased by 8.1 percentage points.¹³⁵

¹³⁰ (...continued)

would be able to market more aggressively should the order be revoked as a result of a sunset review.”

¹³¹ 19 U.S.C. § 1675a(a)(4).

¹³² 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Tariff Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887.

Commerce expedited its determination in its review of frozen fish fillets from Vietnam and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: An Giang Fisheries Import and Export Joint Stock Company (47.05 percent); Vinh Hoan Company Limited (36.84 percent), Nam Viet Company Limited (53.68 percent); Can Tho Agricultural and Animal Products Import Export Company (45.81 percent); An Giang Agriculture and Food Import Export Company, Can Tho Animal Fishery Products Processing Export Enterprise, Da Nang Seaproducts Import-Export Corporation, Mekongfish Company, QVD Food Company Limited, Viet Hai Seafood Company Limited, and Vinh Long Import-Export Company (45.55 percent); and all others (63.88 percent). Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order, 74 Fed. Reg. 5819-20 (Feb. 2, 2009).

¹³³ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, 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 may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

¹³⁴ Original Determination, USITC Pub. 3617 at 17.

¹³⁵ Original Determination, USITC Pub. 3617 at 18.

The Commission also observed that the domestic industry's sales, like its output, were significantly constrained despite the growth in demand. Due to the significant growth in subject import volume, the domestic industry's share of the U.S. market declined by 10.6 percentage points from 2000 to 2002 despite increased shipments by U.S. processors.¹³⁶

Notwithstanding a 24.1 percent growth in apparent U.S. consumption from 2000 to 2002, the domestic industry's profitability declined.¹³⁷ By 2002, the domestic industry was unable to lower costs sufficiently to compensate for declining prices.¹³⁸ The domestic industry's operating income as a ratio to net sales was 2.3 percent in 2000, 2.6 percent in 2001, and just 0.1 percent in 2002.¹³⁹ The domestic industry's employment levels also decreased between 2000 and 2002.¹⁴⁰ Based on significant declines in many of the performance indicators of the domestic industry, the Commission found that the increasing volumes of subject imports had a significant adverse impact on the domestic industry.

During the period examined in this review, the great majority of the domestic industry's performance indicators declined despite relatively strong demand for certain frozen fish fillets. The industry's capacity declined by over 6.1 percent, falling from 146 million pounds in 2003 to 137 million pounds in 2008,¹⁴¹ and its production fell by 8.9 percent, dropping from 107 million pounds in 2003 to 97 million pounds in 2008.¹⁴² The domestic industry's capacity utilization fell from 73.0 percent in 2003 to 70.8 percent in 2008.¹⁴³ Its market share also declined by 33.0 percentage points, from 87.1 percent in 2003 to 54.1 percent in 2008.¹⁴⁴ U.S. shipments of the domestic like product increased from 2003 to 2006, rising from 106 million pounds in 2003 to 116 million pounds in 2006, only to decline to 96 million pounds in 2007 and 95 million pounds in 2008.¹⁴⁵ The value of the domestic industry's sales, however, increased from \$258.9 million in 2003 to \$289.0 million in 2008 as domestic prices increased.¹⁴⁶

The domestic industry's employment-related indicators also declined. The industry's production and related workers (PRWs) and hours worked fluctuated, but decreased overall during the period examined.¹⁴⁷ The number of workers declined from 2,612 in 2003 to 2,589 in 2008;¹⁴⁸ the number of PRW hours worked dropped from 5,338 in 2003 to 4,684 in 2008.¹⁴⁹ Worker productivity, however, increased slightly from 20.0 pounds per hour in 2003 to 20.7 pounds per hour in 2008.¹⁵⁰

¹³⁶ Original Determination, USITC Pub. 3617 at 18.

¹³⁷ Original Determination, USITC Pub. 3617 at 19.

¹³⁸ Original Determination, USITC Pub. 3617 at 19.

¹³⁹ Original Determination, USITC Pub. 3617 at 19.

¹⁴⁰ Original Determination, USITC Pub. 3617 at 19.

¹⁴¹ CR/PR at Table C-1.

¹⁴² CR/PR at Table C-1.

¹⁴³ CR/PR at Table C-1.

¹⁴⁴ CR/PR at Table C-1.

¹⁴⁵ CR/PR at Table C-1. The domestic industry's inventories also increased during the period, from 7.5 million pounds in 2003 to 11.8 million pounds in 2008. Id.

¹⁴⁶ CR/PR at Table C-1.

¹⁴⁷ CR/PR at Table III-7.

¹⁴⁸ CR/PR at Table III-7.

¹⁴⁹ CR/PR at Table III-7.

¹⁵⁰ CR/PR at Table C-1.

The domestic industry's profitability also suffered during the period.¹⁵¹ The industry reported its greatest operating income of \$16.1 million in 2003, the first year of the period examined. In 2007 and 2008, the industry reported operating income of just \$574,000 and \$3.6 million, respectively.¹⁵² The majority of the domestic producers reported losses in those two years.¹⁵³ The domestic industry's operating income as a ratio to net sales was 6.2 percent in 2003, 3.0 percent in 2004, 3.1 percent in 2005, 3.0 percent in 2006, 0.2 percent in 2007, and 1.2 percent in 2008.¹⁵⁴ The industry's capital expenditures fell during the period examined as well, from \$5.3 million in 2003 to \$2.2 million in 2008.¹⁵⁵

The domestic industry's financial and trade indicators reflect a shrinking and less profitable industry. Raw material costs increased during the period examined, as the industry's primary input, live catfish, increased in price due to higher feed costs.¹⁵⁶ The industry had difficulty reducing its costs because raw materials are such a large cost component. Further, despite the antidumping duty order, the industry's ability to raise its prices was constrained due to price pressure from increasing volumes of low-priced subject imports.

Catfish farmers are reducing their catfish production due to low prices for catfish relative to production costs. This reduces the supply of live catfish available to processors. This trend is likely to continue in the foreseeable future because it is unprofitable for U.S. processors to pay more for live catfish. Given the decline in the industry's financial and trade indicators as well as the other difficulties facing the industry, we find that the industry is vulnerable to the effects of the subject imports if the order were to be revoked.

We also have considered the growing presence of nonsubject imports in the U.S. market. The United States is an attractive market for imports. Nonsubject imports increased to 20.8 percent of apparent U.S. consumption in 2008.¹⁵⁷ China is by far the largest source of nonsubject imports.¹⁵⁸ The Chinese industry is not, however, currently focused on export-led growth as is the Vietnamese industry. Less than 5 percent of Chinese aquaculture production is exported.¹⁵⁹ Moreover, the Chinese catfish industry produced 265 million pounds of catfish in 2006 and, therefore, is significantly smaller than the 1.9 billion pound Vietnamese industry.¹⁶⁰ We also note that the average unit values ("AUVs") of nonsubject imports were substantially higher than the AUVs for subject imports during all years of the period examined, indicating that subject imports would likely be priced more aggressively than nonsubject imports if the order were revoked.¹⁶¹ Thus, we find that subject imports are likely to have a significant adverse impact upon the domestic industry if the order were revoked, notwithstanding the growing presence of nonsubject imports in the U.S. market.

As noted above, the volume of subject imports is likely to be significant if the order were revoked. Subject imports increased even with the order in place, and subject producers possess substantial excess capacity, plan further additions to capacity, and are highly export-oriented. Subject imports undersold the domestic industry during the period examined, and underselling is likely to continue in the future in order to increase market share. Given that subject imports and the domestic like

¹⁵¹ See CR/PR at Table III-8.

¹⁵² CR/PR at Table III-8.

¹⁵³ CR/PR at Table III-8.

¹⁵⁴ CR/PR at Table C-1.

¹⁵⁵ CR/PR at Table C-1.

¹⁵⁶ CR at V-2 to V-3; PR at V-2 to V-3.

¹⁵⁷ CR/PR at Table I-11.

¹⁵⁸ See CR/PR at Table IV-2.

¹⁵⁹ CR at IV-13; PR at IV-10.

¹⁶⁰ CR at IV-5; PR at IV-3.

¹⁶¹ CR/PR at Table IV-1. For instance, in 2008, the AUVs of nonsubject imports were \$1.76 per pound compared to \$1.47 per pound for subject imports. CR/PR at Tables IV-1 and IV-2.

product are moderately substitutable, we find that, in the event of revocation, low-priced subject imports would likely increase in absolute terms and would gain market share at the expense of the domestic industry, would undersell significantly the domestic like product, and would depress and/or suppress prices for the domestic like product. Accordingly, we find that revocation of the order would likely have a significant adverse impact on the domestic industry with respect to the industry's production, shipments, sales, market share, employment, and profits.

CONCLUSION

For the reasons stated above, we determine that revocation of the antidumping duty order on subject imports from Vietnam would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

On July 1, 2008, the U.S. International Trade Commission (“Commission” or “USITC”) gave notice, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”),¹ that it had instituted a review to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would likely lead to the continuation or recurrence of material injury to a domestic industry.^{2 3} On October 6, 2008, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act.⁴ Selected information relating to the schedule of the five-year review appears in the following tabulation:⁵

Effective date	Action
August 12, 2003	Commerce’s antidumping duty order on certain frozen fish fillets from Vietnam (68 FR 47909)
July 1, 2008	Commission’s institution of a five-year review (73 FR 37487)
July 1, 2008	Commerce’s initiation of a five-year review (73 FR 37411)
October 6, 2008	Commission’s determination to conduct a full five-year review (73 FR 62318; October 20, 2008)
January 9, 2009	Commission’s scheduling of the review (74 FR 2616; January 15, 2009)
February 2, 2009	Commerce’s final results of the expedited review (74 FR 5819)
May 6, 2009	Commission’s hearing
June 15, 2009	Commission’s vote
June 26, 2009	Commission’s determination transmitted to Commerce

Source: Cited *Federal Register* notices.

¹ 19 U.S.C. 1675(c).

² 73 FR 37487, July 1, 2008. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

³ In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of a five-year review of the subject antidumping duty order concurrently with the Commission’s notice of institution. 73 FR 37411, July 1, 2008.

⁴ 73 FR 62318, October 20, 2008. The Commission found that the domestic interested party group response to its notice of institution was adequate, as was the respondent interested party group response.

⁵ The Commission’s notice of institution, notice of its decision to conduct a full review, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission’s web site (Internet address www.usitc.gov). Commissioners’ votes on whether to conduct an expedited or full review may also be found at the web site.

THE ORIGINAL INVESTIGATION

The original investigation resulted from a petition filed on June 28, 2002, 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, alleging that an industry in the United States was materially injured and threatened with material injury by reason of less-than-fair-value imports of frozen fish fillets from Vietnam. In June 2003, Commerce made a final affirmative determination.⁶ In August 2003, the Commission made an affirmative final determination.⁷

SUBSEQUENT PROCEEDINGS

Litigation and U.S. Government Findings

Since the original investigation there have been several actions taken by the U.S. Government with regard to certain frozen fish fillets. In 2007, the Department of Justice, Immigration and Customs Enforcement, the National Marine Fisheries Service, and the Food and Drug Administration participated in several investigations and eventual indictments of various firms and several of their employees in a scheme to import, distribute, and sell falsely labeled frozen fish fillets between 2004 and 2005.⁸ These actions were in violation of the Lacey Act, which prohibits, among other things, the receipt, acquisition or purchase of fish that was taken, possessed, transported, or sold in violation of U.S. laws or regulations. The indictment alleged that the defendants conspired to deceive customs agents in order to avoid the antidumping duty imposed on frozen basa and tra fillets from Vietnam in 2003. In a separate investigation, a seafood importer and related corporations received imprisonment and fines for a multi-year scheme that involved smuggling and distributing mislabeled frozen basa and tra fillets from Vietnam in the United States and Canada and laundering the illegal proceeds between 2002 and 2005 to avoid paying antidumping duties.⁹ In addition, two seafood dealers were indicted in Florida on 42 counts of identifying U.S. imports of farmed swai or tra from Vietnam as wild grouper between May 2002 and April 2005. On May 18, 2009, the president of Virginia Star Seafood Corp. was sentenced to 63 months in prison and fined more than \$12 million for antidumping duty avoidance for participating in a conspiracy in which more than 10 million pounds of frozen fish fillets were imported from Vietnam, but fraudulently labeled and sold as sole, grouper and other species.¹⁰

In 2004-06, the U.S. Department of Commerce found that two related Vietnamese firms circumvented the antidumping order by importing whole, live basa and tra into Cambodia and processing them into frozen fish fillets for export to the United States.¹¹ In 2007, the Department of Commerce directed U.S. Customs to impose a per unit antidumping duty on frozen basa and tra fillets from Vietnam,

⁶ Commerce's final determination, 68 FR 37116, June 23, 2003. Commerce issued an amended final determination in July 2003. 68 FR 43713, July 24, 2003.

⁷ *Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final)*, USITC Publication 3617, August 2003.

⁸ U.S. Department of Justice, "Illinois Corporation Pleads Guilty to Illegally Dealing in Falsely Labeled Fish from Vietnam," Press Release, March 12, 2008.

⁹ National Oceanic and Atmospheric Administration, "Seafood Importer and Associated Corporations Receive Imprisonment and Fines," Press Release, January 8, 2007.

¹⁰ Department of Justice, "President of Company That Illegally Imported Catfish Sentenced to More Than Five Years in Federal Prison," Press Release, May 19, 2009. The other conspirators also received major sentences.

¹¹ Commerce clarified the scope of the order to include frozen fish fillets processed in Cambodia by Lian Heng from Vietnamese-origin whole live fish for export to the United States. 71 FR 38608 (July 7, 2006).

rather than an *ad valorem* rate, as a result of certain importers undervaluing shipments to reduce the burden of the antidumping duty.¹²

Legislative and Regulatory Actions

During and following the original investigation there have been several legislative and regulatory actions taken by the U.S. government regarding certain frozen fish fillets. The *Farm Security and Rural Investment Act of 2002* (the 2002 farm bill) included a provision that limits the use of the name ‘catfish’ in food product labeling to fish of the *Ictaluriadae* family, which is the species of catfish grown in the United States, commonly known as channel catfish. In addition, the 2002 farm bill included catfish in country-of-origin (COOL) labeling requirements that apply to retail sales, but specifically exempt food service sales (including restaurants).¹³ Six states also have passed legislation regarding catfish labeling; the laws in three of those states (Mississippi, Arkansas, and Louisiana) apply to labeling catfish on menus at the restaurant level.¹⁴ In addition, for the period January-December 2002, U.S. catfish producers qualified for assistance under the U.S. Trade Adjustment Assistance program, through which USDA provides technical assistance and cash benefits to producers if an increase in imports of a like commodity has contributed importantly to a decline in price and a loss of income.¹⁵ More recently, the *Food, Conservation and Energy Act of 2008* (the 2008 farm bill) amended the inspection regulations for catfish in the United States, requiring domestic and imported catfish to be subject to a continuous inspection program by the USDA’s Food Safety and Inspection Service (FSIS), rather than it had previously under the Food and Drug Administration. The proposed final inspection regulation will include the Food Safety and Inspection Service (FSIS) definition of “catfish,” details regarding country of origin labeling requirements, equivalency of foreign inspection systems, and provide for detention, seizure, condemnation of adulterated or misbranded product.¹⁶

SUMMARY DATA

Table I-1 presents summary data from the original investigation and the current review. The data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa or tra fillets. Data for nonsubject fillets include frozen catfish, basa, or tra fillets. As shown below, the market share of subject imports from Vietnam diminished in 2003, the year the antidumping duty order was issued; recovered in 2004-05; and was higher in 2006-08. The largest source of nonsubject imports is China, with a 13.0 percent share of the total U.S. market in 2008.¹⁷

¹² 72 FR 13242 (March 21, 2007).

¹³ COOL regulations for fish and seafood became effective on September 30, 2004, while Congress passed measures subsequent to the 2002 farm bill delaying implementation of COOL regulations for other commodities.

¹⁴ Domestic interested parties’ prehearing brief, exhibit 8.

¹⁵ USDA, FAS, “USDA Grants Assistance to Catfish Producers in 18 States under Trade Adjustment Assistance Program,” Press Release, November 13, 2003.

¹⁶ The 2008 farm bill stipulated that the final catfish inspection rule be implemented 18 months after the enactment of the legislation in May 2008. FSIS intends to publish a proposed rule during 2009. William P. Milton, Jr. Assistant Administrator, Office of Catfish Inspection Programs, “Developing Rule of Catfish Inspection,” presented at the USDA Agricultural Outlook Forum, February 27, 2009.

¹⁷ Since the issuance of the prehearing report, Staff has incorporated two additional questionnaire responses (those of ***) as well as modest revisions to previously- submitted questionnaires. The changes have increased the coverage of the trade, financial, and price data presented in this report.

Table I-1

Certain frozen fish fillets: Summary data from the original investigation and the current five-year review, 2000-08

(Quantity=1,000 pounds; value=1,000 dollars; unit values, unit labor costs, and unit financial data are per pound)

Item	2000	2001	2002	2003	2004	2005	2006	2007	2008
U.S. consumption quantity:									
Amount	148,428	158,575	184,164	161,482	170,548	182,439	220,693	202,628	212,137
Processors' share: ¹	90.7	83.0	80.1	87.1	80.2	77.2	61.8	57.3	54.1
Importers' share: ¹									
Vietnam	8.4	16.4	19.6	12.2	18.4	17.8	24.3	23.1	25.1
All other countries	0.8	0.6	0.3	0.7	1.5	4.9	14.0	19.7	20.8
Total imports	9.3	17.0	19.0	12.9	19.8	22.8	38.2	42.7	45.9
U.S. consumption value:									
Amount	395,615	380,669	385,988	364,413	405,920	424,880	519,595	474,482	487,039
Processors' share: ¹	93.6	88.9	86.0	92.9	88.3	88.5	75.6	70.6	67.9
Importers' share: ¹									
Vietnam	5.9	10.8	13.8	6.6	10.6	8.3	14.0	14.2	16.1
All other countries	0.4	0.3	0.2	0.5	1.0	3.2	10.4	15.2	16.0
Total imports	6.4	11.1	14.0	7.1	11.7	11.5	24.4	29.4	32.1
U.S. imports from—									
Vietnam:									
Quantity	12,540	25,978	36,046	19,689	31,349	32,548	53,531	46,728	53,305
Value	23,450	41,045	53,348	24,228	43,150	35,258	72,872	67,606	78,559
Unit value ²	\$1.87	\$1.58	\$1.48	\$1.23	\$1.38	\$1.08	\$1.36	\$1.45	\$1.47
Ending inventory quantity	532	340	939	***	***	***	***	***	***
All other countries:									
Quantity	1,202	961	586	1,176	2,499	8,962	30,870	39,863	44,129
Value	1,778	1,319	688	1,775	4,169	13,686	54,159	72,121	77,823
Unit value	\$1.48	\$1.37	\$1.17	\$1.51	\$1.67	\$1.53	\$1.75	\$1.81	\$1.76
Ending inventory quantity	0	0	0	***	***	***	***	***	***

Table continued on next page.

Table I-1 – Continued

Certain frozen fish fillets: Summary data from the original investigation and the current five-year review, 2000-08

(Quantity=1,000 pounds; value=1,000 dollars; unit values, unit labor costs, and unit financial data are per pound)

Item	2000	2001	2002	2003	2004	2005	2006	2007	2008
All countries:									
Quantity	13,742	26,939	36,632	20,865	33,848	41,510	84,401	86,591	97,434
Value	25,228	42,364	54,036	26,003	47,319	48,944	127,031	139,727	156,382
Unit value	\$1.84	\$1.57	\$1.48	\$1.25	\$1.40	\$1.18	\$1.51	\$1.61	\$1.61
Ending inventory quantity	532	340	939	39	1,457	2,118	7,466	4,798	5,377
U.S. processors' (based on USDA/NASS data):									
Total shipments:									
Quantity	134,686	131,636	147,532	140,617	136,700	140,929	136,292	116,037	114,703
Value	370,387	338,305	331,952	338,409	358,601	375,936	392,564	334,755	330,657
U.S. processors' (based on questionnaire data):									
Capacity quantity	150,565	148,198	169,888	146,079	146,482	150,802	150,001	149,127	137,129
Production quantity	108,295	103,112	108,469	106,591	111,483	114,138	111,763	94,408	97,068
Capacity utilization ¹	71.9	69.6	63.8	73.0	76.1	75.7	74.5	63.3	70.8
U.S. shipments									
Quantity	107,059	100,101	110,909	106,315	107,744	115,750	109,265	96,366	94,572
Value	294,203	257,336	249,107	255,666	283,331	308,986	318,030	281,420	277,076
Unit value	\$2.75	\$2.57	\$2.25	\$2.40	\$2.63	\$2.67	\$2.91	\$2.92	\$2.93
Export shipments:									
Quantity	369	409	268	9	0	0	0	0	0
Value	1,040	1,166	732	23	0	0	0	0	0
Unit value	\$2.82	\$2.85	\$2.73	\$2.56	(³)				

Table continued on next page.

Table I-1 – Continued

Certain frozen fish fillets: Summary data from the original investigation and the current five-year review, 2000-08

(Quantity=1,000 pounds; value=1,000 dollars; unit values, unit labor costs, and unit financial data are per pound)

Item	2000	2001	2002	2003	2004	2005	2006	2007	2008
U.S. processors':									
Ending inventory quantity	8,051	10,654	8,195	7,502	10,864	9,376	11,592	9,472	11,837
Inventories/total shipments ¹	7.5	10.6	7.4	7.1	10.1	8.1	10.6	9.8	12.5
Production workers	3,365	3,056	2,918	2,612	2,608	2,753	2,681	2,480	2,589
Hours worked (1,000 hours)	6,253	5,534	5,373	5,338	5,128	5,308	5,427	4,925	4,684
Wages paid (1,000 dollars)	45,556	42,180	41,684	37,566	37,508	40,095	41,343	39,086	38,994
Hourly wages	\$7.29	\$7.62	\$7.76	\$7.04	\$7.31	\$7.55	\$7.62	\$7.94	\$8.32
Productivity (pounds per hour)	17.3	18.6	20.2	20.0	21.7	21.5	20.6	19.2	20.7
Unit labor costs	\$0.42	\$0.41	\$0.39	\$0.35	\$0.34	\$0.35	\$0.37	\$0.41	\$0.40
U.S. processors':									
Net sales quantity	97,319	94,288	97,918	107,402	108,368	115,235	110,709	97,706	99,273
Net sales value	274,654	247,283	223,589	258,897	282,459	306,899	317,991	286,029	288,972
Net sales unit value	\$2.82	\$2.62	\$2.28	\$2.41	\$2.61	\$2.66	\$2.87	\$2.93	\$2.91
Cost of goods sold	244,283	215,934	198,507	216,773	245,778	267,658	279,551	258,519	257,065
Gross profit or (loss)	30,371	31,349	25,082	42,124	36,681	39,241	38,440	27,510	31,907
SG&A expenses	24,132	24,799	24,860	26,048	28,274	29,613	28,926	26,936	28,332
Operating income or (loss)	6,239	6,550	222	16,076	8,407	9,628	9,514	574	3,575
Capital expenditures	6,879	20,923	12,431	5,343	4,220	5,684	3,936	2,107	2,225
Unit cost of goods sold	\$2.51	\$2.29	\$2.03	\$2.02	\$2.27	\$2.32	\$2.53	\$2.65	\$2.59
Unit SG&A	\$0.25	\$0.26	\$0.25	\$0.24	\$0.26	\$0.26	\$0.26	\$0.28	\$0.29
Unit operating income/(loss)	\$0.06	\$0.07	\$0.00	\$0.15	\$0.08	\$0.08	\$0.09	\$0.01	\$0.04
COGS/sales ¹	88.9	87.3	88.8	83.7	87.0	87.2	87.9	90.4	89.0
Operating income or (loss)/sales ¹	2.3	2.6	0.1	6.2	3.0	3.1	3.0	0.2	1.2

Table continued on next page.

Table I-1 – Continued**Certain frozen fish fillets: Summary data from the original investigation and the current five-year review, 2000-08**¹ In percent.² Unit value data reflect the valuation of exports from Vietnam to the United States, rather than U.S. imports from Vietnam (which, as previously noted, were subject to reporting irregularities). The unit values of U.S. imports from Vietnam as reflected in official Commerce statistics are \$1.31 (2003), \$1.29 (2004), \$1.06 (2005), \$1.45 (2006), \$1.57 (2007), and \$1.56 (2008).³ Not applicable.

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

Note.— Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa or tra fillets. Data for nonsubject fillets include frozen catfish, basa, or tra fillets.

Source: *Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final)*, USITC Publication 3617, August 2003, pp. 3-19; "Views of the Commission" and tables cited therein; and data submitted in response to Commission questionnaires (imports from Vietnam reported as exports to the United States by VASEP), from official Commerce statistics (2003-08), and from USDA/NASS statistics (2003-08).**RELATED TITLE VII INVESTIGATIONS**

The Commission has not conducted any previous investigation on either catfish or on basa and tra. The Commission has, however, conducted several investigations on related products, namely fish and other seafood, as shown in table I-2.

Table I-2**Freshwater and saltwater fish: Related investigations, 1980-2008**

Date ¹	Number	Product(s)	Country	Outcome	Status
1980	701-TA-40	Fresh, chilled, or frozen fish	Canada	Negative	---
1980	731-TA-17	Clams in airtight containers	Canada	Negative	---
1981	701-TA-81	Hard-smoked herring filets	Canada	Terminated	---
1982	701-TA-82	Hard-smoked herring filets	Canada	Negative	---
1984	731-TA-199	Dried salted codfish	Canada	Affirmative	Order revoked
1985	701-TA-257	Certain fresh Atlantic groundfish	Canada	Affirmative	Order revoked
1990	701-TA-302	Atlantic salmon	Norway	Affirmative	Order in place
1990	731-TA-454	Atlantic salmon	Norway	Affirmative	Order in place
1996	731-TA-752	Crawfish tail meat	China	Affirmative	Order in place
1997	701-TA-372	Fresh Atlantic salmon	Chile	ITA Negative	---
1997	731-TA-768	Fresh Atlantic salmon	Chile	Affirmative	Order revoked
2001	731-TA-924	Mussels	Canada	Terminated	---
2002	701-TA-429	IQF coldwater pink shrimp	Canada	Terminated	---
2002	731-TA-1011	IQF coldwater pink shrimp	Canada	Terminated	---

Table continued on next page.

Table I-2 – Continued
Freshwater and saltwater fish: Related investigations, 1980-2008

Date¹	Number	Product(s)	Country	Outcome	Status
2004	731-TA-1063	Frozen or canned warmwater shrimp & prawns	Brazil	Affirmative	Order in place
2004	731-TA-1064	Frozen or canned warmwater shrimp & prawns	China	Affirmative	Order in place
2004	731-TA-1065	Frozen or canned warmwater shrimp & prawns	Ecuador	Affirmative	Order in place
2004	731-TA-1066	Frozen or canned warmwater shrimp & prawns	India	Affirmative	Order in place
2004	731-TA-1067	Frozen or canned warmwater shrimp & prawns	Thailand	Affirmative	Order in place
2004	731-TA-1068	Frozen or canned warmwater shrimp & prawns	Vietnam	Affirmative	Order in place

¹ "Date" refers to the year in which the investigation was instituted by the Commission.

Source: Compiled from Commission determinations and Commerce orders and revocations published in the *Federal Register*.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.” Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury--

(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--

(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,

(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,

*(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and
(D) in an antidumping proceeding . . ., (Commerce's findings) regarding duty absorption . . .*

(2) VOLUME.--In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--

*(A) any likely increase in production capacity or existing unused production capacity in the exporting country,
(B) existing inventories of the subject merchandise, or likely increases in inventories,
(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and
(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.*

(3) PRICE.--In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--

*(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and
(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.*

(4) IMPACT ON THE INDUSTRY.--In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to--

*(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,
(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and
(C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.*

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.”

Organization of the Report

Information obtained during the course of this review that relates to the above-discussed statutory criteria is presented throughout this report. A summary of trade and financial data for frozen fish fillets market, as collected in this review, is presented in appendix C. U.S. industry data are based on the questionnaire responses of 14 U.S. processors of certain frozen fish fillets that account for 82.4 percent of total U.S. production (by weight) of the domestic like product in 2008.¹⁸ U.S. import data and related information are based on data provided by the Vietnamese Association of Seafood Exporters and Producers (VASEP), official statistics of Commerce, and questionnaire responses, as noted. The Commission received 11 responses from U.S. importers of certain frozen fish fillets that are believed to have accounted for *** percent of U.S. imports from Vietnam in 2008, and *** percent of total U.S. imports. Foreign industry data and related information are based on the questionnaire responses of VASEP. Responses by U.S. processors, importers, purchasers, and foreign producers of certain frozen fish fillets to a series of questions concerning the significance of the existing antidumping duty order and the likely effects of revocation are presented in appendix D, while discussions of raw material prices and variance calculations appear in appendixes E and F.

COMMERCE’S REVIEWS

Administrative Reviews

Table I-3 presents information on Commerce’s administrative reviews of the subject antidumping duty order on the subject frozen fish fillets from Vietnam. Commerce has completed four administrative reviews and has a fifth ongoing review.¹⁹ In the fourth administrative review, Commerce made an affirmative finding of duty absorption with respect to QVD Food and its U.S. affiliate QVD USA.²⁰

¹⁸ Certain industry-wide data are published by the U.S. Department of Agriculture, and where appropriate, are used and reported herein.

¹⁹ In the first administrative review, Commerce found that CATACO, a major Vietnamese exporter of certain frozen fish fillets, had agreed to reimburse the antidumping duties paid by certain U.S. importers. *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14172, March 21, 2006.

²⁰ *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349, March 17, 2009, Decision Memorandum, pp. 16-17.

Table I-3

Frozen fish fillets: Administrative reviews of the antidumping duty order for Vietnam

Date results published	Period of review	Producer or exporter	Margin
March 21, 2006 (71 FR 14170)	01/31/2003 - 07/31/2004	Vinh Hoan	6.81
		CATACO	80.88
		Vietnam-Wide Entity ¹	63.88
March 21, 2007 (72 FR 13242)	08/01/2004 - 07/31/2005	QVD	15.01 ³
		Cataco	80.88
		Vietnam-Wide Entity ²	63.88
March 24, 2008 (73 FR 15479)	08/01/2005 - 07/31/2006	QVD	0.00
		ESS	0.00 ⁵
		Lian Heng with Certification	0.00
		Lian Heng without Certification	63.88
		CATACO	80.88
		Vietnam-Wide Entity ⁴	63.88
April 17, 2009 (74 FR 17816)	08/01/2006 - 07/31/2007	QVD	0.52
		Agifish	0.52
		Anvifish	0.52
		Vietnam-Wide Entity ⁶	63.88
¹ The Vietnam-Wide Entity includes Phan Quan. ² The Vietnam-Wide Entity includes Cafatex, Mekonimex, Navico, Phan Quan, Afiox, ANTESCO, Anhaco, Binh Ding, and Vinh Long. ³ Amended May 1, 2007. ⁴ The Vietnam-Wide Entity includes Phan Quan. ⁵ Amended August 15, 2008 to correct a ministerial error, 73 FR 47885. ⁶ The Vietnam-Wide Entity includes An Xuyen.			

Source: Cited *Federal Register* notices.

New Shipper Reviews

Table I-4 presents information on Commerce’s new shipper reviews of the subject antidumping duty order on the subject frozen fish fillets from Vietnam. Commerce has completed two new shipper reviews and has ongoing reviews. In addition, Commerce rescinded a new shipper review because the requestor, East Sea Foods, withdrew its request for review.²¹

Circumvention Reviews

On November 2, 2004, Commerce initiated an anticircumvention inquiry to determine whether certain imports of frozen fish fillets from Cambodia were circumventing the antidumping duty order.²² Commerce concluded that Lian Heng Trading Co. Ltd. and Lian Heng Investment Co., Ltd. circumvented the antidumping duty order by importing Vietnamese-origin whole live basa and tra into Cambodia, which it subsequently processed into frozen fish fillets for export to the United States.²³

²¹ *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Rescission of Antidumping Duty New Shipper Review*, 72 FR 2857, January 23, 2007.

²² *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Anticircumvention Inquiry and Scope Inquiry*, November 2, 2004, 69 FR 63507.

²³ *Circumvention and Scope Inquiries on the Antidumping Duty order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order; Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608, July 7, 2006.

Table I-4

Frozen fish fillets: New shipper reviews of the antidumping duty order for Vietnam

Date results published	Period of review	Producer or exporter	Margin
June 30, 2008 (73 FR 36840)	08/01/2006 - 01/31/2007	Anvifish	0.00 ¹
		Vinh Quang/New Century/New Century	15.38
March 17, 2009 (74 FR 11349)	08/01/2006 - 07/31/2007	QVD	0.52 ²
		South Vina	0.00
		Binh An	0.00
		Agifish	0.52 ³
		Anvifish	0.52 ³
		Vietnam-Wide Entity	63.88 ⁴
<p>¹ Amended from an initial final rate of 31.68 to correct a ministerial error. 73 FR 47884, August 15, 2008. ² This rate is applicable to the QVD single entity which includes QVD, QVD Dong Thap, and Thuan Hung Co., Ltd. ³ For the exporters subject to review that are determined to be eligible for separate-rate status, but were not selected as mandatory respondents, Commerce normally establishes a weighted-average margin based on an average of the rates it calculated for the mandatory respondents, excluding any rates that are zero, <i>de minimis</i>, or based entirely on facts available. In this new shipper review, there was only one mandatory respondent, QVD. Accordingly the rate calculated for QVD was applied as the rate for Agifish and Anvifish. ⁴ 74 FR 4920.</p>			
Source: Cited <i>Federal Register</i> notices.			

Changed Circumstance Reviews

On August 21, 2007, Commerce initiated a changed circumstances review in response to a request from an interested party.²⁴ Commerce has since rescinded the changed circumstances review because it has initiated an administrative review covering the firms in question and intends to address the changed circumstances issues as part of its ongoing 2007-08 administrative review.²⁵

Five-Year Review

On February 2, 2009, Commerce determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. As presented in table I-5, the individual margins ranged from 36.84 percent to 53.68 percent, and the Vietnam-wide rate was 63.88 percent.²⁶

²⁴ *Certain Frozen Fish Fillets from Vietnam: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 72 FR 46604, August 21, 2007.

²⁵ *Certain Frozen Fish Fillets from Vietnam: Rescission of Antidumping Duty Changed Circumstances Review*, 74 FR 7659, February 19, 2009.

²⁶ *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 5819, February 2, 2009.

Table I-5
Frozen fish fillets: Expedited review of the antidumping duty order for Vietnam

Manufacturers/exporters/producers	Margin
Agifish	47.05
Vinh Hoan	36.84
Nam Viet	53.68
CATACO	45.81
Afiex	45.55
CAFATEX	45.55
Da Nang	45.55
Mekonimex	45.55
QVD	45.55
Viet Hai	45.55
Vinh Long	45.55
Vietnam-Wide	63.88

Source: *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 5819, February 2, 2009

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”) (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such order.²⁷ During the review period, qualified processors of certain frozen fish fillets were eligible to receive disbursements from the U.S. Customs and Border Protection (“CBP”) under CDSOA relating to the antidumping duty order on the subject merchandise beginning in fiscal year 2004.²⁸ Table I-6 presents CDSOA disbursements and claims for the Federal fiscal years (October 1-September 30) 2004-08 by firm. In its 2008 annual report of distributions, the CBP reported that it was unable to collect \$7,114,829 in duties owed under the order.²⁹

²⁷ Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675(c)).

²⁸ No claims or disbursements in FY 2003.

²⁹ CBP, Continued Dumping and Subsidy Offset Act of 2000, “FY 2008 Annual Report, Section II: Uncollected Duties for 2008,” available at http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_08/fy08_annual_rep/section2_uncolduties.ctt/section2_uncolduties.pdf.

Table I-6
Certain frozen fish fillets: CDSOA disbursements, by firm, and total claims, Federal fiscal years
2004-08

Item	Fiscal year				
	2004	2005	2006	2007	2008
Disbursements					
Southern Pride Catfish	\$0	\$940,530	\$496,815	\$1,171,461	\$1,311,475
Seabrook Seafood Inc.	0	44,123	22,492	40,449	37,713
Pride of the Pond	0	185,753	93,865	214,396	220,533
America's Catch, Inc.	0	616,574	531,581	1,164,829	1,132,119
Delta Pride Catfish, Inc.	0	793,023	396,526	819,789	771,469
Catfish Farmers of America	0	20,130	9,629	23,066	22,674
T T & W Farm Products Inc. ¹	0	1,157,337	542,467	1,171,228	1,091,098
Consolidated Catfish Companies LLC	0	708,931	370,647	899,938	862,524
Prime Line	0	102,451	0	103,446	0
Simmons Farm Raised Catfish Inc.	0	350,747	172,504	400,499	389,911
Carolina Classics Catfish Inc.	0	89,271	38,318	72,280	72,201
Alabama Catfish Inc. ²	0	543,915	277,333	646,411	630,028
Harings Pride Catfish	0	121,626	56,826	321,320	491,572
Guidrys Catfish Inc.	0	0	216,943	551,059	674,768
Pride of the South Catfish Inc.	0	0	270,130	776,542	0
Total	0	5,674,411	3,496,076	8,376,713	7,708,085
Claims					
Total	92,351,985	316,980,425	614,274,972	935,205,928	1,066,571,797
¹ Listed in CDSOA records in 2008 as T T AND W FARM PRODUCTS INC dba HEARTLAND CATFISH CO. ² Listed in CDSOA records in 2008 as ALABAMA CATFISH INC dba HARVEST SELECT CATFISH.					
Note.--Because of rounding, figures may not add to the totals shown.					
Source: U.S. Customs and Border Protection's CDSOA <i>Annual Reports</i> . Retrieved from http://www.customs.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/ .					

THE SUBJECT MERCHANDISE

Commerce's Scope

The imported product subject to the antidumping duty order under review, as defined by Commerce in its original orders, is as follows,

The product covered by this order 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 ("fillets 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.³⁰

Tariff Treatment

Certain frozen fish fillets are imported under the following statistical reporting numbers of the Harmonized Tariff Schedule of the United States ("HTS"): 1604.19.4000, 1604.19.5000, 0305.59.4000, and 0304.29.6033.³¹ At the time of the original investigation the tariff rate on frozen fish fillets from Vietnam and all general duty rate countries was free (prior to December 1, 2001, the tariff rate applicable to Vietnam was the column 2 rate of 5.5 cents per kilogram). The 2009 general rate of duty on the bulk of certain frozen fish fillet imports is free.³²

³⁰ *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909, August 12, 2003.

³¹ There have been several changes to the HTS classifications for reporting U.S. imports of frozen fish fillets. The following are the relevant statistical reporting numbers for subject frozen fish fillets during previous periods:

Until July 1, 2004: 0304.20.6030, 0304.20.6096, 0304.20.6043, and 0304.20.6057.

Until February 1, 2007: 0304.20.6033.

After February 1, 2007: 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033.

³² Other statistical reporting numbers of broader fish categories can include frozen basa and tra fillets. The tariff rate on breaded frozen fish fillets, classified under subheadings 1604.19.4000 and 1604.19.5000, are 10 percent and 7.5 percent, respectively. The tariff rate on dried fish fillets, classified under 0305.59.4000, is free.

THE DOMESTIC LIKE PRODUCT

In the original investigation, the Commission faced a situation in which there was no domestic product that was “like” the subject imports, and therefore found the domestic product that was “most similar” in terms of physical characteristics and uses to frozen basa and tra fillets to be frozen catfish fillets.³³ In response to the Commission’s notice of institution, the domestic interested parties indicated that they agreed with this definition of the domestic like product,³⁴ while VASEP remained silent on the issue.³⁵ After reviewing the draft questionnaires issued by the Commission, no party requested the collection of additional information on the issue of the domestic like product.³⁶ The domestic interested parties subsequently confirmed their agreement with the Commission’s original definition.³⁷

Description³⁸

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. 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

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 Texas) where climate and topography favor the process. The ponds are stocked with fingerlings 2 to 3 inches in length³⁹ that receive a daily feeding until they reach a foodsize of at least 0.75

³³ *Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final)*, USITC Publication 3617, August 2003, pp. 6-9.

³⁴ Domestic interested parties’ response to notice of institution, p. 24. The domestic like parties believe the Commission must continue, as it did in the original investigation, to recognize the interdependence of the processors and catfish farmers and to consider this relationship and the role of farms as a condition of competition. Domestic interested parties’ prehearing brief, p. 8.

³⁵ VASEP’s response to the notice of institution, pp. 1-4; Catfish Farmers of America & Individual Processors’ response to the notice of institution, p. 24.

³⁶ Catfish Farmers of America & Individual Processors’ comments on draft questionnaires (January 28, 2009). VASEP provided no comments on the draft questionnaires.

³⁷ Domestic interested parties’ prehearing brief, p. 8.

³⁸ Information in this section is largely drawn from the final staff report in the original investigation.

³⁹ Some farmers raise fingerlings only, selling these as feedstock to the other farmers.

pound and usually not over 3 pounds, which is generally the range that can be processed efficiently.⁴⁰ 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 generally takes place using nets that allow fish smaller than foodsize to escape. Processors generally are 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.⁴¹ After harvesting, the fish are placed into tank trucks and are transported live to the processing plant. 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

To produce frozen fish fillets, 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, 19 processing plants operate in the United States, and more than 80 are known to operate in Vietnam.⁴² The fish, held live in pre-processing tanks, are first deheaded, eviscerated, skinned, and filleted, and then, after chilling and sorting by weight, are quick-frozen and glazed.⁴³ Any breading or marinating is done before freezing. 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.⁴⁴ Upon leaving the freezer, a 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 packaged in 10-pound cartons.

Most 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. Based on questionnaire responses, in 2008, 23 percent of the weight of the U.S.-grown live catfish that processors used was processed into frozen fillets, 29 percent was processed into other products (especially whole fresh fish, fresh fish fillets, and frozen belly-flap nuggets), and 48 percent was offal-unused parts of the fish that were mostly sold for use in fish meal, fertilizer, and oil. 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.

⁴⁰ Yields drop significantly after the fish reaches 2-3 pounds and additional costs are incurred per pound to raise the fish. Staff field trip notes, May 1, 2009.

⁴¹ 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 algacide to kill all the algae in the pond. The latter is detrimental to the pond as algae aid in the pond's oxygenation.

⁴² VASEP questionnaire response.

⁴³ The heads, tails, skin, and viscera of the fish are saleable byproducts, usually sold to rendering plants for use in the production of fish meal and oil.

⁴⁴ In the United States the fillets are treated with a tripolyphosphate solution prior to freezing to prevent excessive water loss.

Vietnamese basa and tra were originally 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 January 2002 (the legislation was signed into law on May 13, 2002, but was retroactive to January 1, 2002). Some other names have been used in the marketing and labeling of Vietnamese basa and tra, including “basa/tra,” “swai/sutchi,” and “Pangasius.”⁴⁵ Distributors, sellers, or restaurant owners may still be offering basa and tra as a substitute for catfish whether in oral communications, price lists, or menus.⁴⁶ Reportedly, basa and tra does not have its own identity at the restaurant level and is known to have been marketed to customers as “southern fried fish.”⁴⁷ Hearing testimony indicates that state level labeling laws and community pressure in catfish producing regions may be a deterrent of such practices in the major producing states.⁴⁸

U.S. MARKET PARTICIPANTS

U.S. Farmers

Domestic catfish farming has generally contracted since the original investigation. At the farmer level, U.S. total catfish water acres decreased by 13 percent during 2003-08, falling by 17 percent, 13 percent, and 8 percent in Mississippi, Alabama, and Arkansas, respectively, but increasing in Texas, by more than 300 percent (table I-7).⁴⁹ The value of grower sales fell 4 percent over the period. The number of farming operations fluctuated upward, with a 12 percent increase over the period January 2003 to January 2009. The number of farming operations reached a peak in January 2008 of 1,617 before falling by January 2009 to 1,306. Overall catfish pounds processed decreased from a historical high of 661,504 million pounds in 2003 to 509,597 million pounds in 2008.⁵⁰

⁴⁵ According to the response of *** in its purchaser questionnaire, “in the past year or two...a distinction in the marketplace...(has been created) between Basa (*Pangasius bocourti*) and Swai (*Pangasius hypophthalmus*). Swai is the cheaper and lower quality version of the two *Pangasius* species readily available.” In addition, in its purchaser questionnaire, *** reports that, “When Vietnamese fish farmers started farming catfish, most of the production was basa, which was raised in floating cages in the vast Mekong River Delta. However, in recent years, almost all Vietnamese fish farmers have switched to tra, which now accounts for more than *** percent of Vietnam’s farmed catfish production and a reported *** percent of exports. In addition to being hardier, tra are faster growing. While basa take 12 months to reach a marketable size of about 3.5-4 pounds, tra can be grown to that size in just 6 months. This allows farmers to grow two crops of tra a year, making it a more economically attractive fish to farm. In addition to being raised in cages, tra are farmed in earthen ponds. Although basa are considered to have a better texture and flavor, both tra and basa are mild tasting, white-fleshed fish that have quickly found favor in markets around the world.”

⁴⁶ Domestic interested parties’ prehearing brief at 18; hearing transcript, p. 26 (Walker).

⁴⁷ Hearing transcript, pp. 32-34 (Renfroe).

⁴⁸ Hearing transcript, p. 33 (Renfroe).

⁴⁹ Texas is one of the largest catfish consuming states. There are two known U.S. processors in Texas, however, the two processors are relatively small compared to the rest of the industry, and they purchase much of their fresh fish from other states. Hearing transcript, pp. 32-33 (Renfroe) and pp. 121-122 (Rhodes).

⁵⁰ *Catfish Processing*, USDA, NASS, March 2009.

**Table I-7
Catfish farmers: Operations, area, and total sales, 2003-08**

State	Item	2003	2004	2005	2006	2007	2008
MS	Number of operations	405	410	410	390	370	427
	Area (acres)	109,000	101,000	101,000	98,700	94,200	90,300
	Total sales (\$1,000)	243,176	274,971	243,101	250,213	229,385	206,228
AL	Number of operations	231	230	230	194	199	252
	Area (acres)	25,500	25,400	25,100	23,700	23,900	22,200
	Total sales (\$1,000)	85,159	101,198	99,144	96,710	95,782	93,254
AR	Number of operations	155	161	153	132	137	155
	Area (acres)	34,000	34,000	31,500	32,800	32,000	31,400
	Total sales (\$1,000)	59,047	66,618	77,668	80,305	78,110	64,263
TX	Number of operations	36	36	62	57	57	149
	Area (acres)	850	850	1,030	1,600	3,800	3,800
	Total sales (\$1,000)	3,350	3,446	5,203	5,951	12,152	13,212
All other	Number of operations	334	310	303	262	483	634
	Area (acres)	17,850	16,540	14,960	13,940	15,800	15,300
	Total sales (\$1,000)	34,292	33,942	34,423	38,996	39,164	33,041
Total	Number of operations	1,161	1,147	1,158	1,035	1,246	1,617 ¹
	Area (acres)	187,200	177,790	173,590	170,740	169,700	163,000
	Total sales (\$1,000)	425,024	480,175	459,539	472,175	454,593	409,998

¹ As of January 1, 2009, the number of operations was 1,306.

Note.--The number of operations presented above is based on data for January 1 of each year.

Source: *Catfish Production*, USDA, NASS, 2009.

U.S. Processors

There were 20 known catfish processors as of January 2008. Details regarding each firm's production location(s), share of 2008 certain frozen fish fillets production, and position on the orders are presented in table I-8. Since the original investigation, at least four domestic catfish processors (Aquafarms, Arkansas Catfish Growers LLC dba SEACAT, Prairie Lands, and Pride of the South Catfish Company) have ceased operations and one other domestic processor (Southern Pride) has closed several plants.⁵¹ Effective June 30, 2008, Country Select and Delta Pride entered into an operating agreement whereby all sales and production of these two processors would be merged into and conducted by a newly created company, Consolidated Catfish Producers.⁵² In addition, Heartland Catfish purchased the operations of Southern Pride in September 2008.⁵³ There is a large degree of integration between the catfish processors and catfish farmers and most processors are farmer-owned.⁵⁴ ***.

⁵¹ Catfish Farmers of America & Individual Processors' response to the notice of institution, p. 23.

⁵² ***.

⁵³ Catfish Farmers of America & Individual Processors' response to the notice of institution, p. 23.

⁵⁴ Domestic interested parties' posthearing brief, exhibit 1, p. 1.

Table I-8

Frozen fish fillets: U.S. processors, position on continuation of the orders, shares of U.S. shipments in 2002 and 2008, and U.S. production locations

Firm	Production locations	Share of shipments (percent)		Positions on the continuation of the orders
		2002	2008	
America's Catch ^{1 2}	Itta Bena, MS	***	***	***
Aquafarms ³	Holdenville, OK	***	***	***
Carolina Classics	Ayden, NC	***	(⁴)	***
Consolidated Catfish Processors ^{5 6}	Indianola, MS Isola, MS Belzoni, MS	(⁴)	***	***
Country Select ^{7 5}	Isola, MS Belzoni, MS	***	***	***
Delta Pride ^{6 8}	Indianola, MS Belzoni, MS	***	***	***
Delta Supreme ¹	Dumas, AR	(⁴)	***	***
Farm Catch	Hughes Springs, TX	(⁴)	(⁴)	***
Fish Breeders ¹	Hagerman, ID	(⁹)	(⁹)	***
Freshwater Farms ¹⁰	Belzoni, MS	(⁴)	***	***
Guidry Catfish ¹	Breux Bridge, LA	(⁴)	(¹¹)	***
Haring Catfish ¹	Wisner, LA	***	***	***
Harvest Select ¹²	Uniontown, AL	***	***	***
Heartland Catfish ¹⁴	Itta Bena, MS North Greensboro, AL	***	***	***
Lakes Farm Raised ¹	Dundee, MS	(⁴)	(¹¹)	***
Prairie Lands ¹³	Pickneyville, IL	***	***	***
Pride of the Pond ^{1 15}	Tunica, MS	***	***	***
Pride of the South ¹⁶	Brooksville, MS	***	***	***
Prime Line	Scooba, MS	***	(⁴)	***
Seabrook Seafood ¹	Kemah, TX	***	***	***
SEACAT ¹⁷	Lade Village, AR	***	***	***

Table continued on next page.

Table I-8--Continued

Frozen fish fillets: U.S. processors, position on continuation of the orders, shares of U.S. shipments in 2002 and 2008, and U.S. production locations

Firm	Production locations	Share of shipments (percent)		Positions on the continuation of the orders
		2002	2008	
Simmons ¹⁸	Yazoo City, MS	***	***	***
Southern Pride ¹⁹	Greensboro, AL Demopolis, AL	***	***	***
South Fresh ²⁰	Eutaw, MS Indianola, MS	(⁴)	***	***
Superior Fish	Macon, MS	(⁴)	(⁴)	***
Total responding		***	***	
Total processors ²¹		100.0	100.0	

¹ Not owned by another firm.
² Has common family ownership of catfish farms and processing plant.
³ Ceased operations in 2006.
⁴ No questionnaire response.
⁵ Effective June 30, 2008, Country Select and Delta Pride entered into an operating agreement whereby all sales and production of these two processors would be merged into and conducted by a newly created company, Consolidated Catfish Producers.
⁶ ***.
⁷ Brand name for Consolidated Catfish Companies, LLC. ***.
⁸ Farmer-owned cooperative.
⁹ ***.
¹⁰ ***.
¹¹ ***.
¹² Brand name for Alabama Catfish Inc. ***.
¹³ Ceased operations in 2003.
¹⁴ Brand name for TT&W Farm Products, Inc. ***.
¹⁵ Brand name for Magnolia Processing Inc.
¹⁶ Ceased operations in 2006.
¹⁷ Ceased operations in 2004.
¹⁸ ***.
¹⁹ ***.
²⁰ ***.
²¹ Based on NASS data for total frozen catfish fillet production.

Source: Staff Report, July 7, 2003 (INV-AA-088), p. III-2 and compiled from data submitted in response to Commission questionnaires.

U.S. Importers

In the original investigation, the Commission sent importer questionnaires to 25 firms believed to be importers of certain frozen fish fillets from Vietnam; in addition, each U.S. processor received an importer questionnaire.⁵⁵ Responses to the Commission's importer questionnaires in the final phase of the original investigation were received from 7 companies.⁵⁶ In response to the Commission's importers' questionnaires issued in this review, 11 firms supplied information regarding imports of certain frozen fish fillets. ***. Table I-9 presents U.S. importers, their imports, and sources.

Table I-9
Certain frozen fish fillets: Reported U.S. imports, by importer and by source of imports, 2008

Firm	Location	Share of 2008 reported U.S. imports from Vietnam (percent)	Share of 2008 reported total U.S. imports (percent)	Source of other imports
Alliance Food	Rosemeads, CA	***	***	***
American Seafood ¹	New Bedford, MA	***	***	***
Beaver Street Fisheries	Jacksonville, FL	***	***	***
Colorado Boxed Beef	Auburndale, FL	***	***	***
H&N Foods	Vernon, CA	***	***	***
Independence Fish	Plymouth Meeting, PA	***	***	***
Piazza's Seafood ²	Saint Rose, LA	***	***	***
QVD ³	Bellevue, WA	***	***	***
Seoul Shik Poom	Hillside, NJ	***	***	***
South Fresh ⁴	Oxford, MS	***	***	***
Wellsea Trading	Houston, TX	***	***	***
Total		100.0	100.0	
¹ ***. ² ***. ³ ***. ⁴ U.S. processor, ***.				
Source: Compiled from data submitted in response to Commission questionnaires.				

⁵⁵ *Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-1012 (Final)*, USITC Publication 3617, August 2003, p. IV-1.

⁵⁶ *Ibid.*

U.S. Purchasers

The Commission received 26 useable purchaser questionnaire responses from firms that bought frozen fillets of basa, tra, and/or catfish during 2003-08.⁵⁷ Twelve responding purchasers are food service distributors,⁵⁸ 6 are restaurants,⁵⁹ 5 are wholesale distributors,⁶⁰ and 5 are grocery chains;⁶¹ one of the food service distributors reported it was also a wholesale distributor and one of the restaurants reported that it was also a food service distributor.⁶² Reported purchases from these 26 purchasers totaled almost 363.3 million pounds of certain frozen fish fillets during 2003-08 (involves some double counting), which is 31.6 percent of the quantity of total U.S. consumption of these products during this period. The largest purchaser based on the total reported quantity of certain frozen fish fillets purchased during 2003-08 by all 26 responding firms was ***, followed by ***, ***, and ***.

The 10 firms that were solely food service distributors accounted for 74.5 percent of the quantity of total purchases of certain frozen fish fillets reported during 2003-08.⁶³ The 5 firms that were solely restaurants accounted for 12.1 percent of the quantity reported; the 4 firms that were solely wholesale distributors accounted for 11.4 percent of the quantity reported;⁶⁴ and the 5 firms that were grocery chains accounted for 1.2 percent of the quantity reported. The combined purchases of the purchaser that was a food service and wholesale distributor, and the purchaser that was both a restaurant and food service distributor accounted for the remaining 0.8 percent of the quantity reported.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Table I-10 presents U.S. shipments, imports, and apparent U.S. consumption of certain frozen fish fillets for 2003-08. Table I-11 presents total U.S. consumption and market shares for the same period. Apparent U.S. consumption increased between 2003 and 2006, decreased in 2007, and then increased in 2008 (but remained below the 2006 peak level of apparent consumption). The U.S. processors' market share decreased throughout the period 2003-08. The market share of imports of certain frozen fish fillets from Vietnam increased overall from 2003 to 2008, with slight declines in 2005 and 2007. Imports from other sources increased markedly from 2003 to 2008 and accounted for a growing share of the U.S. market, while U.S. processors' shipments decreased overall and accounted for a diminishing share of the U.S. market.

⁵⁷ Of the 26 responding purchasers, 17 purchased the domestic frozen catfish fillets and a combination of the frozen basa and tra fillets from Vietnam and/or the subject products from third countries, 5 purchased only the domestic frozen catfish fillets, 2 purchased only the frozen basa and tra fillets from Vietnam, and 2 purchased the subject products only from third countries. Of the total purchases reported during 2003-08, the domestic frozen catfish fillets accounted for 61.9 percent, the frozen basa and tra fillets from Vietnam accounted for 15.9 percent, the subject products from third countries accounted for 8.2 percent, and an unspecified mix of domestic and imported subject products from Vietnam and third countries accounted for 14.0 percent.

⁵⁸ These 12 firms are ***.

⁵⁹ These 5 firms are ***.

⁶⁰ These firms are ***.

⁶¹ These firms are ***, ***.

⁶² U.S. purchaser questionnaire responses, section III-2.

⁶³ The responding food service distributors reported selling the certain frozen fish fillets primarily to restaurants, but also to hotels, school systems, healthcare facilities, nursing homes, the military, and casinos; two of these firms also reported selling the subject products to grocery chains, club stores, convenience stores, and delis. U.S. purchaser questionnaire responses, section III-4.

⁶⁴ The responding wholesale distributors reported selling the certain frozen fish fillets primarily to grocery stores and warehouses of retail supermarkets, but also to food service distributors and to the military. Ibid.

Table I-10**Certain frozen fish fillets: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 2003-08**

Item	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
U.S. processors' shipments	140,617	136,700	140,929	136,292	116,037	114,703
U.S. imports from --						
Vietnam	19,689	31,349	32,548	53,531	46,728	53,305
Other countries	1,176	2,499	8,962	30,870	39,863	44,129
Total imports	20,865	33,848	41,510	84,401	86,591	97,434
Total U.S. consumption	161,482	170,548	182,439	220,693	202,628	212,137
Value (\$1,000)						
U.S. processors' shipments	338,409	358,601	375,936	392,564	334,755	330,657
U.S. imports from --						
Vietnam	24,228	43,150	35,258	72,872	67,606	78,559
Other countries	1,775	4,169	13,686	54,159	72,121	77,823
Total imports	26,003	47,319	48,944	127,031	139,727	156,382
Total U.S. consumption	364,413	405,920	424,880	519,595	474,482	487,039
Note.— Because of rounding figures may not add to the totals shown.						
Note.— Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa or tra fillets. Data for nonsubject fillets include frozen catfish, basa, or tra fillets.						
Source: Compiled from data submitted in response to Commission questionnaires (imports from Vietnam (reported as exports to the United States by VASEP)), from official Commerce statistics (imports from all other sources), and from USDA/NASS data (U.S. processor shipment quantities and unit values); U.S. processor shipment values estimated using USDA/NASS quantities and unit values.						

Table I-11

Certain frozen fish fillets: Total U.S. consumption and market shares, 2003-08

Item	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
Apparent U.S. consumption	161,482	170,548	182,439	220,693	202,628	212,137
Value (1,000 dollars)						
Apparent U.S. consumption	364,413	405,920	424,880	519,595	474,482	487,039
Share of quantity (percent)						
U.S. processors' U.S. shipments	87.1	80.2	77.2	61.8	57.3	54.1
U.S. imports from -- Vietnam	12.2	18.4	17.8	24.3	23.1	25.1
Other countries	0.7	1.5	4.9	14.0	19.7	20.8
Total imports	12.9	19.8	22.8	38.2	42.7	45.9
Share of value (percent)						
U.S. processors' U.S. shipments	92.9	88.3	88.5	75.6	70.6	67.9
U.S. imports from-- Vietnam	6.6	10.6	8.3	14.0	14.2	16.1
Other countries	0.5	1.0	3.2	10.4	15.2	16.0
Total imports	7.1	11.7	11.5	24.4	29.4	32.1
<p>Note.-- Because of rounding, figures may not add to the totals shown.</p> <p>Note.-- Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa or tra fillets. Data for nonsubject fillets include frozen catfish, basa, or tra fillets.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires (imports from Vietnam (reported as exports to the United States by VASEP)), from official Commerce statistics (imports from all other sources), and from USDA/NASS data (U.S. processor shipment quantities and unit values); U.S. processor shipment values estimated using USDA/NASS quantities and unit values.</p>						

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

U.S. CHANNELS OF DISTRIBUTION

The reporting U.S. processors of frozen catfish fillets, U.S. importers of frozen basa and tra fillets from Vietnam, and U.S. importers of certain frozen fish fillets from nonsubject countries reported their annual U.S. shipment quantities of the subject products to three specified categories of customers during 2003-08.¹ The shares of the reported shipment quantities to total reported shipments are shown by country and customer category in table II-1.

As seen in table II-1, the largest customer category by far was food service distributors for all direct shipments from U.S. processors and importers of the domestic and imported certain frozen fish fillets during 2003-08, followed by direct shipments to “other” customers,² and lastly, by only U.S. processors, direct shipments to restaurants.³ As noted in Part I, food service distributors generally sell to restaurants, where consumers purchase the vast majority of the certain frozen fish fillets.⁴

U.S. MARKET CHARACTERISTICS

Supply of certain frozen fish fillets to the U.S. market during 2003-08 was provided primarily by U.S. processors of the domestic frozen catfish fillets and by imported frozen basa and tra fillets from Vietnam and frozen catfish, basa, and tra fillets from China. U.S. processors’ domestic shipments fluctuated but decreased, beginning in 2006 and through the rest of the period, while U.S. imports of the frozen basa, tra, and catfish fillets, including that from Vietnam and China, increased during 2003-08. Some imports of the frozen basa and tra fillets were mislabeled as other types of whitefish for periods during 2003-08, but as discussed in Part I the firms responsible were prosecuted.

A close relationship exists between the catfish farmers and processors of frozen catfish fillets; the farmers sell most of their live catfish to the processors and many farmers and processors are related by ownership or other arrangements. As a result, U.S. seasonal supply and demand factors affecting live catfish and frozen catfish fillets, respectively, and changes in economy-wide and sectoral activity affect both the U.S. farmer and processor.

U.S. processors, which use exclusively live U.S. farm-raised catfish as their major input, have faced increasing purchase prices of such catfish during 2003-08, as catfish farmers’ costs, especially for feed, increased during 2003-08, particularly during 2007-08. Some catfish farmers have not been able to increase the selling price of their live catfish sufficiently to cover the increased costs and have reduced or stopped producing live catfish. This reduced the supply of live farm-raised catfish to the processors during much of 2003-08.⁵ In addition, U.S. processors of frozen catfish fillets have been merging recently, such that the industry has become more concentrated with fewer suppliers.

¹ U.S. producer and importer questionnaire responses, sections II-11 and II-8, respectively.

² These “other” customers were described by U.S. processors and importers as grocery chains, retail stores, and warehouse clubs. *Ibid.*

³ This distribution is similar to that reported during the original investigation. Original staff report, p. II-1.

⁴ Domestic interested parties asserted that certain frozen fish fillets are sold primarily to food service (e.g., restaurants) and the remainder to grocery stores. Hearing transcript, p. 85 (Rhodes and Renfroe).

⁵ U.S. producer questionnaire responses, section IV-22, and USDA data for live farm-raised catfish discussed in Part V.

Table II-1

Certain frozen fish fillets: Channels of distribution for domestic product and U.S. imports sold in the U.S. market (as a share of total shipments), 2003-08¹

Item	2003	2004	2005	2006	2007	2008
Share of quantity (percent)						
U.S. processors' U.S. shipments of frozen catfish fillets to--						
Food service distributors	71.5	71.6	70.9	71.7	70.4	72.9
Restaurants	9.4	9.3	10.2	9.7	10.5	10.2
Other customers (grocery/retail/warehouse)	19.1	19.1	18.9	18.5	19.1	16.9
Total	100.0	100.0	100.0	100.0	100.0	100.0
Importers' U.S. shipments of frozen basa and tra fillets from Vietnam to--						
Food service distributors	***	***	***	***	***	***
Restaurants	***	***	***	***	***	***
Other customers (grocery/retail/warehouse)	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' U.S. shipments of certain frozen fish fillets from all other countries to--						
Food service distributors	***	***	***	***	***	***
Restaurants	***	***	***	***	***	***
Other customers (grocery/retail/warehouse)	***	***	***	***	***	***
Total	***	***	***	***	***	***
Total U.S. shipments to--						
Food service distributors	71.7	72.7	72.3	74.0	73.6	76.6
Restaurants	9.4	8.9	9.7	8.9	9.1	8.2
Other customers (grocery/retail/warehouse)	19.0	18.3	18.0	17.0	17.3	15.2
Total	100.0	100.0	100.0	100.0	100.0	100.0
¹ All of the reported U.S. shipments of responding U.S. processors and importers involved only U.S. commercial shipments, which are shown in the table. Note.--Due to rounding, numbers may not add to totals. Source: Compiled from data submitted in response to Commission questionnaires.						

U.S. demand for certain frozen fish fillets, a perishable consumer product,⁶ is driven largely by consumer preferences, which, in turn, are affected by consumer demand for other whitefish, in particular, tilapia. The demand relationship between certain frozen fish fillets and frozen fillets of other whitefish may be some combination of substitution and complementarity, the latter due to reported consumer preference for variety.⁷ U.S. demand for certain frozen fish fillets increased during 2003-08 and

⁶ Certain frozen fish fillets have a shelf life of approximately six months. E-mail from ***.

⁷ *** (importer and wholesale distributor) and *** (grocery store chain) U.S. purchaser questionnaire responses, sections IV-3 and III-8, respectively.

generally is expected to increase in the future, but a number of firms expect demand to remain unchanged in the future.⁸

Substitution in demand between domestic frozen catfish fillets and frozen basa and tra fillets, including those from Vietnam may have decreased somewhat in the U.S. market during the past few years. U.S. processors asserted that the domestic and imported certain frozen fish fillets from Vietnam are substitutable.⁹ On the other hand, there has been an increased emphasis on labeling requirements¹⁰ and an asserted increase in consumer awareness of differences in taste and texture between these domestic and imported products.¹¹ U.S. demand in parts of the southern United States reportedly exhibit strong regional preference for the domestic frozen catfish fillets. In addition, “Buy America” laws (military) and preferences may enhance demand for the domestic frozen catfish. On the other hand, imports of frozen catfish fillets, particularly from China, are the same species as domestic frozen catfish fillets and may be the most similar import product to the domestic product. However, health concerns about the Chinese catfish may affect, at least somewhat, the degree to which these two sources of frozen catfish fillets compete in the U.S. market.¹²

Twelve of the 26 responding U.S. purchasers of certain frozen fish fillets reported purchasing the imported frozen basa and/or tra from Vietnam prior to the August 2003 application of antidumping duty orders on the subject product from Vietnam.¹³ Three of these 12 firms indicated that they have not changed their purchase patterns since August 2003, 4 firms indicated that they discontinued or reduced their purchases due to the antidumping duty order, and 5 firms indicated that they changed their purchase pattern for other reasons.¹⁴

⁸ U.S. producer, importer, and purchaser questionnaire responses, sections IV-15a/IV-16a, III-20a/III-21a, and III-11a/III-12a, respectively.

⁹ U.S. producer questionnaire responses, section IV-11.

¹⁰ The Farm Security and Rural investment Act of 2002 established catfish labeling rules and country-of-origin labeling (COOL) requirements; the latter, which also requires the fish to be labeled wild or farm-raised, applies to products sold in retail stores, but exempts food service establishments. Arkansas, Louisiana, and Mississippi have instituted state labeling laws that are enforced at the restaurant level. Hearing transcript, p. 33 (Renfroe) and domestic interested parties’ prehearing brief, exhibit 8.

¹¹ *** purchaser questionnaire response, section III-9 and *** and *** purchaser questionnaire responses, sections III-36 and IV-4.

¹² In the spring of 2007, the U.S. Food and Drug Administration blocked shipments of several types of seafood from China, including catfish, following laboratory tests indicating the presence of drug residues, mostly cancer-causing antimicrobials and certain banned antibiotics. In addition, Alabama, Louisiana, and Mississippi previously banned sales of Chinese catfish in these states after antibiotic traces were found in specimens in 2006 and 2007. *The 2007 Farm Bill: Policy Options and Consequences—Catfish Policy*, Terrill Hanson and J. Corey Miller, Mississippi State University, February 2007.

¹³ U.S. purchaser questionnaire responses, section II-3.

¹⁴ One of these five firms, ***, provided additional comments. According to the firm, it sells ***, but its purchases of the Vietnamese product have declined because the availability of the Vietnamese basa has declined as it has been increasingly replaced by swai (tra).

Information on Suppliers of Certain Frozen Fish Fillets

U.S. purchasers were requested to provide information on their suppliers of certain frozen fish fillets during 2003-08. Their responses are summarized in the following discussion.

Purchasers were requested to identify the number of suppliers that they contact in making a purchase of certain frozen fish fillets.¹⁵ Of the 26 purchasers responding, the food service distributors reported contacting from 1 to 10 or more suppliers; the wholesale distributors reported contacting from 1 to 20 suppliers; the restaurants reported contacting 1 to 4 suppliers; and the grocery stores reported contacting 1 to 6 suppliers.

Purchasers were requested to indicate if their purchases of certain frozen fish fillets involved negotiations with their suppliers.¹⁶ Of the 26 purchasers responding, 10 indicated no and the remaining 16 indicated that they negotiate with their suppliers. Negotiations include factors such as price, quantity, delivery schedules, timeliness, and product specifications; several of the firms specifically indicated that they do not share competing prices while none of the responding purchasers reported quoting competing prices. U.S. market prices of domestic frozen catfish fillets, imported frozen basa and tra fillets from Vietnam, and imported certain frozen fish fillets from third countries are available daily by subscription from Uner Barry.¹⁷

Purchasers were requested to indicate if they vary purchases of certain frozen fish fillets from a given supplier within a specific time period based on the price offered during that period.¹⁸ Of the 26 purchasers responding, 18 indicated no and 8 indicated yes. One of the latter eight purchasers, ***, also provided the following explanation: “The imported products are not as subject to seasonal fluctuations, whereas, for domestic products, we will buy more aggressively during periods of high supply.”

Purchasers were asked if they changed suppliers of certain frozen fish fillets since 2003.¹⁹ Of the 26 firms responding, 18 indicated no and 8 indicated yes. The latter eight purchasers reported dropping a total of five suppliers and adding a total of four suppliers. Purchasers reported dropping suppliers because the suppliers no longer carried the certain frozen fish fillets or the suppliers went out of business. Purchasers reported adding suppliers to obtain additional product lines or for risk management purposes.

Purchasers were asked if they were aware of any new suppliers of certain frozen fish fillets, either domestic or foreign, since 2003, and whether they expected new suppliers to enter the market in the future.²⁰ On the question of any new suppliers since 2003, 18 of the 25 responding purchasers reported no and 7 reported yes. The new suppliers cited by the latter seven purchasers were typically new to the responding firm, not necessarily new in the market, or the suppliers began selling additional products (specifically cited were frozen tra fillets from Vietnam and Chinese certain frozen fish fillets). On the question of expected new suppliers in the future, 19 of the 24 responding purchasers reported none and 5 reported that they expected new suppliers in the market as a consequence of the natural “supplier churn” in the market. In addition, one of the latter five purchasers, ***, asserted that, as tra gains recognition, more suppliers will pick up this item.

¹⁵ U.S. purchaser questionnaire responses, section III-21.

¹⁶ U.S. purchaser questionnaire responses, section III-22a.

¹⁷ Domestic interested parties’ prehearing brief, p. 61, fn. 249. These prices are gathered on a survey basis and considered a reliable indicator of price trends, although price levels of specific sales transactions may differ from the price levels reported. Staff telephone interview with ***.

¹⁸ U.S. purchaser questionnaire responses, section III-22b.

¹⁹ U.S. purchaser questionnaire responses, section III-23.

²⁰ U.S. purchaser questionnaire responses, section III-24.

Purchasers were requested to indicate whether they required their suppliers of certain frozen fish fillets to become certified or prequalified.²¹ Six of the 26 purchasers responded no and 20 firms responded yes. These latter 20 firms reported that they require one or more of the following from their suppliers to be certified: (1) adherence to purchaser specifications, (2) independent product and plant inspections, (3) a valid HACCP plan,²² (4) adherence to all federal and local guidelines regarding weights, measure, and food safety, and (5) passing microbiological testing. The reported time period for certification ranged from two days/several orders to one year and the factors considered were product quality, service, reliability, availability, product consistently meets purchaser specifications, and price competitiveness.

Purchasers were also requested to report if they had decertified any suppliers of certain frozen fish fillets or any suppliers failed to become certified since 2003.²³ Twenty-three of the 25 responding purchasers responded no and 2 (both food service distributors) responded yes and provided additional comments. *** reported that “when the FDA established the auto detention list regarding products from China, any plants producing *Ictalurus catfish* in that country were decertified for sales to ***.” *** reported that “*** were decertified because they mislabeled Vietnamese swai as the more expensive basa. In addition, *** was decertified because its imported certain frozen fish fillets from Vietnam tested positive for fluroquinolones; any time this type of incident occurs, the supplier is decertified until such time as they can verify corrective actions and procedural changes to avoid the problem in the future.”

SUPPLY AND DEMAND CONSIDERATIONS²⁴

U.S. Supply²⁵

U.S. Production

Based on available information, U.S. processors may have had the ability to respond to changes in U.S. demand with substantial changes in the quantity of shipments of U.S.-processed certain frozen catfish fillets to the U.S. market during 2003-08. Factors contributing to this degree of responsiveness of supply are discussed later in this section. Due to some seasonal supply factors, this ability to increase shipments may be reduced somewhat in the summer; U.S. live farm-raised catfish supply tends to be the lowest during the summer months when the amount of food-size fish in the ponds is lower and feeding is the heaviest; in addition, the fish can be off-flavor during the summer due to various factors such as algae growth, which delays the fish harvest until the fish flavor improves.²⁶ Any processing shortfall during the summer months may be offset by the availability of U.S. processors’ inventories of domestic frozen

²¹ U.S. purchaser questionnaire responses, section III-25.

²² Hazard Analysis and Critical Control Point systems were developed by the U.S. FDA and the U.S. Agriculture Department in 1997 to ensure food safety. U.S. FDA monitors the application of this system for seafood, which involves seafood processors, repackers, and warehouses, both domestic and foreign exporters to this country. *Critical Steps Toward Safer Seafood*, U.S. FDA, February 1999, <http://www.cfsan.fda.gov/~dms/fdsafe3.html>, retrieved April 14, 2009.

²³ U.S. purchaser questionnaire responses, section III-27.

²⁴ Short-run effects discussed in the supply and demand sections refer to changes that could occur within 12 months, unless otherwise indicated.

²⁵ Data on U.S. frozen catfish fillet production, production capacity, capacity utilization, inventories, and exports are shown in detail in Part III.

²⁶ E-mail from ***.

catfish fillets;²⁷ in addition, customers' inventories may also mitigate somewhat any processing shortfall during the summer.

A key factor hindering the U.S. processors' ability to increase shipments has been a decreasing supply of U.S. live farm-raised catfish during 2003-08. U.S. processors were requested to comment in their questionnaire responses on the effects of price changes in raw materials and other factors on the price and quantity of their frozen catfish fillets during 2003-08 and anticipated in the future.²⁸ U.S. purchasers were also requested to identify factors affecting supply of domestic frozen catfish fillets during 2003-08.²⁹ Fifteen U.S. processors and 9 U.S. purchasers provided useable comments.³⁰ The responding firms generally cited increased costs of U.S. catfish farmers and processors of the frozen catfish fillets that have largely led to higher prices of both the live and processed catfish, but has led to a decrease in quantity supplied of both. The U.S. processors also generally asserted that the supply of domestic frozen catfish fillets will decrease in the future.³¹

U.S. processors testified that catfish ponds have a useful life of 10-15 years. Rebuilding the ponds entails a substantial cost, reportedly similar to the cost of converting the ponds to row crops, such that catfish farmers have a long-term commitment when they rebuild their ponds.³² The witnesses also indicated that if the outlook for profits for catfish were bleak for the next two or three years, the catfish farmers would convert to row crops such as soybeans; this conversion reportedly already has taken place in the Mississippi delta.³³

Water-surface acres of U.S. catfish ponds during 1993-2008, and projected for 2009, are shown in figure II-I. As shown in the figure, U.S. pond acreage generally increased from 152,140 acres in 1993 to a peak of 196,760 acres in 2002, and since then has declined steadily to a projected period low of 146,900 acres in 2009, or a decrease of 25.3 percent from the peak. At least some of this decline in pond acreage likely occurred as catfish ponds that had reached the end of their life cycle were switched to row crops.

Industry capacity

Based on responses of the U.S. processors of domestic frozen catfish fillets, total reported annual capacity utilization for frozen catfish fillets fluctuated but decreased during 2003-08, by a total of 2.2 percentage points. The 7.5 percentage point improvement in capacity utilization during 2008 from that in 2007 occurred as production increased somewhat, but capacity fell by 8.0 percent from the level in 2007 and ended at a period low of 137.1 million pounds in 2008. The reported annual levels of capacity utilization between 63.3 and 76.1 percent indicate that U.S. processors of frozen catfish fillets had a substantial amount of available capacity to increase production of frozen catfish fillets in the short run in the event of a price change during 2003-08, provided that the supply of U.S. live farm-raised catfish were available.

²⁷ Domestic interested parties' prehearing brief, p. 60, fn. 242.

²⁸ U.S. producer questionnaire responses, sections IV-14, IV-21, and IV-22.

²⁹ U.S. purchaser questionnaire responses, section III-14.

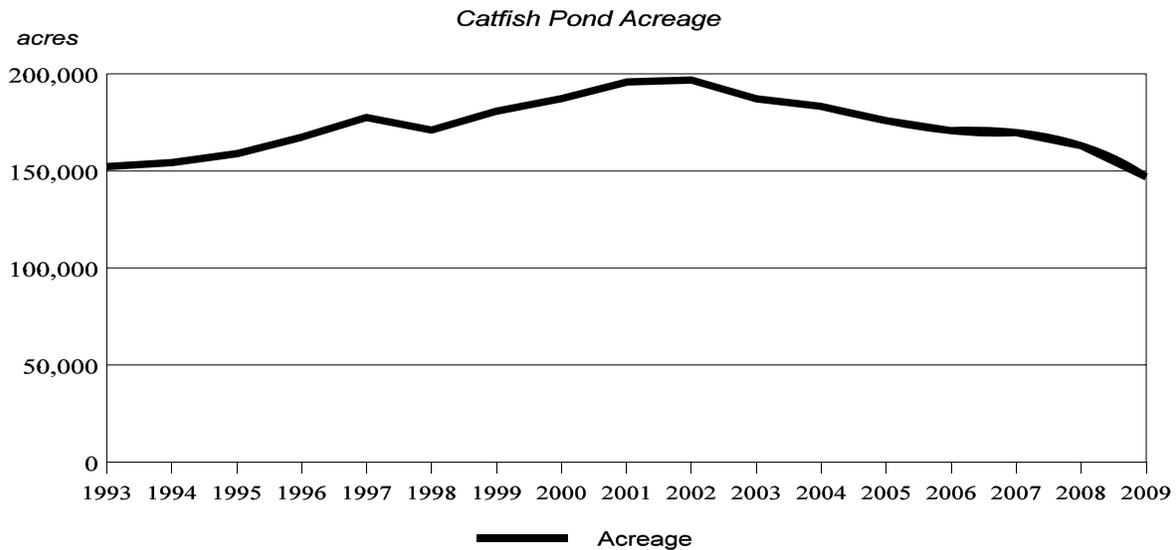
³⁰ Fourteen other U.S. purchasers indicated that there were no changes in factors affecting supply of domestic frozen catfish fillets since 2003.

³¹ The specific comments of the responding firms are shown in appendix E.

³² Hearing transcript, pp. 77-78 (Lowery and Rhodes) and pp. 104-105 (Lowery).

³³ Hearing transcript, p. 105 (Lowery).

Figure II-1
U.S. catfish pond acreage: U.S. catfish farmers' total pond acreage, annually, 1993-2008 and projection for 2009



Source: NASS, USDA, Monthly Catfish Report, various issues, <http://usda.mannlib.cornell.edu/MannUsda/ViewDocumentInfo.do?documentID=1015>, retrieved May 7, 2009.

Inventory levels

U.S. processors reported their end-of-period inventory quantities of frozen catfish fillets, which fluctuated but increased during 2003-08 in absolute amounts and as a share of total shipments.³⁴ End-of-period inventories increased from approximately 7.5 million pounds, or 7.1 percent of total shipments, in 2003 to approximately 11.8 million pounds, or 12.5 percent of total shipments, in 2008. The flexibility to use inventories to respond to price changes in the short run may be restrained to the extent that the U.S. processors' inventories consist of products that are not required by the increased demand, or consist of products already committed to customers in the U.S. market. U.S. processors generally sell their frozen catfish fillets on a spot basis, such that it is likely that the reported inventories were available to contribute to their supply flexibility in the short run.

Alternate markets

U.S. processors of frozen catfish fillets reported no substantial exports during 2003-08. As a result, the lack of exports does not enhance the supply flexibility of U.S. processors.

Production alternatives

U.S. processors reported producing other products on their production equipment used to produce frozen catfish fillets.³⁵ Such other products included fresh catfish fillets and other catfish products; some of the other catfish products could be considered by-products and therefore these latter

³⁴ U.S. processors shipped their frozen catfish fillets only on a commercial basis to U.S. customers, as a result, U.S. commercial shipments constituted total shipments.

³⁵ Some processors reported also processing other types of seafood such as salmon, tilapia, and shrimp.

products would not involve switching production between frozen catfish fillets and these products. U.S. processors produce approximately twice as much frozen catfish fillets as fresh catfish fillets. The ability of the U.S. processors to shift production between frozen catfish fillets and fresh catfish fillets, as well as other types of fish, enhances their supply responsiveness in the short run in response to relative price changes between frozen catfish fillets and some combination of fresh catfish fillets and other types of fish.

Imports from Vietnam

U.S. imports of frozen basa and tra fillets from Vietnam increased by a total of 170.7 percent in quantity during 2003-08.³⁶ However, based on publically available information, staff believes that Vietnamese processors have the capability to respond to changes in demand with relatively large changes in shipments of the Vietnamese frozen basa and tra fillets to the U.S. market.³⁷ Because only one Vietnamese producer provided a questionnaire response to the Commission, discussion of the specific factors that contribute to the responsiveness of supply would not be meaningful.

U.S. importers of certain frozen fish fillets were requested to discuss the future availability of the Vietnamese certain frozen fish fillets in the U.S. market.³⁸ Eleven U.S. importers responded, with 3 indicating an increase,³⁹ 2 indicating a decrease, 5 indicating no change, and 1 indicating that it did not know. Four of the five firms reporting a change in the future availability provided the following comments. The *** reporting importer of frozen basa and tra fillets from Vietnam asserting an increase, ***, stated that--

“Our company anticipates an “increase” in supply in the U.S. market of certain frozen fish fillets imported from Vietnam. The reason for increase is that the fish fillets have become well known as a whitefish fillet item to the seafood commodity trade. Because of its flavor profile and ease of cooking methods, many consumers and restaurants are finding interest in the fillets. In addition, wild whitefish species have been drastically reduced, therefore aquaculture species are filling the void.”

Another importer asserting an increase, ***, stated that “with the number of shipper reviews achieving zero recently, we have seen a significant increase in product availability and downward price pressure.” The remaining importer asserting an increase, *** ***, stated that “within 2-3 years U.S. consumption of the frozen basa and tra fillets will increase at least 10 percent.” One of the importers asserting a decrease, ***, stated that--

“The U.S.D.A. has signaled its intent to include the Pangasius species in its definition of “catfish,” which is contrary to the definition established in the 2002 Farm Bill.”

³⁶ U.S. imports of frozen basa and tra fillets from Vietnam increased steadily from 19.7 million pounds in 2003 to a period high of 53.5 million pounds by 2006, for a total increase of 171.9 percent, before fluctuating and ending at 53.3 million pounds in 2008.

³⁷ A U.S. purchaser, ***, reported that harvest cycles for imported Pangasius and catfish affect availability and the market several times a year; the duration would be more than two and less than four months beginning around early April to mid August. U.S. purchaser questionnaire response, III-16.

³⁸ U.S. importer questionnaire responses, section III-16.

³⁹ ***, were among the three importers expecting an increase in U.S. imports of frozen basa and tra fillets from Vietnam in the future.

The remaining importer reporting a future decrease, ***, cited market conditions and the economy as reasons.

Imports from Nonsubject Countries

U.S. imports of certain frozen fish fillets from countries other than Vietnam increased markedly from less than 1.2 million pounds in 2003 to more than 44.1 million pounds in 2008, or by 3,651.6 percent. China was the leading nonsubject import source by far during 2003-08, followed by 16 other countries, including, in descending order, Thailand, Cambodia, and Indonesia as the next largest nonsubject country suppliers of certain frozen fish fillets.

U.S. processors of frozen catfish fillets and U.S. importers of the frozen catfish, basa, and/or tra fillets were requested to discuss how the availability in the U.S. market of certain frozen fish fillets from nonsubject countries changed during 2003-08.⁴⁰ Eleven of the 15 responding U.S. processors and 7 of the 11 responding importers indicated that the availability of certain frozen fish fillets from nonsubject countries increased in the U.S. market during 2003-08. Two U.S. processors and the remaining 4 U.S. importers indicated that such availability had not increased,⁴¹ and the 2 remaining U.S. processors did not know how such imports changed in the U.S. market. Of the 18 responding firms that indicated an increase, a total of 10 firms identified frozen catfish fillets from China, whereas the remaining firms did not identify specific countries with types of certain frozen fish fillets.

U.S. processors of frozen catfish fillets and U.S. importers of certain frozen fish fillets were also asked to identify the top three nonsubject country sources of certain frozen fish fillets to the U.S. market during 2003-08.⁴² As seen in the tabulation of responses on the following page, China was identified most frequently as the largest nonsubject country supplier of certain frozen fish fillets to the U.S. market during 2003-08, followed in descending order by Thailand and Cambodia.

U.S. processors of frozen catfish fillets and U.S. importers of certain frozen fish fillets were also asked to comment on any anticipated changes in the future in the availability of imported certain frozen fish fillets from nonsubject countries to the U.S. market.⁴³ Nine U.S. importers responded, but no U.S. processors responded. Four of the nine responding U.S. importers reported no expected future changes, whereas the remaining five U.S. importers reported that they expected changes in the future, either increased availability from non-Vietnamese sources (such as Thailand, Philippines and Cambodia)⁴⁴ or decreased availability as a result of changes in the U.S. inspection regime.

⁴⁰ U.S. producer and importer questionnaire responses, sections IV-23a and III-17a, respectively.

⁴¹ One of these four importers, ***, asserted that “the increase in transshipped product from Vietnam via Thailand to avoid duty has put price pressure on the “real” Vietnam duty-paid products. Vietnam may be the only real source for the product, because other countries do not have production capacity to meet in-country demand.”

⁴² U.S. producer and importer questionnaire responses, sections IV-23b and III-17b, respectively.

⁴³ U.S. producer and importer questionnaire responses, sections IV-23c and III-17c, respectively.

⁴⁴ One of the importers indicating increased future availability of certain frozen fish fillets from nonsubject countries, ***, asserted that transshipped product will continue to increase until action is taken to halt such trade.

Number of responses for each nonsubject country source			
Country	U.S. processors	U.S. importers	Total
Top sources:			
China ¹	10	3	13
Thailand	2	3	5
Central America	-	1	1
Second largest sources:			
Cambodia	3	1	4
China ¹	2	3	5
Mexico	2	-	2
Thailand	2	1	3
Third largest sources:			
Cambodia	1	1	2
Central America	1	-	1
China ¹	1	-	1
Mexico	2	-	2
Indonesia	-	1	1
Malaysia	-	1	1
¹ Many firms specified frozen catfish fillets from China.			

U.S. Demand

Demand for certain frozen fish fillets, as measured by annual apparent U.S. consumption, fluctuated during 2003-08, but increased by 31.4 percent on a quantity basis during this period.

Overall U.S. demand for certain frozen fish fillets, a consumer product, likely moves with general economic activity in the U.S. economy and with demand in the sectors where it is purchased by consumers, primarily the restaurant and grocery store sectors. U.S. demand for certain frozen fish fillets also exhibits some seasonal variation, as demand is reportedly high during the Lenten pre-Easter season and low during the holiday months of November and December.⁴⁵ Eight of 16 responding U.S. processors also reported seasonality in their operations. Lent was reportedly the high-point in demand for certain frozen fish fillets, then sales decline after May until September and October, but then fall off in November and December as the low point in demand. The remaining 8 processors reported that no fluctuations exist.⁴⁶

⁴⁵ E-mail from ***. In addition, three U.S. purchasers identified the six weeks of Lent as a period of increased demand for all fish, including certain frozen fish fillets. U.S. purchaser questionnaire response, section III-16.

⁴⁶ U.S. producer questionnaire responses, section II-9.

Business Cycles⁴⁷

U.S. real gross domestic product (GDP) increased by 2.5 percent in 2003, by 3.6 percent in 2004, 3.1 percent in 2005, 2.9 percent in 2006, 2.2 percent in 2007, and 1.1 percent in 2008.⁴⁸ Real GDP is forecast to decrease by 2.8 percent in 2009 and increase by 1.9 percent in 2010.⁴⁹

Nominal and real quarterly values of U.S. sales at full-service restaurants and grocery stores during January 2003-December 2008 are shown in figure II-2.⁵⁰ Quarterly sales values for both types of retailers fluctuated but generally increased during 2003-08, but the nominal sales figures for both types of retailers increased more than the comparable real sales figures during this period.

Nominal sales values at full-service restaurants increased from \$12.1 billion during January-March 2003 to \$16.5 billion during October-December 2008, or by a total of 36.7 percent; real sales values, however, increased by a total of only 12.0 percent during this period. Quarterly real sales values at the restaurants reached a period high of \$13.7 billion during April-June 2007 and then fluctuated but generally decreased to end at \$12.8 billion during October-December 2008, or a decrease of a total of 6.9 percent from the period high during this period.⁵¹ Domestic interested parties asserted that, beginning in November 2008 and through the middle of January 2009, sales of their domestic frozen catfish fillets to restaurant chains declined sharply.⁵² In addition, domestic interested parties indicated that the National Restaurant Association reported restaurant sales were off by about 20 percent. Domestic interested parties also asserted that since mid-January 2009 their sales to restaurants are back to normal.⁵³

Nominal sales values at grocery stores increased from \$34.4 billion during January-March 2003 to \$44.6 billion during October-December 2008, or by a total of 29.5 percent; real sales values, however, increased by a total of only 6.1 percent during this period. Quarterly real sales values at grocery stores reached a period high of \$35.7 billion during October-December 2007 and then fluctuated but generally

⁴⁷ U.S. purchasers were requested to comment whether the market for certain frozen fish fillets was subject to business cycles. Twenty-two firms provided useable responses regarding demand; 19 firms reported no and the remaining three firms provided comments regarding seasonality that were discussed above. U.S. purchaser questionnaire responses, section III-16.

⁴⁸ For 2003-07, *Economic Report of the President*, U.S. Government Printing Office, Table B-13, p. 300; and for 2008, *Blue Chip Economic Indicators*, Aspen Publishers, Inc., Vol. 34, No. 5, May 10, 2009, p. 2. Real GDP grew at annual rates in the first two quarters of 2008, but declined in the final two quarters; in 2008, real GDP changed at the following annual rates from the previous quarter: 0.9 percent increase in the first quarter, 2.8 percent increase in the second quarter, -0.5 percent decrease in the third quarter, and -6.3 percent decrease in the fourth quarter (*Blue Chip Economic Indicators*, Aspen Publishers, Inc., Vol. 34, No. 5, May 10, 2009, p. 5). Real GDP decreased -5.7 percent (annual rate) in the first quarter of 2009 from the prior quarter (<http://www.bea.gov/newsreleases/national>, retrieved May, 29, 2009).

⁴⁹ *Blue Chip Economic Indicators*, Aspen Publishers, Inc., Vol. 34, No. 5, May 10, 2009, pp. 2-3.

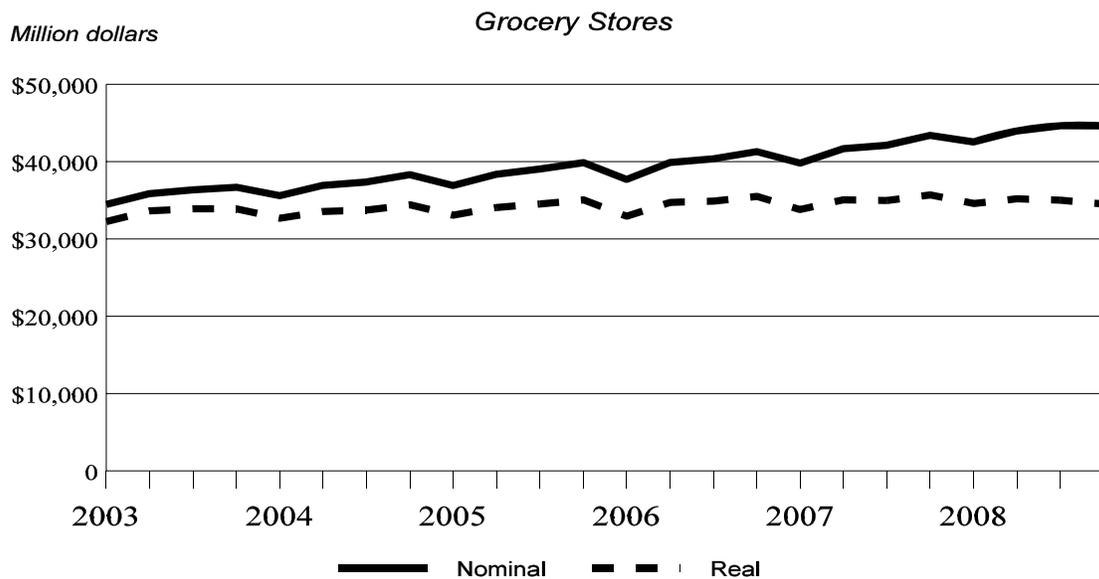
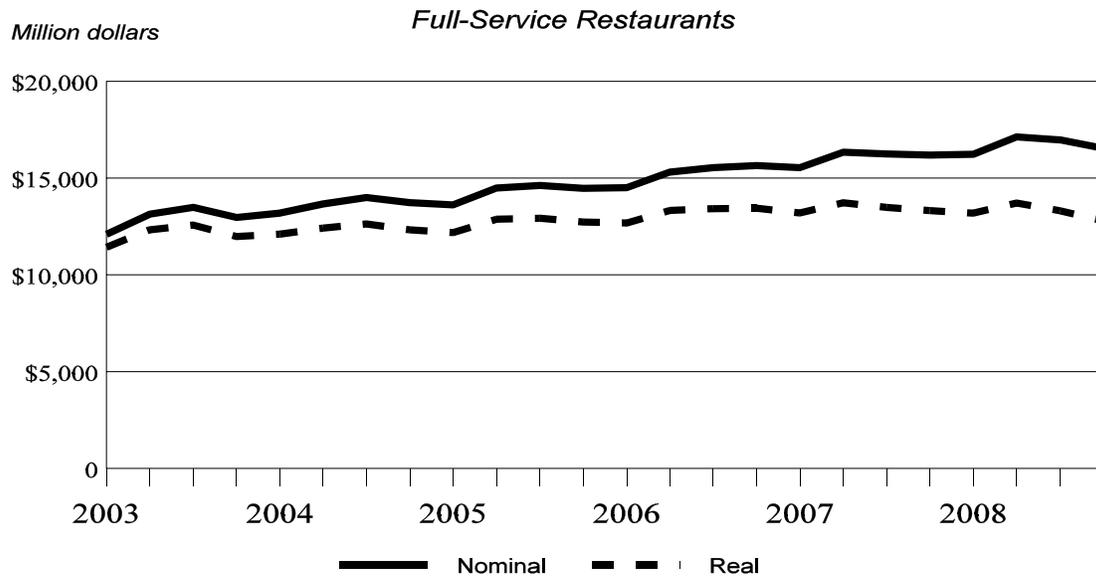
⁵⁰ Nominal values were deflated by the quarterly price index for the component of Gross Domestic Product involving personal consumption expenditures for food in the nondurable goods category reported by the U.S. Bureau of Economic Analysis (BEA). The base year for the price index was 2000=100; as a result, real quarterly values are in 2000 dollars, with the impact of inflation removed or minimized from the food retailers' sales figures. Quarterly nominal sales values were calculated as simple averages of monthly nominal sales values reported by BEA.

⁵¹ Comparing same-quarter real sales values of full-service restaurants during 2007-08 showed decreases from 2007 to 2008 in each quarter.

⁵² At least part of this decline may have been due to seasonal demand factors.

⁵³ Hearing transcript, pp. 75-76 (Rhodes and Walker).

Figure II-2
Sectoral U.S. sales values: Nominal and real U.S. sales values of full-service restaurants and grocery stores, by quarters, during January 2003-December 2008



Note.--Real values based on 2000=100.

Source: *Monthly Retail Trade Survey*, Census Bureau, DOC, <http://www.census.gov/mrts/www/data/excel/mrtssales92-09.xls>, retrieved March 24, 2009; and *Price Indexes for Gross Domestic Product*, Expanded Detail, Bureau of Economic Analysis, DOC, <http://www.bea.gov/national/nipaweb>, retrieved April 2, 2009.

decreased to end at \$34.5 billion during October-December 2008, 3.3 percent lower than the period high.⁵⁴

Questionnaire Responses Concerning Changes in U.S. Demand

U.S. processors, importers, and purchasers were requested to indicate whether U.S. demand for certain frozen fish fillets increased, decreased, fluctuated, or did not change since January 2003 and how they anticipate this demand will change in the future.⁵⁵ Responses were mixed regarding U.S. demand. Useable responses are summarized in the following tabulation.⁵⁶

U.S. demand changes for certain frozen fish fillets				
Types of firms	Number of firms responding			
	Increase	Decrease	Fluctuate	No change
	U.S. demand changes since January 2003			
U.S. processors ¹	3	2	1	1
U.S. importers	6	-	5	1
U.S. purchasers	12	3	4	5
Total	21	5	10	7
U.S. demand changes anticipated in the future				
U.S. processors ²	1	-	-	3
U.S. importers ³	6	-	2	1
U.S. purchasers	9	2	3	10
Total	16	2	5	14
¹ In addition, one other U.S. processor reported that it did not know how U.S. demand changed. ² In addition, two other U.S. processors reported that they did not know how U.S. demand would change in the future. ³ In addition, one other U.S. importer reported that it did not know how U.S. demand would change in the future.				

The majority of all questionnaire responses, led principally by purchasers, indicate that U.S. demand for certain frozen fish fillets has increased since January 2003, but the majority of responses for anticipated future U.S. demand, again led principally by purchasers, indicate a split between increased future demand and no change in future demand.

With regard to historical U.S. demand for certain frozen fish fillets, the responding firms that indicated increased demand cited a number of reasons, including a healthier food choice, increase in

⁵⁴ Comparing same-quarter real sales values of grocery stores during 2007-08 showed a decrease from 2007 to 2008 in only the fourth quarter, when real GDP contracted at an annual rate of 6.3 percent from the previous quarter.

⁵⁵ U.S. producer, importer, and purchaser questionnaire responses, sections IV-15a/IV-16a, III-20a/III-21a, and III-11a/III-12a, respectively.

⁵⁶ A number of U.S. processors responded only for the domestic frozen catfish fillets, which were not shown, because the question was referring to all certain frozen fish fillets and not just a particular species.

availability, affordability, mild tasting product continues to gain consumer acceptance, higher prices/tighter quotas for wild whitefish, increased marketing of the imported frozen basa and tra from Vietnam, and increased demand in the food service sector due to value pricing. The responding firms that indicated decreased demand cited lower pricing of substitutes, such as tilapia, selling price and availability, and low customer demand. The responding firms that indicated fluctuating demand cited reasons as price, availability, trade barriers, aquaculture cycles, regulatory compliance, and food safety scares. The responding firms that indicated no change in demand typically did not cite reasons except for importer ***, which stated “the dumping duty created hurdles to get the fish to the United States, so initially sales slowed, but naming guidelines changed the appeal of the fish.”

Concerning future U.S. demand for certain frozen fish fillets, the responding firms that anticipate increased future demand cited a number of reasons, including the concern that wild whitefish may not be as sustainable, the continuing growth of aquaculture throughout the world, healthier eating habits, better food safety, the economy will continue to drive consumers to lower cost items, and maturing of the baby-boom generation.⁵⁷ The responding firms that anticipate decreased future demand cited lower pricing of substitutes and legislative impediments of imported products via the 2008 Farm Bill will increase prices of all certain frozen fish fillets. The responding firms that anticipate fluctuating future demand cited several reasons including, perceived value of other products, availability of substitutes, population change, economic conditions, FDA regulations, price, and availability.⁵⁸ The responding firms that anticipate no change in demand typically did not cite reasons other than to note that flat sales were expected due to the economy.⁵⁹

Substitute Products

Based on available information, U.S. distributors, restaurants, grocery stores, and consumers are likely to respond to changes in the price of certain frozen fish fillets with small to moderate changes in their purchases of certain frozen fish fillets, such that U.S. demand may be somewhat price inelastic or price elastic. The main contributing factor to this level of responsiveness of demand is the existence of substitutes for certain frozen fish fillets, but also contributing may be the moderate cost share in that part of consumer food budgets where items are purchased with protein content in mind and/or the main course of a meal is considered. On the other hand, consumer preferences and “Buy America” policies/practices may tend to reduce the price elasticity of demand. In addition, because consumers reportedly like variety in their consumption of whitefish fillets, it is possible that the alternatives may also be complements to certain frozen catfish fillets.

Substitutes for certain frozen fish fillets

U.S. processors, importers, and purchasers were requested to comment on substitutes for certain frozen fish fillets in the U.S. market during 2003-08, and on any changes in substitutes during this

⁵⁷ One of the firms that reported that it anticipated future demand, ***, a food service distributor, provided the following comment: “Demand for Pangasius will grow as it becomes known as a stand-alone product with its own positive characteristics. Likewise, the demand for Chinese-grown catfish will increase as consumers discover it as a competitive alternative to domestic catfish. Domestic catfish growth is constrained by the limits of the aquaculture base and by the current economic crisis.”

⁵⁸ U.S. processor *** gave the following explanation for its anticipation of fluctuating demand: “The recession can affect future demand in ways we do not know at this time. Customers can reduce the frequency of dining out, and large buyers can go bankrupt. As a result, the market could be more volatile.”

⁵⁹ One U.S. processor that cited no future change in demand, ***, indicated that if live fish prices and other expenses increase too much, people will opt for other fish and/or for meat.

period.⁶⁰ Fourteen U.S. processors, six U.S. importers, and 23 U.S. purchasers provided useable responses for substitutes during 2003-08. Five of the responding U.S. processors, five responding importers, and 17 of the responding purchasers reported that no substitutes exist. The remaining nine U.S. processors, one importer, and six purchasers identified substitute products. The alternative products and the number of responses identifying the products are shown in the following tabulation.

Substitutes/alternatives for certain frozen fish fillets (Number of responses)				
Type of fish	U.S. processors	U.S. importer	U.S. purchasers	Total
Tilapia	9	1	6	16
Cod	1	-	3	4
Pollock	2	-	2	4
Flounder	-	-	2	2
Sole	1	-	1	2
Hoki	-	-	1	1
Orange roughy	-	-	1	1
Ponga	-	-	1	1
Whiting	-	-	1	1
Total	13	1	18	32
Note.—Some responding firms reported more than one alternative product.				

Tilapia was by far the most frequently cited alternative to certain frozen fish fillets, followed by cod, pollock, flounder, sole, and then the other whitefish identified above.⁶¹ Eight U.S. processors and two U.S. purchasers provided follow-up comments on the alternatives, especially concerning tilapia. These firms generally asserted that (1) tilapia, especially from China, is high-volume and low-priced, and (2) competition with the alternative whitefish can be intense, especially for sales to food service establishments.

U.S. purchasers were also requested to discuss to what extent prices of other types of frozen whitefish are relevant or used as leverage when negotiating prices and volumes of certain frozen fish

⁶⁰ U.S. producer, importer, and purchaser questionnaire responses, sections IV-11-12, III-11-12, and III-5-6, respectively.

⁶¹ U.S. processors, U.S. importers, and U.S. purchasers were also asked whether there were changes in substitutes for certain frozen fish fillets in the U.S. market during 2003-08 (U.S. producer, importer, and purchaser questionnaire responses, sections IV-12, III-12, and III-6, respectively). Ten U.S. processors, eight importers, and 23 purchasers provided useable responses. Six of the 10 responding processors and all of the responding importers and purchasers reported no changes. The four remaining U.S. processors cited increased volumes of tilapia, from China and South America, during 2003-08. One of these four U.S. processors, ***, reported that, as sales of tilapia increased, sales of domestic frozen catfish fillets have trended downward.

fillets.⁶² Of the 14 responding purchasers, 11 asserted that prices of these other whitefish are not used as leverage.⁶³

Six U.S. processors, 8 U.S. importers, and 24 U.S. purchasers provided useable responses concerning any anticipated changes in substitutes for certain frozen fish fillets in the future.⁶⁴ All of the responding firms reported that they anticipate no changes in substitutes in the future.

Substitution among various species/types of certain frozen fish fillets

U.S. purchasers were requested to discuss substitution among various species/types of certain frozen fish fillets.⁶⁵ U.S. processors and importers also commented on such substitutions in their responses to requests to discuss substitution between certain frozen fish fillets and alternative fish;⁶⁶ these latter comments also will be discussed here.

Frozen fillets of basa and tra versus frozen fillets of catfish.—Of the 24 responding purchasers, 20 asserted that these products were not substitutable for each other, whereas the 4 remaining purchasers asserted that they were substitutable.⁶⁷ Most of the 20 firms reporting no substitution cited labeling laws, but some also noted differences in taste and texture and differences in consumer preferences.⁶⁸

⁶² U.S. purchaser questionnaire responses, section III-8.

⁶³ The remaining 3 responding purchasers provided the following responses. ***, a wholesale distributor, reported that “market demand factors of price, quality, and regional preferences determine sales.” ***, a grocery chain, stated that “we have never utilized the market price of these items when negotiating price. Although the end use is similar, they are distinct products. In most cases, the expectation of variety on the part of the customer forces you to carry most of the products. If you were selecting only one or two to use, the leverage would be there. Since most are offering several of the products, the price of each is maximized against itself.” ***, a wholesale distributor, stated that “fish in the same price range (tilapia and pollock) affect negotiations.”

⁶⁴ U.S. producer, importer, and purchaser questionnaire responses, sections IV-13, III-13, and III-7, respectively.

⁶⁵ U.S. purchaser questionnaire responses, sections III-9 and III-10.

⁶⁶ U.S. producer and importer questionnaire responses, sections IV-11-13 and III-11-13, respectively.

⁶⁷ Two of the four purchasers asserting that these products are substitutes for each other made the following comments. ***, a restaurant, asserted that “the basa and tra fillets are similar to the catfish fillets when fried; it is hard to tell them apart.” ***, a grocery chain, asserted that “they are as substitutable as any other mild, whitefish fillet. For the end use in mind—frozen or refreshed fillets to the customer or for processor use in making value added items—catfish fillets are just as easily used as any other whitefish. The price of catfish also keeps it in line with basa or tra versus a product such as cod or haddock, which will be much more expensive.”

*** also indicated that, in recent years, Vietnamese production and exports have shifted from basa, which is considered to have better texture and flavor, to tra (swai), a faster growing alternative. According to ***, labeling and marketplace distinctions between basa and tra are the “biggest improvements” that have occurred in the U.S. market in recent years. *** purchaser questionnaire responses, sections I-7, III-36, and IV-6.

⁶⁸ One of these 20 responding purchasers, ***, a food service distributor, provided the following detailed comments.

“Basa and tra are milder than channel catfish. Catfish has an inherent “earthy” flavor that the catfish customer expects and is used to. The forced name change by the FDA to basa/swai has been a blessing. Basa is now a recognized name in the marketplace, and salesmen are able to sell basa on its own merits and attributes. The consumer no longer confuses it with domestic catfish and recognizes the value of this mild tasting, tender whitefish.”

Eight U.S. processors and two U.S. importers asserted that frozen fillets of basa and tra were substitutes for domestic frozen catfish fillets in the U.S. market.⁶⁹ Many of these firms reported that frozen fillets of basa and tra were priced lower than the domestic frozen catfish fillets and this put downward pressure on prices of the domestic product. Some reported that prices of the imported products were 35-40 percent less than prices of the domestic products and some indicated a \$1.00 per pound difference. On the other hand, ***, a U.S. purchaser stated that domestic frozen catfish fillets are priced lower than the imported frozen basa fillets from Vietnam, but the domestic fish are priced higher than the imported frozen tra fillets from Vietnam.⁷⁰

Frozen fillets of catfish from China versus frozen fillets of domestic catfish.—Although not specifically asked about this comparison, five U.S. processors, three U.S. importers, and two U.S. purchasers commented on the substitutability between these two different sources of catfish in the U.S. market during 2003-08. All of the responding firms asserted that the domestic frozen catfish fillets were substitutable for the imported frozen catfish fillets from China, although one of the responding purchasers, ***, a food service distributor, asserted that the domestic product is used and not substitutable when customer preferences, law, food safety concerns, or “Buy America” concerns dominate.

Frozen fillets of wild-caught catfish versus frozen fillets from farm-raised basa and tra.—All 23 responding purchasers indicated that these two products are not substitutable.⁷¹ Many of the firms cited limited quantities of wild-caught catfish. One of the responding purchasers, ***, a grocery chain, provided the following additional comment: “Flavor, texture, and quality characteristics are too inconsistent in this particular wild fish. The nature of this fish’s eating habits leads to off flavor (muddy) and soft texture. It is not a suitable substitute.”

Frozen fillets of wild-caught catfish versus frozen fillets from farm-raised catfish.—The same 23 purchasers responded, as above, and indicated that these two products were not substitutable, citing the same reasons as discussed above.⁷²

Cost Share

The cost share of certain frozen fish fillets relative to the overall consumer budget for food is likely low, but is larger based on that part of the food budget where protein content and the main course of a meal are considered.

SUBSTITUTABILITY ISSUES

The degree of substitution in demand between frozen catfish fillets produced in the United States and frozen basa and tra fillets imported from Vietnam depends upon such factors as relative prices, conditions of sales (order lead times, payment terms etc.), purchaser supply requirements, qualified status of supplier, and product differentiation. Product differentiation depends on factors such as the range of products (size and type of frozen fillets), quality (grade standards, defect rates, product consistency, etc.), consumer preference, taste and texture, availability, reliability of supply, product services, and the market

⁶⁹ U.S. producer and importer questionnaire responses, sections IV-11 and III-11, respectively.

⁷⁰ *** purchaser questionnaire response, section IV-9.

⁷¹ U.S. purchaser questionnaire responses, section III-10.

⁷² Ibid.

perception of these factors. Based on the reported information in this review, there appears to be at least moderate substitution in demand between domestic frozen catfish fillets and the frozen basa and tra fillets from Vietnam.

U.S. purchasers of certain frozen fish fillets were requested to indicate and explain if buying the domestic frozen catfish fillets is important to their firm.⁷³ Of the 26 responding purchasers, 15 indicated that buying the domestic product was important, whereas the remaining 11 purchasers indicated that this was not important. Four purchasers reported that purchases of the domestic products were required by law or regulation and, for the two firms reporting their affected purchase shares, ranged from 15 to 33 percent of their purchases of certain frozen fish fillets for this reason.⁷⁴ Seven purchasers plus two of the four purchasers cited in the previous sentence reported that purchases of the domestic product was not a matter of law or regulation but was preferred by their customers; based on the seven firms reporting purchase shares, purchases of the domestic product for this reason ranged from 49-100 percent of these firms' purchases of certain frozen fish fillets. Four other purchasers reported buying the domestic frozen catfish fillets for logistical purposes and to support the domestic industry; such purchases of the domestic product ranged from 61-100 percent of the total purchases of certain frozen fish fillets of the three firms reporting purchase shares. The total reported shares of domestic frozen catfish fillets that were purchased based on "Buy America" laws or practices, customer preferences, and for other reasons accounted for approximately 31.0 percent of total reported purchases of the domestic product and 19.2 percent of total reported purchases of all certain frozen fish fillets during 2003-08.⁷⁵

U.S. purchasers were also requested to comment on the emergence of new markets for certain frozen fish fillets and whether this has changed conditions of competition for this product in the U.S. market since 2003.⁷⁶ Of the 25 responding purchasers, 16 responded that there were no new markets, whereas the remaining 9 purchasers reported that new markets had developed. New U.S. markets included catfish from China and an increased demand for frozen basa and tra fillets from Vietnam, due to the affordable price and overall quality of these latter products.

U.S. processors of frozen catfish fillets and U.S. importers of the subject certain frozen fish fillets were requested to describe any significant changes in the product range or marketing of their products in the United States since January 2003 and any changes they anticipate in the future.⁷⁷ Sixteen U.S. processors and 11 U.S. importers responded, but not necessarily for both the historical period and future period. For any product/marketing changes since January 2003, 10 U.S. processors identified changes while 6 indicated no changes or did not know, whereas four U.S. importers identified changes and seven indicated no changes. For any product/marketing changes anticipated in the future, eight U.S. processors identified future changes and eight U.S. processors indicated no future changes, whereas two U.S. importers identified future changes and eight U.S. importers indicated no future changes.

⁷³ U.S. purchaser questionnaire responses, section III-15.

⁷⁴ Two of these four responding firms, ***, were unable to report their purchase shares for "Buy America" purposes; as a result the purchase share for this category is likely understated. Domestic interested parties estimated that approximately 3 percent of their total sales of frozen catfish fillets are based on "Buy America" policies. Domestic interested parties' posthearing brief, exhibit 1, p. 11.

⁷⁵ Likely double counting may affect these combined purchase shares (all three preference categories), but it is not known by how much or in which direction. On the other hand, ***, which responded for the "Buy America" provisions and for customer preferences, were unable to report their affected purchase shares. As a result, the combined purchase shares favoring the domestic frozen catfish fillets are likely understated.

⁷⁶ U.S. purchaser questionnaire responses, section III-16.

⁷⁷ U.S. producer and importer questionnaire responses, sections IV-17/18 and III-18/19, respectively.

Changes since January 2003 identified by U.S. processors involved the following: (1) selling more fresh fillets and higher value-added fillets, such as traypack, breaded, and par-fried;⁷⁸ (2) fillets are being cut into strips more often; (3) quantity of the U.S. processed 2-3 ounce fillet, which reportedly is more desirable than the large fillets, has dropped considerably due to lower price of this size fillet from Vietnam; (4) increased marketing of domestic frozen catfish fillets as U.S. processed farm-raised products; and one U.S. processor, ***, reported that it had established a website for internet sales.⁷⁹ Three of the four U.S. importers commenting on changes since 2003 asserted that (1) the availability of certain frozen fish fillets has increased to meet market demand, (2) U.S. processors are offering products over the internet, and (3) transshipment of frozen basa and tra fillets. The remaining importer commenting on historical changes, *** provided the following discussion:

“There have been significant changes in the product range and mix of certain frozen fish fillets since 2003. The product range change is most of the imports are Pangasius Hypophthalmus (market name referred to as Swai or Striped Pangasius) rather than Pangasius Bocourti (market name is Basa). Most purchasers were familiar with Basa, but Basa production from Vietnam became very limited, therefore *** of imports coming into the United States is Swai (Striped Pangasius).”

Both U.S. processors and importers that commented on product/marketing changes anticipated in the future indicated that the historical changes identified above would continue in the future.

Ten U.S. purchasers of certain frozen fish fillets provided comments describing improvements/changes in the U.S. certain frozen fish fillet market since January 2003 and any improvements/changes they anticipate in the future; not all responding firms commented on both historical and anticipated improvements/changes.⁸⁰ Purchaser comments of changes/improvements since 2003 included (1) disappearance of basa, (2) HACCP certification, (3) more consistent price due to the order, (4) correct labeling and distinction between basa and swai,⁸¹ (5) proof that catfish are U.S. farm raised, (6) higher quality of certain frozen fish fillets, (7) overseas producers sought other markets (particularly Europe), (8) opened the door in the United States for channel catfish grown in China, and (9) Pangasius increased U.S. market share by embracing its differences from the domestic frozen catfish fillets. Purchaser comments of changes/improvements that are anticipated in the future included (1) economy will keep the market flat, (2) change in sustainability and environmental impact of domestic industry, (3) expanded use of value-added products such as breaded, battered, marinated, etc., (4) more government inspections, and (5) USDA will regulate the catfish industry, reducing imported catfish from China and Pangasius as well.⁸²

⁷⁸ Three U.S. processors, ***, noted that the value-added market is much smaller than the commodity fish market.

⁷⁹ This website may be recent; none of the responding purchasers reported purchasing certain frozen fish fillets over the internet during 2003-08.

⁸⁰ U.S. purchaser questionnaire responses, section III-36.

⁸¹ ***, a grocery chain, asserted that over the years basa and tra (the latter also known as swai and sutchi) have become separate items in the U.S. market.

⁸² ***, a food service distributor, asserted that the parties who lobbied successfully to have Pangasius re-named in order to segregate it from their domestic product are now seeking to include it in the regulatory scope of the USDA as a “catfish like” or “whiskered fish” species. “If their effort is successful, there will certainly be a sizable reduction of imports until those overseas resource areas are certified compliant to USDA standards. However, we do not expect this trade disruption to be any more successful than the previous attempts have been. Certainly, we see no short-term impact of these moves, as the domestic catfish industry faces a major challenge to raise its own practices to meet USDA standards.”

Finally, U.S. purchasers were requested to discuss the effects and effectiveness of U.S. federal and state “catfish” labeling laws enacted after 2001.⁸³ Of the fifteen responding purchasers, 8 reported some effects/effectiveness and the remaining 7 firms reported no effects. The comments of the responding firms that reported some effects included (1) helped U.S. processors upscale their product, (2) enabled domestic and imported certain frozen fish fillets to be marketed and sold on each of their own merits, (3) leveled the playing field, (4) individual state bans on the imported certain frozen fish fillets have been most effective.⁸⁴

Factors Affecting Purchasing Decisions

Purchasers were requested to list the top three purchase factors that they consider when deciding from whom to purchase certain frozen fish fillets.⁸⁵ Responses of the 25 reporting purchasers, which did not necessarily respond for each level of importance and sometimes reported for more than one purchase factor in a specific rank, are shown in the following tabulation.

Factors	Number of purchasers responding		
	First important factor	Second important factor	Third important factor
Quality	13	8	2
Price	5	5	6
Availability	2	8	8
Traditional supplier	4	1	4
Product consistency	1	1	-
Food safety program	1	-	-
Accurate net weight	-	-	1
Payment terms	-	-	1
Service	-	-	1

As shown in the tabulation, quality was reported most frequently as the most important factor, quality and availability were reported most frequently as the second important factor, and availability and price were reported most frequently as the third important factor. Purchasers reported that quality considerations included net weight, meet purchaser specifications, age, undamaged, color, odor, size,

⁸³ U.S. purchaser questionnaire responses, section III-37.

⁸⁴ ***, a food service distributor asserted that “the individual state bans have been most effective as they are easier to pass and ultimately driven by local sentiment. Similarly, attempts at creating food safety concerns around antibiotic residues have been more successful at the state level, where the interpretation of tolerance levels and technical capability are more subjective. Menu labeling restrictions and country of origin labeling have been the least successful local measures due to the difficulty of driving compliance at the individual operator level.”

⁸⁵ U.S. purchaser questionnaire responses, section III-29.

taste, texture, belly flap and fat line removed, freshness (package date), episodes of freezing, excludes antibiotics, and verified micro and macro chemicals.⁸⁶

Twenty-five U.S. purchasers also responded to a request to rank 15 specified purchase factors as very important, somewhat important, or not important.⁸⁷ The total number of responses is shown in table II-2 for each purchase factor. Four purchase factors--availability, product quality meets standards, reliable supply, and product consistency--were considered most frequently to be very important purchase factors for certain frozen fish fillets.⁸⁸ Packaging, product range, and U.S. transportation costs were considered most frequently to be somewhat important, and extension of credit and minimum quantity requirements were reported most frequently to be not important.

Table II-2
Certain frozen fish fillets: Ranking of purchase factors, as reported by U.S. purchasers of certain frozen fish fillets

Purchase factors	Very important ¹	Somewhat important	Not important
Availability *	24	1	-
Delivery terms	15	9	1
Delivery time	14	10	1
Discounts offered	7	8	10
Extension of credit	4	9	12
Price *	17	8	-
Minimum quantity requirements	7	6	12
Packaging	11	12	2
Product consistency	23	2	-
Product quality meets standards *	24	1	-
Product quality exceeds standards	20	5	-
Product range	8	12	5
Reliable supply	24	1	-
Technical support	8	10	7
U.S. transportation costs	6	12	7

¹ Two purchasers, both food-service distributors, identified other factors as very important. *** cited paperwork/insurance and plant facilities; *** identified food safety (no antibiotics), compliance with trade legislation, and economic integrity of the supplier.

Note.--The top 3 purchase factors as discussed earlier are identified with asterisks.

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

⁸⁶ U.S. purchaser questionnaire responses, section III-30.

⁸⁷ U.S. purchaser questionnaire response, section III-28.

⁸⁸ Quality, availability, and price, in descending order, were reported as the top purchase factors in another part of the purchaser questionnaire and were discussed earlier.

Comparisons of the Domestic Products, Subject Imports from Vietnam, and Subject Products from Third Countries

U.S. processors, importers, and purchasers of frozen catfish, basa, and/or tra fillets were requested in their questionnaire responses to report on the extent of interchangeability among the various country sources of certain frozen fish fillets.⁸⁹ In addition, U.S. processors and importers were requested to report on the extent of any differences other than price that would affect sales in the U.S. market among the various country sources of certain frozen fish fillets.⁹⁰

Responses of the 13 reporting U.S. processors, 6 U.S. importers, and 20 U.S. purchasers regarding the degree of interchangeability between domestic and imported frozen certain frozen fish fillets are summarized in table II-3a for comparisons involving the U.S.-produced frozen catfish fillets and imported frozen catfish, basa, and/or tra fillets. In addition, table II-3b shows comparisons of interchangeability involving the imported frozen basa and tra fillets from Vietnam and the frozen catfish, basa, and/or tra fillets from third countries.

Responses of the 12 reporting U.S. processors and 6 U.S. importers regarding differences other than price affecting competition are summarized in table II-4a for comparisons involving the U.S.-produced frozen catfish fillets and imported frozen catfish, basa, and/or tra fillets. In addition, table II-4b shows comparisons of nonprice factors involving the imported frozen basa and tra fillets from Vietnam and the frozen catfish, basa, and/or tra fillets from third countries.

Responding U.S. processors of the frozen catfish fillets and importers of the frozen catfish, basa, and/or tra fillets generally reported that the domestic frozen catfish fillets were always or frequently interchangeable in the United States with the imported certain frozen fish fillets from Vietnam, China, Malaysia, Thailand, and other countries (table II-3a). On the other hand, the responding U.S. purchasers generally reported that the domestic frozen catfish fillets were frequently interchangeable in the United States with the imported certain frozen fish fillets from China, and sometimes or never interchangeable with certain frozen fish fillets from Vietnam, Malaysia, Thailand, and other countries (table II-3a).⁹¹

Responding U.S. processors of the frozen catfish fillets and importers of the frozen catfish, basa, and/or tra fillets generally reported that nonprice factors were always or frequently important in competition between domestic frozen catfish fillets and the imported certain frozen fish fillets from Vietnam and China, but only the U.S. processors reported similarly for Malaysia and Thailand (table II-4a). However, importers generally reported that nonprice factors were sometimes or never important in competition between the domestic frozen catfish fillets and the imported certain frozen fish fillets from Malaysia, Thailand and other countries.⁹²

⁸⁹ U.S. producer, importer, and purchaser questionnaire responses, sections IV-28, III-25, and IV-3, respectively.

⁹⁰ U.S. producer and importer questionnaire responses, sections IV-29 and III-26, respectively. Each responding firms did not necessarily report for all specified country comparisons.

⁹¹ Responding U.S. processors of the frozen catfish fillets and importers of frozen catfish, basa, and/or tra fillets generally reported that imported frozen basa and tra fillets from Vietnam were always or frequently interchangeable in the United States with the imported certain frozen fish fillets from China, Malaysia, Thailand, and other countries (table II-3b). On the other hand, the responding U.S. purchasers reported that imported frozen basa and tra fillets from Vietnam were about equally likely to be always/frequently or sometimes/never interchangeable in the United States with the imported certain frozen fish fillets from China, Malaysia, Thailand, and other countries (table II-3b).

⁹² Responding U.S. processors of the frozen catfish fillets and importers of frozen catfish, basa, and/or tra fillets generally reported that nonprice factors were always or frequently important in competition between imported frozen basa and tra fillets from Vietnam and the imported certain frozen fish fillets from China, but that nonprice factors were sometimes or never important in competition between the imported subject products from Vietnam and the subject imported products from Malaysia, Thailand, and other countries (table II-4b).

Table II-3a

Certain frozen fish fillets: Perceived degree of interchangeability of U.S.-produced frozen catfish fillets vis-a-vis (1) imported frozen basa and tra from Vietnam, and (2) imported frozen catfish, basa, and/or tra from third countries, based on sales in the U.S. market during 2003-08

Country pair	Number of U.S. processors' responses				Number of U.S. importers' responses				Number of U.S. purchasers' responses ¹			
	A	F	S	N	A	F	S	N	A	F	S	N
United States vs.--												
Vietnam	10	2	-	1	1	2	1	1	-	4	4	8
China	9	2	-	1	2	3	1	-	2	8	3	6
Malaysia	1	1	2	1	1	2	-	-	-	1	6	-
Thailand	2	3	-	1	2	1	-	-	-	1	5	6
Other countries ²	-	1	1	1	1	1	-	-	-	2	2	3
<p>¹ The two largest reporting purchasers, ***, reported that the U.S. and imported Vietnamese certain frozen fish fillets were respectively sometimes and never interchangeable. *** also reported the following: (1) *** reported that the nature of basa and tra lend themselves to be substituted for catfish, and (2) *** reported that there was no restriction against substituting catfish for basa and tra. U.S. purchaser questionnaire responses, section III-9.</p> <p>² None of the responding firms identified specific other countries.</p> <p>Note.--A = Always, F = Frequently, S = Sometimes, N = Never.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>												

Table II-3b

Certain frozen fish fillets: Perceived degree of interchangeability of imported frozen basa and tra from Vietnam vis-a-vis imported frozen catfish, basa, and/or tra from third countries, based on sales in the U.S. market during 2003-08

Country pair	Number of U.S. processors' responses				Number of U.S. importers' responses				Number of U.S. purchasers' responses			
	A	F	S	N	A	F	S	N	A	F	S	N
Vietnam vs.--												
China	8	2	-	-	-	2	2	-	4	3	4	5
Malaysia	2	1	1	-	-	3	-	-	2	1	-	3
Thailand	2	2	-	-	1	2	-	-	2	2	4	2
Other countries ¹	1	1	-	-	-	2	-	-	1	3	1	2
<p>¹ None of the responding firms identified specific other countries.</p> <p>Note.--A = Always, F = Frequently, S = Sometimes, N = Never.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>												

Table II-4a

Certain frozen fish fillets: Perceived degree of importance of differences in nonprice factors between U.S.-produced frozen catfish fillets vis-a-vis (1) imported frozen basa and tra fillets from Vietnam, and (2) imported frozen catfish, basa, and/or tra imported from third countries, based on sales in the U.S. market during 2003-08

Country pair	Number of U.S. producers' responses				Number of U.S. importers' responses			
	A	F	S	N	A	F	S	N
United States vs.--								
Vietnam	5	2	5	-	2	2	1	-
China	3	6	2	-	1	4	1	-
Malaysia	2	1	1	-	-	-	2	1
Thailand	3	1	1	-	-	1	2	1
Other countries ¹	2	-	2	-	-	1	2	1
¹ None of the responding firms identified specific other countries. Note.--A = Always, F = Frequently, S = Sometimes, N = Never. Source: Compiled from data submitted in response to Commission questionnaires.								

Table II-4b

Certain frozen fish fillets: Perceived degree of importance of differences in nonprice factors between imported frozen basa and tra fillets from Vietnam vis-a-vis imported frozen catfish, basa, and/or tra imported from third countries, based on sales in the U.S. market during 2003-08

Country pair	Number of U.S. producers' responses				Number of U.S. importers' responses			
	A	F	S	N	A	F	S	N
Vietnam vs.--								
China	2	2	1	-	1	3	1	-
Malaysia	-	-	1	1	-	-	2	1
Thailand	1	1	1	1	-	1	2	1
Other countries ¹	-	-	1	-	-	1	2	1
¹ None of the responding firms identified specific other countries. Note.--A = Always, F = Frequently, S = Sometimes, N = Never. Source: Compiled from data submitted in response to Commission questionnaires.								

Some of the responding U.S. processors, importers, and purchasers of the certain frozen fish fillets provided useable narrative explanations, as requested, in their questionnaire responses regarding the degree/importance of interchangeability and nonprice factors.⁹³ Responses provided by the 16 firms commenting (included U.S. processors, importers, and purchasers) included (1) availability and technical support are occasionally factors, (2) taste and smell differences between the domestic and imported Vietnamese products, (3) flavor differences between the domestic and imported Chinese products, (4) quality issues with some imports from China, (5) some customers prefer domestic catfish and some prefer basa, (6) Pangasius, due to higher fat content, is not as firm as the domestic product, (7) product generally is accepted or rejected based on its merits, not country of origin, (8) fresher and higher quality domestic product, and (9) U.S. processors can more easily replace off-flavor fillets.

Country of origin and producer identity appear to be important for U.S. purchasers of frozen catfish, basa, and tra fillets. Fifteen of 26 responding purchasers reported that the country of origin of the certain frozen fish fillets was always or usually important in their purchases of such products, whereas the remaining 11 firms reported that the country of origin was sometimes or never important.⁹⁴ Seventeen of the 26 responding purchasers reported that the identity of the producer of the certain frozen fish fillets was always or usually important in their purchases of such products, whereas the remaining 9 firms reported that the identity of the producer was sometimes or never important.⁹⁵

Purchasers were also requested to explain whether they purchase frozen fish fillets from one country in particular over other possible sources of supply.⁹⁶ Sixteen of the 26 responding U.S. purchasers reported ordering certain frozen fish fillets from a particular country over other sources of supply, whereas the 10 remaining firms reported not ordering from a single country in particular. The 16 firms reported purchasing from a particular country for the following reasons: (1) customer preference/requirement for domestic frozen catfish fillets,⁹⁷ customer preference for imported frozen basa and/or tra from Vietnam,⁹⁸ or imported frozen catfish fillets from China,⁹⁹ and (2) purchase from several regions for risk management purposes.

Purchasers were requested to make country-of-origin comparisons among the domestic frozen catfish fillets, the imported frozen basa and tra fillets from Vietnam, and the imported frozen catfish, basa, and/or tra fillets from third countries based on the 15 specified purchase factors discussed earlier, indicating for each factor whether product from one country was superior, comparable, or inferior to product from another country.¹⁰⁰ Fifteen purchasers responded, but not for every country comparison; purchaser responses are summarized in table II-5.

⁹³ U.S. producer, importer, and purchaser questionnaire responses, sections IV-28/29, III-25/26, and IV-3, respectively.

⁹⁴ U.S. purchaser questionnaire responses, section III-18.

⁹⁵ U.S. purchaser questionnaire responses, section III-19.

⁹⁶ U.S. purchaser questionnaire responses, section IV-4.

⁹⁷ Four purchasers, ***, reported that a portion of the customer base, particularly in the South, have a historical preference for domestic product, which is based on cultural norms and loyalty to the domestic industry. *** also asserted that some U.S. customers, e.g., the military and government, are required to serve the domestic product.

⁹⁸ Three of the 16 purchasers, ***, reported that customers prefer the imported frozen basa and/or tra fillets from Vietnam due to quality and freshness of the Vietnamese product, and one other purchaser, ***, cited familiarity and relationships with the Vietnamese processors. Another purchaser, ***, asserted that Pangasius from Vietnam has found favor in the U.S. market, not as a substitute for the domestic frozen catfish fillets, but as a distinct product in its own right. Two purchasers, ***, cited customer preference for the imported frozen basa fillets from Vietnam.

⁹⁹ Two U.S. purchasers, ***, indicated that some of their customers preferred the price and taste of the imported frozen catfish fillets from China.

¹⁰⁰ U.S. purchaser questionnaire response, section IV-7.

Table II-5

Certain frozen fish fillets: Comparisons of (1) domestic frozen fish fillets vis-a-vis imported frozen basa/tra fillets from Vietnam and imported frozen catfish, basa, and/or tra from third countries, and (2) comparisons of imported frozen basa/tra fillets from Vietnam vis-a-vis imported frozen catfish, basa, and/or tra from third countries, all based on sales in the U.S. market during 2003-08

Purchase factors	U.S.-produced products compared to subject imported products from–						Imported subject products from Vietnam compared to imported products from–		
	Vietnam			Third countries			Third countries		
	S	C	I	S	C	I	S	C	I
Availability *	4	8	2	4	11	1	2	12	-
Delivery terms	5	9	-	4	12	-	1	13	-
Delivery time	7	7	-	7	8	-	3	11	-
Discounts offered	-	13	1	1	12	1	1	13	-
Extension of credit	2	11	1	3	11	-	1	12	1
Price ¹ *	2	6	6	1	8	6	1	12	1
Minimum quantity requirements	5	9	-	6	9	1	1	12	1
Packaging	-	13	1	1	15	-	2	12	-
Product consistency	1	10	3	1	12	3	5	8	1
Product quality meets standards *	2	12	-	2	13	1	2	12	-
Product quality exceeds standards	2	9	3	2	11	3	3	10	1
Product range	2	10	2	2	11	3	1	13	-
Reliable supply	2	10	2	1	13	2	1	13	-
Technical support	2	11	1	1	14	1	2	12	-
U.S. transportation costs ¹	4	9	1	2	13	1	-	14	-

¹ A rating of “S” on price and/or transportation costs indicates that the U.S. product has lower prices or transportation costs than the product from the country with which it is being compared.

Note.–S=superior, C=comparable, and I=inferior.

Note.–The overall top 3 purchase factors as discussed earlier are identified with asterisks.

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

The U.S.-produced frozen catfish fillets were generally comparable to the imported frozen basa and tra fillets from Vietnam and to the imported frozen catfish, basa, and/or tra fillets from third countries.¹⁰¹ The single exception involved delivery times for both sets of comparisons; the domestic frozen catfish fillets were rated superior in nearly half of all comparisons.

ELASTICITY ESTIMATES¹⁰²

U.S. Supply Elasticity

The domestic supply elasticity for U.S.-processed frozen catfish fillets measures the sensitivity of the quantity supplied by the U.S. producers to a change in the U.S. market price of these products. The elasticity of domestic supply depends on several factors including the U.S. producers' level of excess capacity, the ease with which the U.S. producers can alter their productive capacity, the existence of inventories, and the availability of alternate markets for domestic frozen catfish fillets.¹⁰³ Analysis of these factors indicates that, overall, the U.S. processors had flexibility in the short run to alter their supply of frozen catfish fillets to the U.S. market in response to relative changes in the demand for their products. The domestic elasticity of supply for frozen catfish fillets is estimated to be in the range of 2-4.¹⁰⁴

U.S. Demand Elasticity

The U.S. price elasticity of demand for certain frozen fish fillets measures the sensitivity of the overall quantity demanded for certain frozen fish fillets to changes in the U.S. market price of certain frozen fish fillets. The price elasticity of demand depends on factors discussed earlier such as the existence and availability of substitute products for certain frozen fish fillets. Based on available information, the demand elasticity for certain frozen fish fillets is estimated to be in the range of negative 0.5 to negative 1.5.¹⁰⁵

¹⁰¹ Two purchasers, ***, identified additional purchase factors that are not shown. *** reported that the domestic frozen catfish fillets were inferior to imported certain frozen fish fillets from Vietnam and third countries for the additional factor "correct net weight;" the firm asserted that U.S. processors do not produce and ship 100 percent net weight, which the firm requires of the foreign producers. *** reported that the domestic frozen catfish fillets were superior to imported certain frozen fish fillets from Vietnam and third countries based on the additional purchase factors of "safety antibiotics and compliance with trade laws," and comparable based on the additional purchase factor "economic integrity."

¹⁰² The suggested ranges for the various elasticities were presented in the prehearing report for purposes of discussion in the prehearing briefs, hearing testimony, and/or posthearing briefs; no comments were reported. The elasticity responses in this section refer to changes that could occur within 12 months, unless otherwise indicated.

¹⁰³ Domestic supply response is generally assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Exceptions to this assumption occur when the supply response is restricted when demand increases (e.g., the domestic firm(s) operate near or at full capacity and any likely expansion in capacity would take more than 12 months to complete), or when demand decreases (e.g., the domestic firm(s) must operate at or near full capacity due to very high fixed costs).

¹⁰⁴ The higher end of the range for supply elasticity for domestic frozen catfish fillets, however, depends on the required increase in prices necessary for increased production of farm-raised catfish; the higher the price increase required the lower the supply elasticity of domestic frozen catfish fillets.

¹⁰⁵ The greater the effect of substitutes for certain frozen fish fillets, the closer the elasticity is to the higher end of the range, and the greater the effect of alternatives as complements to certain frozen fish fillets, the closer the elasticity is to the lower end of the range.

Substitution Elasticity¹⁰⁶

The elasticity of substitution largely depends upon the degree to which there is an overlap of competition between domestic frozen catfish fillets and imported frozen basa and tra fillets from Vietnam, and the extent of product differentiation.¹⁰⁷ Product differentiation, in turn, depends on such factors as physical characteristics (e.g., sizes (weights), types (regular, shank, or strip fillets), taste, smell, texture, and other quality factors), consumer preferences, and conditions of sale (e.g., delivery lead times, reliability of supply, technical service, etc.). Based on available information discussed earlier, the elasticity of substitution between domestic frozen fish fillets and imported frozen basa and tra fillets from Vietnam is estimated to be in the range of 2-4.¹⁰⁸

¹⁰⁶ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the imports and the U.S. domestic like product to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the imported product (or vice versa) when prices change.

¹⁰⁷ Some purchasers asserted that the labeling requirements have led, to at least some degree, to differentiated markets for the domestic frozen catfish fillets and imported frozen basa and tra fillets from Vietnam.

¹⁰⁸ The more modest the impact of differentiating factors between the domestic and subject imported products, such as regional consumer preferences for the domestic product, differences in taste and texture, “Buy America” policies and laws, concern about health factors regarding the subject imported products, etc., the closer the substitution elasticity is to the upper end of the range. The more pronounced these differentiating factors, the closer the substitution elasticity is to the lower end of the range.

PART III: CONDITION OF THE U.S. INDUSTRY

OVERVIEW

Background

Information in this section is based on the questionnaire responses of 14 processors that accounted for 82.4 percent of U.S. shipments during 2008.¹

Changes Experienced in Operations

Domestic processors were asked to indicate whether their firm had experienced any plant openings, relocations, expansions, acquisitions, consolidation, closures, or prolonged shutdowns because of strikes or equipment failure; curtailment of production because of shortages of materials or other reasons including revision of labor agreements (including pension or health care obligations of retirees or current employees); or any other change in the character of their operations or organization relating to the production of frozen fish fillets since 2003. Thirteen processors indicated that they had experienced some change in the character of their operations since 2003. The domestic processors' responses to this question are detailed in table III-1.

Table III-1
Certain frozen fish fillets: Changes in the character of U.S. operations

* * * * *

Anticipated Changes in Existing Operations

The Commission requested that domestic processors discuss anticipated changes to their U.S. operations. Table III-2 presents U.S. processors' anticipated changes to their U.S. operations.

Table III-2
Certain frozen fish fillets: Anticipated changes in U.S. operations

* * * * *

¹ Staff's coverage estimate is based on a comparison of data compiled from Commission questionnaires to official USDA/NASS statistics. ***.

U.S. PROCESSORS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

The Commission requested information on certain frozen fish fillets capacity and production from processors. Their data on frozen catfish fillets capacity, production, and capacity utilization are presented in table III-3. Processors' reported capacity in the United States remained relatively stable between 2003 and 2007 (despite an apparent increase in 2005 that actually reflects ***).² Capacity declined noticeably in 2008, however, as Southern Pride halted its processing operations late in the year. Production cuts by half the industry began earlier, however, driving down capacity utilization in 2007 and 2008. In addition, at least four domestic catfish processors (Aquafarms, Prairie Lands, Pride of the South, and SEACAT) have ceased operations.³

Table III-3
Certain frozen fish fillets: U.S. processors' total capacity, production, and capacity utilization, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Capacity (1,000 pounds)	146,079	146,482	150,802	150,001	149,127	137,129
Production (1,000 pounds)	106,591	111,483	114,138	111,763	94,408	97,068
Capacity utilization (percent)	73.0	76.1	75.7	74.5	63.3	70.8

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

Constraints on Capacity

The Commission asked domestic processors to report constraints on their capacity to produce certain frozen fish fillets. Two processors reported the live fish supply as the most important constraint, two reported freezer capacity, five reported market conditions and price, and one reported size of live fish as the most important constraint. For the second most important constraint on production, four firms reported the live fish supply, and one reported machinery or equipment other than freezers.

Alternative Products

Table III-4 presents the U.S. processors' total and allocated freezing capacity. Four domestic processors reported that they process salmon, trout, sturgeon or shrimp utilizing the same equipment and related workers used to produce certain frozen fish fillets. Fourteen domestic processors reported that they produce a variety of other fresh and frozen catfish products other than certain frozen fish fillets utilizing the same equipment and related workers.⁴

² ***.

³ Prairie Lands ceased operations in 2003, SEACAT ceased operations in 2004, and both Aquafarms and Pride of the South ceased operations in 2006. As these companies were unable to provide data prior to their closure, questionnaire data somewhat understate volume reductions since 2003.

⁴ Processors reported producing whole catfish, fresh catfish fillets, fresh catfish nuggets, fresh catfish steak, frozen whole catfish, frozen catfish steaks, and frozen catfish nuggets.

Table III-4
Certain frozen fish fillets: U.S. processors' capacity, by type, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
Total potential freezing capacity	208,341	209,617	220,028	220,034	227,168	237,541
of which allocated to non-catfish frozen products	15.4	15.3	14.5	14.5	14.6	15.6
allocated to frozen catfish products other than the merchandise under review	21.5	21.2	21.9	22.3	21.7	21.1
allocated to certain frozen fish fillets (<i>i.e. merchandise under review</i>)	63.1	63.5	63.5	63.1	63.7	63.3
Source: Compiled from data submitted in response to Commission questionnaires.						

**U.S. PROCESSORS' DOMESTIC SHIPMENTS, COMPANY TRANSFERS,
AND EXPORT SHIPMENTS**

As detailed in table III-5, the quantity of U.S. processors' U.S. shipments increased from 2003 to 2005, then decreased in 2006 through 2008, for an overall decrease of 11.0 percent.⁵ ***. Similarly, the value of U.S. shipments increased from 2003 to 2006, then decreased in 2007 and 2008, but still increased overall by 8.4 percent. There was no reported internal consumption or transfers to related firms. Exports were reported in 2003 only. The unit values of U.S. shipments rose steadily from \$2.40 per pound in 2003 to \$2.91 in 2006, then increased marginally in 2007 and 2008. While most U.S. processors reported a decrease or slight increase in unit values from 2006 to 2008, *** as well as ***, reported greater increases in unit values.

⁵ U.S. processors' shipments as reported by official USDA/NASS statistics (presented in table C-1) show an overall decrease of 18.4 percent in U.S. shipments from 2003-08. Because USDA/NASS data are collected on a monthly basis, these data include partial period shipments by processors that are no longer operating (and thus did not complete Commission questionnaires).

Table III-5
Certain frozen fish fillets: U.S. processors' shipments, by type, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
Commercial shipments	106,315	107,744	115,750	109,265	96,366	94,572
Internal consumption	0	0	0	0	0	0
Transfer to related firms	0	0	0	0	0	0
U.S. shipments	106,315	107,744	115,750	109,265	96,366	94,572
Export shipments	9	0	0	0	0	0
Total	106,324	107,744	115,750	109,265	96,366	94,572
Value (1,000 dollars)						
Commercial shipments	255,666	283,331	308,986	318,030	281,420	277,076
Internal consumption	0	0	0	0	0	0
Transfer to related firms	0	0	0	0	0	0
U.S. shipments	255,666	283,331	308,986	318,030	281,420	277,076
Export shipments	23	0	0	0	0	0
Total	255,689	283,331	308,986	318,030	281,420	277,076
Unit value (dollars per pound)						
Commercial shipments	2.40	2.63	2.67	2.91	2.92	2.93
Internal consumption	(¹)					
Transfer to related firms	(¹)					
U.S. shipments	2.40	2.63	2.67	2.91	2.92	2.93
Export shipments	2.56	(¹)				
Total	2.40	2.63	2.67	2.91	2.92	2.93
Share of shipment quantity (percent)						
Commercial shipments	100.0	100.0	100.0	100.0	100.0	100.0
Internal consumption	0.0	0.0	0.0	0.0	0.0	0.0
Transfer to related firms	0.0	0.0	0.0	0.0	0.0	0.0
U.S. shipments	100.0	100.0	100.0	100.0	100.0	100.0
Export shipments	0.0	0.0	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
¹ Not applicable.						
Source: Compiled from data submitted in response to Commission questionnaires.						

U.S. PROCESSORS' INVENTORIES

Data collected in this review on domestic processors' end-of-period inventories of certain frozen fish fillets are presented in table III-6. The domestic industry's inventories of frozen fish fillets increased overall during the period for which data were collected, with the lowest level of inventories reported for year end 2003. Inventories held at year end 2008 were their highest level. Inventories, relative to total shipments, increased from a low of 7.1 percent in 2003 to a high of 12.5 percent in 2008. ***.⁶ ***.

Table III-6

Certain frozen fish fillets: U.S. processors' end-of-period inventories, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Inventories (1,000 pounds)	7,502	10,864	9,376	11,592	9,472	11,837
Ratio to production (percent)	7.0	9.7	8.2	10.4	10.0	12.2
Ratio to U.S. shipments (percent)	7.1	10.1	8.1	10.6	9.8	12.5
Ratio to total shipments (percent)	7.1	10.1	8.1	10.6	9.8	12.5

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

U.S. PROCESSORS' IMPORTS AND PURCHASES

One U.S. processor, ***, reported direct imports of certain frozen fish fillets. ***. ***.⁷ Eight U.S. processors reported purchases of domestic production of frozen fish fillets: ***, ***, ***, ***, ***, ***, ***, and ***.⁸

U.S. PROCESSORS' EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. processors on the number of production and related workers ("PRWs") engaged in the production of certain frozen fish fillets, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in this review are presented in table III-7. The number of PRWs fluctuated from 2003 to 2008. Hours worked also fluctuated from 2003 to 2008, and were 12.3 percent lower in 2008 compared to 2003, ***. Despite the reduction in hours worked, wages paid increased by 3.8 percent, as hourly wage rates increased by 18.3 percent between 2003 and 2008. During this same period, productivity increased by only 3.8 percent, resulting in an increase of 14.0 percent in unit labor costs. Approximately one-half of all U.S. processors have unionized labor forces represented by the United Food and Commercial Workers International Union.⁹

⁶ ***.

⁷ ***.

⁸ ***.

⁹ Domestic interested parties' posthearing brief, exhibit 1, p. 26.

Table III-7
Certain frozen fish fillets: U.S. processors' employment-related indicators, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Production and related workers (PRWs)	2,612	2,608	2,753	2,681	2,480	2,589
Hours worked by PRWs (1,000 hours)	5,338	5,128	5,308	5,427	4,925	4,684
Wages paid to PRWs (1,000 dollars)	37,566	37,508	40,095	41,343	39,086	38,994
Hourly wages	\$7.04	\$7.31	\$7.55	\$7.62	\$7.94	\$8.32
Productivity (<i>pounds produced per hour</i>)	20.0	21.7	21.5	20.6	19.2	20.7
Unit labor costs (<i>per pound</i>)	\$0.35	\$0.34	\$0.35	\$0.37	\$0.41	\$0.40

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

FINANCIAL EXPERIENCE OF THE U.S. PROCESSORS

Background

The financial results of 14 U.S. processors of frozen catfish fillets are presented in this section of the report.¹⁰ The majority of processors reported their financial results on the basis of U.S. generally accepted accounting principles (“GAAP”) for calendar and fiscal year periods.¹¹

Revenue represents commercial sales with no transfers or internal consumption reported. While some U.S. processors maintained essentially the same frozen catfish fillet operations throughout the period, *** reported changes in the nature of their operations which impacted their respective financial results.¹²

Processors’ Operations on Frozen Catfish Fillets

Table III-8 presents the financial results of the U.S. industry’s processing operations on frozen catfish fillets. Selected financial information by processor is presented in table III-9. For each processor the relative share of live catfish purchased from related and unrelated growers, respectively, is presented in table III-10. Table III-11 presents a variance analysis of the U.S. processors financial results.¹³

Sales Quantity and Value

When considering those processors and successor entities reporting operations throughout the period, overall sales volume declined *** percent between 2003 and 2008.¹⁴ For the same period NASS/USDA information indicates that frozen fish fillet sales volume declined by around 18.4 percent.¹⁵

While the majority of processors reported lower sales volume at the end of the period compared to the beginning, the magnitude of company-specific declines was not uniform. Of the medium-to-large volume processors (i.e., over several million pounds in sales volume) with operations throughout the entire period, *** reported the most substantial overall decline in sales volume at *** percent. Corresponding with this decline, *** eliminated a portion of its processing capacity in 2006.¹⁶ Similarly, the overall decline in *** sales volume during the period corresponds with the elimination of that company’s ***.¹⁷

¹⁰ ***

¹¹ ***

¹² ***. Auditor prehearing notes (EDIS document ID number 401361).

¹³ See appendix F for a description of the components which make up the variance analysis. The absence of 2003 and 2004 data for *** limits the accuracy of the variance analysis. *** represents a *** processor accounting for *** percent to *** percent of the industry’s total sales volume between 2005 and 2008. Additionally and with respect to the industry’s financial results as a whole, profitability is likely somewhat overstated in 2003 and 2004 by the absence of ***. Ibid.

¹⁴ ***.

¹⁵ Table C-1.

¹⁶ E-mail with attachments from ***, March 13, 2009.

¹⁷ Auditor prehearing notes.

Table III-8

Certain frozen fish fillets: Results of operations of U.S. processors in the production of frozen catfish fillets, 2003-08

Item	Calendar and fiscal year					
	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
Total net sales	107,402	108,368	115,235	110,709	97,706	99,273
Value (\$1,000)						
Total net sales	258,897	282,459	306,899	317,991	286,029	288,972
Cost of sales						
Catfish from related growers	72,289	84,705	97,477	96,015	88,222	83,036
Catfish from unrelated growers	73,530	95,746	99,048	111,624	88,503	107,653
Other raw materials	2,673	2,165	2,029	2,266	2,015	2,128
Total raw material cost	148,492	182,616	198,554	209,905	178,740	192,817
Direct labor	29,692	28,383	29,513	30,544	28,345	33,535
Other factory costs	41,298	38,419	43,603	43,578	56,062	36,016
Less: byproduct revenue from offal	(2,709)	(3,640)	(4,012)	(4,476)	(4,628)	(5,303)
Total cost of sales	216,773	245,778	267,658	279,551	258,519	257,065
Gross profit	42,124	36,681	39,241	38,440	27,510	31,907
Selling expenses	19,185	21,537	21,445	20,805	19,188	20,287
General and administrative expenses	6,863	6,737	8,168	8,121	7,748	8,045
Total SG&A expenses	26,048	28,274	29,613	28,926	26,936	28,332
Operating income	16,076	8,407	9,628	9,514	574	3,575
Interest expense	2,178	2,158	2,374	2,477	2,021	1,883
Other expenses	862	4,220	1,426	819	5,302	3,371
CDSOA funds received	0	0	4,196	3,601	6,354	6,295
Other income items	728	882	1,002	703	629	3,318
Net income	13,764	2,911	11,026	10,522	234	7,934
Depr. and amortization (incl. above)	6,791	7,317	7,820	7,926	7,219	5,258
Est. cash flow from operations	20,555	10,228	18,846	18,448	7,453	13,192

Table continued on next page.

Table III-8--Continued

Certain frozen fish fillets: Results of operations of U.S. processors in the production of frozen catfish fillets, 2003-08

Item	Calendar and fiscal year					
	2003	2004	2005	2006	2007	2008
Ratio to net sales (percent)						
Catfish from related growers	27.9	30.0	31.8	30.2	30.8	28.7
Catfish from unrelated growers	28.4	33.9	32.3	35.1	30.9	37.3
Other raw materials	1.0	0.8	0.7	0.7	0.7	0.7
Total raw material cost	57.4	64.7	64.7	66.0	62.5	66.7
Direct labor	11.5	10.0	9.6	9.6	9.9	11.6
Other factory costs	16.0	13.6	14.2	13.7	19.6	12.5
Less: byproduct revenue from offal	(1.0)	(1.3)	(1.3)	(1.4)	(1.6)	(1.8)
Total cost of sales	83.7	87.0	87.2	87.9	90.4	89.0
Gross profit	16.3	13.0	12.8	12.1	9.6	11.0
Total SG&A expenses	10.1	10.0	9.6	9.1	9.4	9.8
Operating income	6.2	3.0	3.1	3.0	0.2	1.2
Net income	5.3	1.0	3.6	3.3	0.1	2.7
Unit value (dollars per pound)						
Total net sales	2.41	2.61	2.66	2.87	2.93	2.91
Cost of sales						
Catfish from related growers	0.67	0.78	0.85	0.87	0.90	0.84
Catfish from unrelated growers	0.68	0.88	0.86	1.01	0.91	1.08
Other raw materials	0.02	0.02	0.02	0.02	0.02	0.02
Total raw material cost	1.38	1.69	1.72	1.90	1.83	1.94
Direct labor	0.28	0.26	0.26	0.28	0.29	0.34
Other factory costs	0.38	0.35	0.38	0.39	0.57	0.36
Less: byproduct revenue from offal	(0.03)	(0.03)	(0.03)	(0.04)	(0.05)	(0.05)
Total cost of sales	2.02	2.27	2.32	2.53	2.65	2.59
Gross profit	0.39	0.34	0.34	0.35	0.28	0.32
SG&A expenses	0.24	0.26	0.26	0.26	0.28	0.29
Operating income	0.15	0.08	0.08	0.09	0.01	0.04
Number of companies reporting						
Data	12	12	13	13	13	14
Operating losses	4	5	4	6	7	8
Source: Compiled from data submitted in response to Commission questionnaires.						

Table III-9
Certain frozen fish fillets: Results of operations of U.S. processors in the production of frozen catfish fillets, by firm, 2003-08

* * * * *

Table III-10
Certain frozen fish fillets: U.S. processors' cost of live catfish purchased from related and unrelated growers, respectively, as a share of total cost of live catfish, 2003-08

* * * * *

In contrast with the majority of processors with operations throughout the period, *** reported overall increases in sales volume of *** percent and *** percent, respectively, from 2003 through 2008. Similarly, while *** reported somewhat lower sales volume in 2008 compared to 2003, its sales volume for 2004 through 2007 was consistently above the 2003 level. As discussed below, these companies, along with ***, are also notable because they are the *** medium-to-large size processors that reported operating profit on their certain frozen fish fillet operations throughout the period for which data were collected.¹⁸

Consistent with the decline in overall sales volume, the table III-11 variance analysis shows that the overall increase in certain frozen fish fillet revenue was due entirely to higher average sales value. With some exceptions, table III-9 shows that company-specific average sales values for certain frozen fish fillets were in the same basic range and generally followed similar patterns of change.¹⁹ When taken as a whole the average per pound sales value presented in table III-8 are within several cents of the per pound sales values reported by NASS/USDA.²⁰ As noted below with respect to differences in financial results, company-specific average sales values in part reflect variations in the level of further processing and channels of trade.

Table III-8 shows that higher average sales values generally correspond with increases in average raw material costs. The exceptions to this pattern were in 2007 when the overall average sales value of certain frozen fish fillets increased and average raw material costs declined, and in 2008 when overall average sales value of certain frozen fish fillets declined and average raw material costs increased.²¹

¹⁸ ***.

¹⁹ ***. Auditor prehearing notes.

²⁰ See table C-1.

²¹ This pattern is generally consistent with NASS/USDA data compiled from Catfish Processing reports (presented below). The 6.2 percent increase in average raw material costs in 2008 compared to 2007 reflected in table III-9, however, is notably higher compared to the 1.2 percent increase in the average price received by growers as reported by NASS/USDA. As discussed below, the reason for this divergence appears to be primarily due to the manner in which ***.

	2003	2004	2005	2006	2007	2008
Farm-raised catfish prices (dollars per pound)	0.58	0.70	0.72	0.80	0.77	0.78

Table III-11

Certain frozen fish fillets: Variance analysis on results of operations of U.S. processors in the production of frozen catfish fillets, 2003-08

	Calendar and fiscal year					
	2003-08	2003-04	2004-05	2005-06	2006-07	2007-08
Value (\$1,000)						
Total net sales:						
Price variance	49,670	21,233	6,541	23,146	5,387	(1,644)
Volume variance	(19,595)	2,329	17,899	(12,054)	(37,349)	4,587
Total net sales variance	30,075	23,562	24,440	11,092	(31,962)	2,943
Cost of sales:						
Total raw material cost:						
Cost variance	(55,564)	(32,788)	(4,366)	(19,149)	6,511	(11,210)
Volume variance	11,239	(1,336)	(11,572)	7,798	24,654	(2,867)
Net total raw material cost variance	(44,325)	(34,124)	(15,938)	(11,351)	31,165	(14,077)
Direct labor:						
Cost variance	(6,090)	1,576	669	(2,190)	(1,388)	(4,735)
Volume variance	2,247	(267)	(1,799)	1,159	3,587	(455)
Net direct labor variance	(3,843)	1,309	(1,130)	(1,031)	2,199	(5,190)
Other factory costs:						
Cost variance	2,156	3,250	(2,749)	(1,688)	(17,602)	20,945
Volume variance	3,126	(371)	(2,435)	1,713	5,118	(899)
Net other factory cost variance	5,282	2,879	(5,184)	25	(12,484)	20,046
Byproduct revenue from offal:						
Price variance	2,799	907	141	622	678	601
Volume variance	(205)	24	231	(158)	(526)	74
Net byproduct revenue from offal	2,594	931	372	464	152	675
Net cost of sales:						
Cost variance	(56,699)	(27,055)	(6,306)	(22,406)	(11,802)	5,600
Volume variance	16,407	(1,950)	(15,574)	10,513	32,834	(4,146)
Total net cost of sales variance	(40,292)	(29,005)	(21,880)	(11,893)	21,032	1,454
Gross profit variance	(10,217)	(5,443)	2,560	(801)	(10,930)	4,397
SG&A expenses:						
Expense variance	(4,256)	(1,992)	453	(476)	(1,408)	(964)
Volume variance	1,971	(234)	(1,792)	1,163	3,397	(432)
Total SG&A variance	(2,284)	(2,226)	(1,339)	687	1,989	(1,396)
Operating income variance	(12,501)	(7,669)	1,221	(114)	(8,941)	3,001

Table continued on next page.

Table III-11--Continued

Certain frozen fish fillets: Variance analysis on results of operations of U.S. processors in the production of frozen catfish fillets, 2003-08

	Calendar and fiscal year					
	2003-08	2003-04	2004-05	2005-06	2006-07	2007-08
Value (\$1,000)						
Operating income variance						
Price variance	49,670	21,233	6,541	23,146	5,387	(1,644)
Net cost/expense variance	(60,955)	(29,047)	(5,853)	(22,882)	(13,210)	4,636
Net volume variance	(1,217)	145	533	(378)	(1,117)	9

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

Cost of Sales

The individual components of cost of sales presented in table III-8 exhibited somewhat different patterns of change during the period: average raw material costs were 40.5 percent higher in 2008 compared to 2003, average direct labor was 22.2 percent higher in 2008 compared to 2003, while average other factory costs were 5.6 percent lower in 2008 compared to 2003.²²

The variance analysis in table III-11 shows that the net increase in average cost of sales offset higher average prices and was a key contributing factor in the lower relative profitability. All things being equal, however, even if processors had collectively maintained their higher 2003 operating profit margin throughout the period, absolute profitability would still have declined due to lower sales volume. As noted below, decisions to reduce processing capacity and/or to reorganize/consolidate operations were generally attributed to poor financial results and reductions in market share.

Raw Material

As a share of total cost of sales, purchased live catfish ranged from 67.3 percent to 74.3 percent.²³ The low end of the above range was 2003 when the average price paid to growers was at its lowest level, while the high end of the range corresponds with the peak average live catfish price in 2006 as reported by NASS/USDA.

While processors by definition all have processing capability, the extent to which they engage in additional activity such as growing, harvesting, hauling/distribution, and feed milling varies. For example, while some producers have harvesting and hauling capability, *** is reportedly unique in that it handled *** for the growers from which it purchased live catfish. In addition to impacting *** cost of live catfish, as noted below, this activity also affects the level of the company's *** relative to other processors.²⁴ In most instances, the cost of harvesting and hauling live catfish for delivery to the

²² ***.

²³ In addition to live catfish, raw material also includes "other raw materials" which represent items such as batter, breeding, packaging, and related supplies. While several companies reported costs for this line item, it appears that most processors with other raw material costs reported them as part of other factory costs. ***. Auditor prehearing notes.

²⁴ E-mails (first and second) from ***, March 20, 2009. Auditor prehearing notes.

processor appears to be the responsibility of the grower and is therefore not directly reflected as a cost in table III-8.²⁵

In some cases, the comparability of company-specific raw material costs shown in table III-9 is limited. In particular, ***. As explained by the company, notable changes in *** average raw material costs in 2007 and 2008, as shown in table III-9, reflect large swings in ***.²⁶

Live Catfish Purchased from Related and Unrelated Growers

The term “related grower” covers a number of relationships including primary ownership in the processing facility as a grower/owner, as well as growers with processing rights.²⁷ In several cases, “related grower” also refers to the captive growing operations of divisions or companies related to the processor.²⁸ Table III-10 shows that purchases of live catfish from unrelated growers represented the majority of overall purchases during the period.^{29 30}

While most processors stated that the price paid to related and unrelated growers for live catfish was the same and at fair market value, *** indicated that its related growers have occasionally received a somewhat higher price compared to unrelated growers.³¹ When asked to clarify whether payments to related growers included a distribution of profit, most processors stated that the reported cost of live catfish from related growers does not include a distribution of profit.³² While the net price paid for live catfish by processors varies, fair market value at any given time appears to be based in part on what larger processors are understood to be currently paying.^{33 34}

Adjustments to Net Prices Paid to Growers

While processors generally characterized the price paid for live catfish as fair market value, there does not appear to be a single method for adjusting prices for the actual size delivered by growers.³⁵ In at least one case, the processor does not retroactively adjust the price for under or over-sized fish, but does reduce the price paid to growers by several cents below market to account for the absence of a size penalty. Another processor only implements a size-based price structure when supply is abundant. Other processors indicated that within the last several years they have adopted price structures in which only

²⁵ ***. Ibid.

²⁶ ***. E-mail with attachment from Akin Gump on behalf of ***, March 23, 2009. Auditor prehearing notes.

²⁷ ***. E-mail with attachment from Akin Gump on behalf of ***, March 17, 2009. ***. Auditor prehearing notes. ***. E-mail with attachments from ***, March 11, 2009. ***. E-mail with attachments from Akin Gump on behalf of ***, March 13, 2009. ***. E-mail with attachment from Akin Gump on behalf of ***, March 16, 2009.

²⁸ ***. E-mail with attachments from Akin Gump on behalf of ***, March 17, 2009. ***. E-mail with attachments from ***, March 13, 2009. ***. Auditor prehearing notes. ***. Ibid.

²⁹ ***. Ibid.

³⁰ As shown in table III-10, some processors reported relatively large changes in the share of live catfish purchased from related and unrelated growers. ***. E-mail with attachment from Akin Gump on behalf of ***, March 23, 2009.

³¹ ***. Auditor prehearing notes. ***. Auditor prehearing notes.

³² ***. E-mail with attachment from Akin Gump on behalf of ***, March 31, 2009. E-mail with attachment from Akin Gump on behalf of ***, April 2, 2009.

³³ ***. Auditor prehearing notes.

³⁴ The relative share of purchases from related and unrelated growers does not generally explain differences in company-specific financial results. ***.

³⁵ Size here generally refers to the range of live catfish weight which maximizes processing efficiencies.

fish falling within the desired size range receive full price; i.e., the net price paid for fish falling outside this range reflects a deduction. In instances where the price is not adjusted for size directly, at least one processor indicated that it has implemented a system to track the size of live fish delivered by specific growers. This in turn allows the processor to direct purchases to growers consistently supplying more desirable size ranges.³⁶ Despite differences in price structure, processors generally indicated that adjustments to net price are applied equally to both related and unrelated growers.³⁷

Consistent with generally higher prices paid to growers during the period, table III-8 shows that total average raw material cost generally increased throughout the period. In addition to higher prices, most processors reported that the average yield of usable catfish meat declined during the latter part of the period. This decline was generally attributed to higher feed costs which in turn reduced feeding by growers. In an attempt to mitigate higher feed prices, there were reportedly changes in feed formulation which may have also adversely affected yield.³⁸ Notwithstanding a general shift by a number of processors to adjust the net price of live catfish for delivered size, most processors indicated that they do not routinely adjust net price for actual yield.³⁹ While several processors acknowledged the practical benefit of adjusting net price for yield, ***.⁴⁰

Direct Labor

As described by several processors, catfish processing is highly labor intensive. For example, ***.⁴¹

With respect to changes in direct labor costs in general, most processors cited increased minimum wages as being a primary factor.⁴² In the case of ***, higher average direct labor cost, as compared to ***, was due primarily to the reconfiguration of operations.⁴³ In contrast, the consistently higher average direct labor cost reported by *** compared to other processors appears to be primarily due to ***.⁴⁴

Other Factory Costs

With respect to changes in other factory costs, a number of processors indicated that packaging and energy costs increased in the latter part of the period. One processor also noted that the cost of tripolyphosphates used to extend shelf life increased in 2008.⁴⁵ While these factors likely impacted all or

³⁶ Auditor prehearing notes. ***. Ibid.

³⁷ Ibid. ***. Ibid.

³⁸ Ibid. ***. Ibid.

³⁹ ***. Ibid.

⁴⁰ ***. Ibid.

⁴¹ Ibid.

⁴² Ibid. Approximately half of all U.S. processors are unionized. Petitioners' posthearing brief, exhibit 1, p. 26. ***. Auditor prehearing notes.

⁴³ As shown in table III-9, the average direct labor cost reported by ***. Ibid.

⁴⁴ E-mail with attachment from Akin Gump on behalf of ***, March 17, 2009.

⁴⁵ Auditor prehearing notes.

the majority of processors, average other factory costs for some processors also reflect underlying changes in their operations, as well as the accounting method used to report cost of sales.^{46 47}

Financial Results

While general trends such as changes in average sales value and raw material cost were common to most processors, there are a number of factors which make each processor unique and in turn help to explain differences in company-specific financial results (see table III-9).

***⁴⁸ ***⁴⁹ ***⁵⁰ ***⁵¹ ***⁵²

Notwithstanding the generally positive financial performance of the above processors, table III-9 shows that the majority of processors reported consecutive losses interspersed with sporadic operating income. This pattern of poor financial results in turn motivated capacity reductions, reorganization, consolidation, as well as one processor's complete exit from the market.^{53 54 55}

While the impact of capacity reductions and reorganization/consolidation is directly reflected in changes in sales volume and the exit and entry of processors, non-recurring charges related to these operational changes are not reflected in table III-8 operating results; i.e., affected processors either did not report such restructuring charges to the Commission or reported them as "other expenses."⁵⁶

Research and Development Expenses, Capital Expenditures, Assets, and Return on Investment

Data on company-specific research and development ("R&D") expenses, capital expenditures, total assets, and return on investment ("ROI") are presented in table III-12.

As shown in table III-12, *** processors reporting R&D expenses during the period.⁵⁷

Consistent with a period during which overall capacity was reduced and some processing operations reorganized/consolidated, the U.S. industry's annual capital expenditures were consistently lower than corresponding depreciation expense. As described by processors, capital expenditures

⁴⁶ ***. Ibid. ***. Ibid. E-mails (first and second) from ***, March 20, 2009.

⁴⁷ ***. Auditor prehearing notes.

⁴⁸ ***. E-mail with attachment from Akin Gump on behalf of ***, March 23, 2009.

⁴⁹ E-mail with attachment from Akin Gump on behalf of ***, March 17, 2009.

⁵⁰ E-mail with attachment from Akin Gump on behalf of ***, March 17, 2009.

⁵¹ E-mail with attachment from Akin Gump on behalf of ***, March 23, 2009.

⁵² E-mail with attachment from Akin Gump on behalf of ***, March 13, 2009.

⁵³ ***. E-mail with attachment from Akin Gump on behalf of ***, March 16, 2009.

⁵⁴ ***. Auditor prehearing notes.

***. E-mail with attachment from Akin Gump on behalf of ***, March 23, 2009.

***. E-mail with attachment from Akin Gump on behalf of ***, March 17, 2009.

⁵⁵ *** both eliminated capacity during the period. ***. E-mail with attachments from ***, March 13, 2009.

***. Auditor prehearing notes.

⁵⁶ ***. Auditor prehearing notes.

⁵⁷ ***. *** U.S. producer questionnaire response, III-13. ***. E-mail with attachment from Akin Gump on behalf of ***, March 16, 2009.

Table III-12
Certain frozen fish fillets: Value of research and development expenses, capital expenditures, total assets, and return on investment of U.S. processors of frozen catfish fillets, 2003-08

* * * * *

generally fell into the following categories: capitalized maintenance and repair, equipment purchases to improve quality and efficiency, and truck/trailer purchases.⁵⁸

⁵⁸ With the exception of ***, the following narrative statements are based on company-specific responses to question III-13 of the U.S. producer questionnaire response. ***. Auditor prehearing notes.

PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRY

U.S. IMPORTS

The Commission sent questionnaires to 50 firms believed to have imported certain frozen fish fillets between January 2003 and December 2008. Questionnaire responses were received from 11 firms.¹ Data for the subject Vietnamese merchandise include frozen basa or tra fillets. Data for nonsubject fillets include frozen catfish, basa, or tra fillets. U.S. import data for Vietnam are based on aggregated export data reported by VASEP. U.S. import data for all other sources are based on official U.S. import statistics.² Firms responding to the Commission's questionnaires accounted for *** percent of imports from Vietnam and *** percent of total imports in 2008. Data regarding U.S. imports appear in tables IV-1 and IV-2.

In 2008, imports of frozen fish fillets from Vietnam were greatest in April-October, imports from China were greatest in January-May, and imports from all other sources were greatest in January-July.³ In 2008, the leading ports of entry for imports from Vietnam were: Los Angeles, CA (44.8 percent); New York, NY (12.7 percent); and Miami, FL (10.2 percent). The leading ports of entry for imports from China were: Los Angeles, CA (23.3 percent); Houston-Galveston, TX (18.1 percent); Boston, MA (14.9 percent); and New Orleans, LA (11.9 percent). The leading ports of entry for imports from all other sources were Los Angeles, CA (57.3 percent); New York, NY (19.4 percent); and Miami, FL (14.3 percent).

Table IV-1
Certain frozen fish fillets: U.S. imports, by sources, 2003-08

Source	Calendar year					
	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
Vietnam	19,689	31,349	32,548	53,531	46,728	53,305
China	719	1,679	3,344	14,593	21,420	27,542
All other	457	820	5,618	16,277	18,443	16,586
Total	20,865	33,848	41,510	84,401	86,591	97,434
Value (1,000 dollars)¹						
Vietnam	24,228	43,150	35,258	72,872	67,606	78,559
China	1,265	2,879	6,109	27,214	38,978	50,687
All other	509	1,290	7,577	26,945	33,143	27,136
Total	26,003	47,319	48,944	127,031	139,727	156,382

Table continued on next page.

¹ Eight firms reported that they did not import certain frozen fish fillets during the period for which data were collected. Thirty-one firms did not respond to the Commission's questionnaire.

² HTS statistical reporting numbers 0304.20.6030 (January 2003 - June 2004); 0304.20.6032, 0304.20.6033 (July 2004 - December 2006); and 0304.29.6032, 0304.29.6033 (January 2007 - December 2008).

³ As discussed in Parts I and II, reporting irregularities make the use of official import statistics for years prior to 2008 problematic.

Table IV-1 – Continued
Certain frozen fish fillets: U.S. imports, by sources, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Unit value (per pound)						
Vietnam ²	\$1.23	\$1.38	\$1.08	\$1.36	\$1.45	\$1.47
China	1.76	1.71	1.83	1.86	1.82	1.84
All other	1.11	1.57	1.35	1.66	1.80	1.64
Total	1.25	1.40	1.18	1.51	1.61	1.61
Share of quantity (percent)						
Vietnam	94.4	92.6	78.4	63.4	54.0	54.7
China	3.4	5.0	8.1	17.3	24.7	28.3
All others	2.2	2.4	13.5	19.3	21.3	17.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Share of value (percent)						
Vietnam	93.2	91.2	72.0	57.4	48.4	50.2
China	4.9	6.1	12.5	21.4	27.9	32.4
All others	2.0	2.7	15.5	21.2	23.7	17.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
Ratio of import quantity to U.S. production (percent)						
Vietnam	18.5	28.1	28.5	47.9	49.5	54.9
China	0.7	1.5	2.9	13.1	22.7	28.4
All others	0.4	0.7	4.9	14.6	19.5	17.1
Total	19.6	30.4	36.4	75.5	91.7	100.4
<p>¹ Believed to be ex-processing facility for U.S. imports from Vietnam. Landed duty-paid for U.S. imports from China, all other sources.</p> <p>² Unit value data reflect the valuation of exports from Vietnam to the United States, rather than U.S. imports from Vietnam (which, as previously noted, were subject to reporting irregularities). The unit values of U.S. imports from Vietnam as reported by official Commerce statistics are \$1.31 (2003), \$1.29 (2004), \$1.06 (2005), \$1.45 (2006), \$1.57 (2007), and \$1.56 (2008).</p>						
Source: Compiled from official Commerce statistics and from data submitted in response to Commission questionnaires.						

LEADING NONSUBJECT SOURCES OF IMPORTS

During the period for which data were collected, imports of certain frozen fish fillets entered the United States from several sources. The leading nonsubject suppliers are shown in table IV-2. The total quantity of certain frozen fish fillet imports from all nonsubject sources increased markedly during the period for which data were collected. China and Thailand are the leading nonsubject country suppliers. In 2008, imports from China were 75 percent catfish and 25 percent basa and tra, whereas imports from Thailand were 99.7 percent basa and tra.⁴ Imports from Cambodia (100 percent basa and tra in 2008) increased markedly through 2006, when Commerce issued an affirmative determination of circumvention.⁵

U.S. IMPORTERS' INVENTORIES

Data relating to U.S. importers' inventories of certain frozen fish fillets are presented in table IV-3. Inventories of subject imports fluctuated throughout the period for which data were collected, with the lowest inventory level reported in 2003 and the highest inventory level reported in 2006. Inventory levels of nonsubject imports were minimal during 2003-05, then increased rapidly, with the highest inventory level reported in 2008. Importers' inventories from nonsubject countries are largely of Chinese origin, and are believed to include substantial volumes of *Ictaluridae* catfish.

⁴ The domestic interested parties believe that imports reported to be from Thailand may consist in part of Vietnamese-origin frozen basa and tra fillets that are circumventing the antidumping duty order. Domestic interested parties' prehearing brief, p. 49. Similarly, U.S. importer *** reported that "product imported from Thailand and China, where there is same limited production of product, does not support export volumes from these countries. Malaysia and Indonesia also have no significant commercial production. Somehow exports from Vietnam to Thailand often match volumes imported to USA from Thailand." *** U.S. importer questionnaire response at II-7 (b).

⁵ The U.S. Department of Commerce found that two related Vietnamese firms circumvented the antidumping order by importing whole, live basa and tra into Cambodia and processing them into frozen fish fillets for export to the United States. *Circumvention and Scope Inquiries on the Antidumping Duty order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order; Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608, July 7, 2006.

Table IV-2
Certain frozen fish fillets: U.S. imports from leading nonsubject sources, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
Cambodia	0	437	1,005	2,033	2,350	2,126
China	719	1,679	3,344	14,593	21,420	27,542
Indonesia	0	0	58	1,196	1,832	1,552
Malaysia	16	0	426	4,769	904	145
Thailand ¹	47	5	3,252	7,525	12,332	12,338
All others ²	394	377	878	754	1,025	426
Total nonsubject	1,176	2,499	8,962	30,870	39,863	44,129
Value (1,000 dollars)³						
Cambodia	0	767	1,561	3,713	4,329	3,470
China	1,265	2,879	6,109	27,214	38,978	50,687
Indonesia	0	0	94	2,255	3,396	2,907
Malaysia	14	0	551	6,858	1,416	204
Thailand ¹	41	5	4,102	12,675	20,199	18,729
All others ²	454	518	1,270	1,443	3,804	1,826
Total nonsubject	1,775	4,169	13,686	54,159	72,121	77,823
Unit value (per pound)						
Cambodia	(³)	\$1.75	\$1.55	\$1.83	\$1.84	\$1.63
China	\$1.76	1.71	1.83	1.86	1.82	1.84
Indonesia	(³)	(³)	1.61	1.89	1.85	1.87
Malaysia	0.86	(³)	1.29	1.44	1.57	1.41
Thailand ¹	0.88	0.99	1.26	1.68	1.64	1.52
All others ²	1.15	1.37	1.45	1.92	3.71	4.28
Total nonsubject	1.51	1.67	1.53	1.75	1.81	1.76
<p>¹ The domestic interested parties and U.S. importer *** questioned whether imports from Thailand are in part Vietnamese-origin frozen fish fillets. Domestic interested parties' prehearing brief, p. 49, and *** U.S. importer questionnaire, II-7(b).</p> <p>² All others includes Australia, Bangladesh, Brazil, Canada, Chile, Guyana, Hong Kong, India, Mexico, Singapore, Spain, Taiwan.</p> <p>³ Landed, duty-paid.</p>						
Source: Compiled from official Commerce statistics.						

Table IV-3

Certain frozen fish fillets: U.S. importers' end-of-period inventories of imports, by source, 2003-08

Item	Calendar year					
	2003	2004	2005	2006	2007	2008
Imports from Vietnam:						
Inventories (1,000 pounds)	***	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***	***
Ratio to total import shipments (percent)	***	***	***	***	***	***
Imports from all other sources:						
Inventories (1,000 pounds)	***	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***	***
Ratio to total import shipments (percent)	***	***	***	***	***	***
Imports from all sources:						
Inventories (1,000 pounds)	39	1,457	2,118	7,466	4,798	5,377
Ratio to imports (percent)	4.7	25.1	25.1	27.7	15.0	10.9
Ratio to U.S. shipments of imports (percent)	4.9	31.8	28.8	35.0	14.3	11.3
Ratio to total import shipments (percent)	4.9	31.8	28.8	34.6	14.1	11.3
Source: Compiled from data submitted in response to Commission questionnaires.						

THE INDUSTRY IN VIETNAM

Overview

Growth in the Vietnamese aquaculture sector⁶ has been rapid in the last two decades owing to the diversification of farming practices and the intense adaptation to the production of species for export.⁷ After Vietnamese reunification, the fisheries sector was identified as a key economic sector for the nation for its importance in domestic food production. In the 1980s, buoyed by rapid export growth, the sector, mainly aquaculture, grew further. Owing to the wide range of geographical and climatic conditions throughout the country, different species are farmed in different regions. Shrimp and basa and tra are the largest aquaculture products produced in Vietnam; they are raised primarily in the south in the Mekong River Delta. Total aquaculture production was 1.15 million metric tons (2.535 billion pounds) on 902,900 hectares in 2004. Aquaculture production accounted for 60 percent of the \$2.397 billion in export earnings from the fisheries sector in 2004.

⁶ Aquaculture is the farming of freshwater and saltwater organisms under controlled conditions.

⁷ Information in this section is adapted from the United Nation Food and Agriculture Organization's *National Aquaculture Sector Overview. Viet Nam*. Text by Nguyen, T.P. & Truong, H.M. FAO Fisheries and Aquaculture Department. Rome. Updated 10 October 2005. http://www.fao.org/fishery/countrysector/naso_vietnam/en.

Reports indicate that Vietnamese aquaculture production is likely to continue its upward trend⁸ and both domestic and export markets will expand to absorb the production increases. International observers note that the challenges the Vietnamese industry faces moving forward include the increasing international demand for high quality, safe and clean aquatic products and the need to regulate a rapidly expanding sector faced with meeting international safety and quality standards, securing sufficient high quality seed, a lack of capital for infrastructure investment, poorly educated farmers, and the lack of skilled workers.⁹

Basa and Tra Operations in Vietnam

Production of basa (*Pangasius hypophthalmus*) and tra (*Pangasius bocourti*) is one of Vietnam's most developed aquaculture sectors along with the giant tiger prawn (*Penaeus monodon*). Typical culture systems of the south for basa and tra production include pond, fence, and cage culture in high densities in freshwater. Basa and tra production grew from 114,000 metric tons (251 million pounds), valued at \$171 million, in 2001 to 850,000 metric tons (1.873 billion pounds), valued at \$1.3 billion, in 2007 (table IV-4).^{10 11} From 2001 to 2005, area under production grew from just over 2,000 ha to just over 4,000 ha. Yields of over 100 kg/m³/crop from cage farming; 183-582 tons/ha/crop in pond farming (depending on the stocking density); and 35 tons/ha/crop from fence farming have been reported.¹²

Table IV-4

Basa and tra: Vietnamese production of basa and tra, 1997-2007

Item	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Volume (1,000 lb)	88,185	132,277	191,802	220,462	251,327	297,624	359,353	496,040	828,938	1,146,403	1,873,929
Value (\$1,000)	64,000	96,000	121,800	140,000	171,000	202,500	244,500	382,500	564,000	780,000	1,275,000

Source: Global Aquaculture Production, FAOStat database.

⁸ Aquaculture share of total fisheries production increased from 31.2 percent in 1991 to 43.8 percent in 2003, according to FAO.

⁹ Information in this section is adapted from the United Nation Food and Agriculture Organization's *National Aquaculture Sector Overview. Viet Nam*. Text by Nguyen, T.P. & Truong, H.M. FAO Fisheries and Aquaculture Department. Rome. Updated 10 October 2005. http://www.fao.org/fishery/countrysector/naso_vietnam/en.

¹⁰ UN, FAO, FishStat database, 2007.

¹¹ In VASEP's response to the notice of institution, it reported its members' 2007 production of certain frozen fish fillets was *** pounds. VASEP's response to the notice of institution, p. 3. These data only covered VASEP's reporting members during the response to the notice of institution (which were a smaller subset than in later VASEP submissions). These data are substantially understated compared to export data submitted by VASEP during the review and compared to the domestic interested parties' estimate of Vietnamese production of certain frozen fish fillets.

¹² UN FAO, *National Aquaculture Sector Overview. Viet Nam*. Text by Nguyen, T.P. & Truong, H.M. In: FAO Fisheries and Aquaculture Department. Rome. Updated 10 October 2005. http://www.fao.org/fishery/countrysector/naso_vietnam/en.

The Vietnamese Ministry of Agriculture and Rural Development (MARD) reportedly has targeted the basa and tra sector, devising a plan coordinated with other government agencies to develop farming and processing into a large-scale industry.^{13 14} In addition, the Ministry of Fisheries conducts research on national aquaculture and has conducted research on the application of new technologies to basa and tra production in both seed production and grow-out phases. Technologies for basa and tra feed production have been improved resulting in less expensive, locally available raw materials which has contributed to lower production costs for farmers.¹⁵

Many participants in the Vietnamese industry lack capital to invest in infrastructure, particularly cold storage facilities for frozen product which for some processors is currently limited.¹⁶ Certain firms, however, have recently announced expansion plans and increases in storage capacity.¹⁷ The Vietnamese industry reportedly currently suffers from underutilized processing capacity and is importing fish for processing from other countries such as China and Thailand.¹⁸

Recent rapid and unplanned expansion has led to concerns of environmental pollution, particularly of water. In addition, intense price competition reportedly results in overuse of glazing and additives which reduce quality.¹⁹ The Vietnamese government reportedly encourages producers to agree on a floor price to avoid unfair competition and encourage safe hygienic practices.²⁰ Vietnamese producers are reportedly aware that their global comparative advantage has been based on low prices which may not be sustainable in the long term and unlikely to encourage production expansion. Some Vietnamese firms are intensifying efforts to meet quality, hygiene and food safety standards in the EU.²¹

In the Mekong delta region there are over 80 frozen fish fillets processors, with processing capacity of *** tons of finished products in 2007 and *** tons in 2008.²² Four Vietnamese processing plants have announced capacity expansion plans in 2009 totaling 656 million pounds.²³

The Commission sent questionnaires to 80 firms believed to produce frozen fish fillets in Vietnam. A questionnaire response was received from one firm, ***. Export data were received from VASEP for this review. VASEP is a non-governmental organization with 235 members which includes Vietnamese seafood producers, exporters, and companies providing services to the seafood sector. VASEP reported that it's members represent 80 percent of total seafood exports (including frozen fish fillets) from Vietnam. As shown in table IV-5, Vietnam's exports of frozen fish fillets to the United States decreased as a share of total exports from 2003 to 2008, and the share of exports to other markets increased. The European Union was the largest export market for VASEP from 2004-07. Poland, Spain,

¹³ "MARD Plans Large Scale Catfish Production," The Fish Site News Desk, March 27, 2009.

¹⁴ In November 2008, MARD announced targeted goals of increasing pangasius farming output to 2.76 billion pounds by 2010, and to 4.08 billion pounds by 2020. Domestic interested parties' prehearing brief, exhibit 14.

¹⁵ UN FAO, *National Aquaculture Sector Overview. Viet Nam*. Text by Nguyen, T.P. & Truong, H.M. In: FAO Fisheries and Aquaculture Department. Rome. Updated 10 October 2005. http://www.fao.org/fishery/countrysector/naso_vietnam/en.

¹⁶ Reportedly, Vietnamese traders move frozen product to export markets quickly, due to the lack of cold storage space. Helga Josupeit, FAO Globefish, Pangasius Market Report, February 2009.

¹⁷ Domestic interested parties' prehearing brief, exhibit 17.

¹⁸ USDA, FAS, GAIN Report, "Vietnam Fishery Products Annual Report," June 2008 and domestic interested parties' prehearing brief, exhibit 16.

¹⁹ Helga Josupeit, FAO Globefish, Pangasius Market Report, February 2009.

²⁰ Helga Josupeit, FAO Globefish, Pangasius Market Report, February 2009.

²¹ Truong Tri Vinh, VASEP for FAO Globefish, Pangasius Market Report, December 2005 "Increase in Vietnamese Pangasius Sales to EU Markets."

²² VASEP foreign producers'/exporters' questionnaire response, p. 5. Based on projected growth rates, domestic interested parties estimate 2008 total Vietnamese capacity at *** pounds and production at *** pounds. Domestic interested parties' prehearing brief, exhibit 15.

²³ Domestic interested parties' prehearing brief, exhibit 15.

and Netherlands are the main EU markets. The depreciation of the U.S. dollar against the euro during the period increased EU purchasing power, making the EU one of Vietnam's most attractive markets.²⁴ In 2008, other markets, including specifically Russia and Ukraine, combined, became the largest export destination.

Table IV-5
Certain frozen fish fillets: Vietnam's exports, by country, 2003-08

Source	Calendar year					
	2003	2004	2005	2006	2007	2008
Quantity (1,000 pounds)						
United States	19,689	31,349	32,548	53,531	46,728	53,305
European Union	14,727	49,431	121,632	271,632	381,111	494,516
China/Hong Kong	15,889	40,289	36,053	38,972	40,155	40,827
ASEAN	10,845	25,039	48,550	62,864	74,385	74,853
All other markets ¹	12,273	36,791	71,419	204,840	310,514	749,271
Total	73,423	182,898	310,202	631,839	852,893	1,412,772
Share of export quantity (percent)						
United States	26.8	17.1	10.5	8.5	5.5	3.8
European Union	20.1	27.0	39.2	43.0	44.7	35.0
China/Hong Kong	21.6	22.0	11.6	6.2	4.7	2.9
ASEAN	14.8	13.7	15.7	9.9	8.7	5.3
All other markets ¹	16.7	20.1	23.0	32.4	36.4	53.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Value (1,000 dollars)						
United States	24,228	43,150	35,258	72,872	67,606	78,559
European Union	17,755	67,097	139,393	343,427	469,541	581,500
China/Hong Kong	15,509	44,479	32,379	37,377	38,803	35,975
ASEAN	9,497	23,499	40,604	62,835	77,612	75,751
All other markets ¹	14,910	50,771	80,518	220,361	325,473	681,314
Total	81,899	228,995	328,153	736,872	979,036	1,453,098
Unit value (dollars per pound)						
United States	\$1.23	\$1.38	\$1.08	\$1.36	\$1.45	\$1.47
European Union	1.21	1.36	1.15	1.26	1.23	1.18
China/Hong Kong	0.98	1.10	0.90	0.96	0.97	0.88
ASEAN	0.88	0.94	0.84	1.00	1.04	1.01
All other markets ¹	1.21	1.38	1.13	1.08	1.05	0.91
Total	1.12	1.25	1.06	1.17	1.15	1.03
¹ All other markets include Australia, Russia, and Ukraine.						
Source: Compiled from export data submitted by VASEP.						

²⁴ Truong Tri Vinh, FAO Globefish, Pangasius Market Report, November 2007.

Despite the initial decline in exports to the United States, total Vietnamese exports grew steadily as increasingly more product was shipped to the EU. This expansion into the EU market reportedly is owed to increasing penetration among European grocery chains, where retail promotional activities moved basa and tra from marginal to mainstream status.²⁵ In the EU, Vietnamese basa and tra are considered less expensive alternatives to white fish, which is increasingly expensive in the EU due to reduced landings and quota policies. EU firms import frozen basa and tra fillets and perform their own value-added operations.²⁶

In 2006, Russian imports of Vietnamese basa and tra increased considerably. However, in December 2008, Russia banned all pangasius imports from Vietnam following the discovery of some contaminated products. Although the ban was recently partially lifted, only 10 Vietnamese processing plants are authorized to export to Russia.²⁷ In 2007 and 2008, Vietnamese exports to the United States rebounded, despite the antidumping order. In 2008, Polish imports of Vietnamese basa and tra dropped off while Russian and Ukrainian imports grew rapidly along with smaller, developing markets such as Egypt and Mexico.

GLOBAL MARKET

Global aquaculture production reached nearly 48.4 million metric tons (106.7 billion pounds) in 2001, up from 11.3 million tons (24.9 billion pounds) in 1985.²⁸ Trends indicate that capture capacity for many species has reached its limit, making aquaculture production more important in supplying growing global demand for fish and fish products, which is predicted to grow by more than 50 percent by 2030.²⁹ The global share of aquaculture production accounted for by developed countries is low.³⁰ Growth in the sector has been almost entirely from developing countries, for whom export revenues of aquaculture species are crucial components of GDP. In 2005, China accounted for 67 percent of global aquaculture production, followed by India (6 percent), and Vietnam (3 percent).³¹ Much of current production in developing countries is relatively immature and commonly accepted global rules, particularly with regard to production practices and food safety, have not been developed.³²

²⁵ Gerry O'Sullivan, FAO Globefish, Pangasius Market Report, July 2006.

²⁶ Nick Holmyard, FAO Globefish, Pangasius Market Report, November 2008.

²⁷ Domestic interested parties' posthearing brief, exhibit 1, p. 40.

²⁸ Helga Josupeit and Nicole Franz, "Aquaculture - Trade, Trends, Standards and Outlooks," FAO Fisheries Department, January 2004 (ppt).

²⁹ Helga Josupeit and Nicole Franz, "Aquaculture - Trade, Trends, Standards and Outlooks," FAO Fisheries Department, January 2004 (ppt).

³⁰ Developed countries' share of global aquaculture production was 9 percent in 2001.

³¹ "Global Fish Trade Overview," EUROFISH FAO Workshop, Split, Croatia, May 2007.

³² Some of the hazards associated with aquaculture include: pollution contaminating pond and tank water, contaminated feeds, abuse of veterinary drugs, and parasites in freshwater fish.

Supply Considerations

Vietnam is by far the largest global producer of basa and tra. Other major producers of catfish are the United States and China. The main exporters of catfish (regardless of species) are Vietnam, China, Thailand, Malaysia, and some Sub-Saharan African countries, including Tanzania.

China has a long history of aquaculture and in the last several decades it has become one of the country's fastest growing agriculture sectors. The industry originally focused on carp production and although it has expanded into other species, carp currently accounts for almost three-quarters of Chinese freshwater aquaculture production. In 2003, total aquaculture production was 30.28 million metric tons (66.8 billion pounds) covering 7,104 million hectares.³³ This production mainly serves China's domestic market, as less than 5 percent of Chinese aquaculture production is processed for export. Nonetheless, China is a major exporter of fish products, mainly frozen shrimp (mainly to the United States), baked eel (to Japan), and frozen tilapia fillets (to the United States).

Various species, including the species of catfish grown in the United States (*Ictalurus*), have been introduced in China from abroad for commercial cultivation. Chinese catfish production in 2006 was 120,000 metric tons (265 million pounds).³⁴ Chinese catfish production takes place in over 20 provinces in pond culture, cage culture and running water culture. Catfish for export is mainly produced by cage culture.³⁵

Aquaculture production in Thailand in 2007 was 1.39 million metric tons (3.1 billion pounds) and accounted for about one-quarter of fisheries production.³⁶ In 2002, total aquaculture production contributed 2.07 percent of total GDP.³⁷ Freshwater aquaculture accounts for about one-third of total aquaculture production and is mainly for domestic consumption and marketed as fresh products. The main fresh water species grown are Nile tilapia (*Oreochromis niloticus*) hybrid catfish (*Clarias macrocephalus* X *C. Gariepinus*), and silver barb (*Barbodes gonionotus*). Catfish (*Clarias* sp.) production in 2003 was 86,475 metric tons (190.6 million pounds), or 30 percent of total freshwater aquaculture production. Although this species of catfish is preferred by growers because it grows faster than native species, the production per unit has been decreasing in recent times, possibly due to the quality of the original male stock introduced for cultivation. A Sutchi catfish (*Pangasianodon hypophthalmus*) is also produced in Thailand, accounting for 5 percent of total freshwater aquaculture production in 2003. Saltwater aquaculture production in Thailand, particularly barramundi (*Lates calcarifer*), grouper (*Epinephalus* sp.), and shellfish (mussels, shrimp, and prawn), is higher value than freshwater and is mainly for export.

³³ FAO. © 2006-2009. National Aquaculture Sector Overview. China. Text by Shuping, C. In: FAO Fisheries and Aquaculture Department. Rome. Updated 1 February 2005.

http://www.fao.org/fishery/countrysector/naso_china/en.

³⁴ Helga Josupeit, FAO Globefish, Catfish Market Report, December 2007.

³⁵ FAO Globefish, Catfish Market Report, January 2008.

³⁶ Information in this section is drawn largely from FAO. 8 2006-2009. National Aquaculture Sector Overview. Thailand. Text by Pongsri, C. and Sukumasavin, N. In: FAO Fisheries and Aquaculture Department. Rome.

Updated 1 February 2005. http://www.fao.org/fishery/countrysector/naso_thailand/en.

³⁷ Thai aquaculture production began to grow rapidly beginning in the late 1980s, from just over 200,000 metric tons (441 million pounds) in 1988 to 1.39 million metric tons (3.1 billion pounds) in 2007.

Demand Considerations

The growing global demand for white fish can be attributed to consumer interest in the health benefits of fish and food safety issues surrounding beef and poultry (i.e., BSE and Avian flu outbreaks). Static or declining supplies of traditional white fish species has increased market interest in price competitive aquaculture products.³⁸ Vietnam is the major exporter of basa and tra to global markets. Vietnam's competitive advantage in basa and tra production comes from favorable natural growing conditions and low labor costs, however similar conditions in China have led to strong competition, particularly in the EU market.³⁹ However, frozen fish fillets from both Vietnam and China have faced challenges in their growing markets, particularly in the United States and Russia (Vietnam) and in the EU and the United States (China).

In 2001, the EU issued a regulation on fish labeling and traceability in order to protect the consumer.⁴⁰ The EU was closed to Chinese aquaculture products from January 2002 to July 2004 when residues were found on imported Chinese fish products.⁴¹ At the end of 2002, the Chinese government implemented a voluntary program to guide its aquaculture production in a sustainable, responsible and healthy way.⁴²

In October 2006, the Russian Federal Veterinary and Phytosanitary Surveillance Service (VPSS) adopted new regulations for food safety inspections of Vietnamese basa and tra at the border. Shipments had been found without proper documentation for approved processing plants by Russian inspectors.⁴³ This resulted in reduced shipments to Russia.⁴⁴ Increased exports to the Ukraine made up for the Russian decline.

In June 2007 the U.S. Food and Drug Administration began to detain imports of Chinese farm-raised seafood products when samples were found to contain chemical residues.⁴⁵ A protocol for inspection and control for Chinese food products, including cultured seafood like catfish, was reached in the end of 2007 and U.S. imports of Chinese catfish began to increase again.⁴⁶ Chinese exporters must obtain an exemption on export restrictions by "requalifying within HACCP system."⁴⁷

U.S. processors, U.S. importers, and U.S. purchasers of certain frozen fish fillets were requested in their questionnaire responses to comment on demand for certain frozen fish fillets outside of the United States since January 1, 2003 and anticipated in the future.⁴⁸ Useable responses are summarized in the following tabulation.

³⁸ Gerry O'Sullivan, FAO Globefish, Pangasius Market Report, July 2006.

³⁹ Truong Tri Vinh, FAO Globefish, Pangasius Market Report, November 2007.

⁴⁰ Helga Josupeit and Nicole Franz, "Aquaculture - Trade, trends, Standards and Outlooks," FAO Fisheries Department, January 2004 (ppt).

⁴¹ FAO. © 2006-2009. National Aquaculture Sector Overview. China. Text by Shuping, C. In: FAO Fisheries and Aquaculture Department. Rome. Updated 1 February 2005.

[Http://www.fao.org/fishery/countrysector/naso_china/en](http://www.fao.org/fishery/countrysector/naso_china/en).

⁴² FAO. © 2006-2009. National Aquaculture Sector Overview. China. Text by Shuping, C. In: FAO Fisheries and Aquaculture Department. Rome. Updated 1 February 2005.

[Http://www.fao.org/fishery/countrysector/naso_china/en](http://www.fao.org/fishery/countrysector/naso_china/en).

⁴³ FAO Globefish, Pangasius Market Report, May 2007.

⁴⁴ Truong Tri Vinh, FAO Globefish, Pangasius Market Report, November 2007.

⁴⁵ U.S. Food and Drug Administration, "FDA Detains Imports of Farm-Raised Chinese Seafood," Press Release, June 28, 2007.

⁴⁶ Helga Josupeit, FAO Globefish, Catfish Market Report, December 2007.

⁴⁷ FAO Globefish, Catfish Market Report, January 2008.

⁴⁸ U.S. producer, importer, and purchaser questionnaire responses, sections IV-15b and 16b, III-20b and 21b, and III-11b and III-12b, respectively.

Changes in demand for certain frozen fish fillets outside of the United States				
Types of firms	Number of firms responding			
	Increase	Decrease	Fluctuate	No change
	Demand changes since January 2003			
U.S. processors ¹	1	2	-	3
U.S. importers ²	2	-	1	3
U.S. purchasers	7	-	-	2
Total	10	2	1	8
Demand changes anticipated in the future				
U.S. processors ³	-	-	2	4
U.S. importers ⁴	3	-	1	2
U.S. purchasers	5	-	3	4
Total	8	0	6	10
¹ Nine other U.S. processors reported that they did not know how foreign demand changed. ² Four other U.S. importers reported that they did not know how foreign demand changed. ³ Nine other U.S. processors reported that they did not know how foreign demand would change in the future. ⁴ Two other U.S. importers reported that it did not know how foreign demand would change in the future.				

A small majority of questionnaire responses indicate that foreign demand for certain frozen fish fillets increased since January 2003, but a small majority of responses for anticipated future foreign demand indicate no change in future demand.

Considering historical foreign demand for certain frozen fish fillets, the responding firms that indicated increased demand cited a number of reasons, including availability, price, and price competitiveness, mild taste, and the general perception that seafood is a healthy nutritious food. One of the responding firms asserting increased demand, ***, a U.S. importer, provided the following additional comments: “Foreign demand increased as Vietnam established strong marketing efforts of the Pangasius fish fillets in such countries as Russia, Spain, and Mexico. Value pricing of the Vietnamese product compared to other fish fillets, especially that of wild species. Quality and standards of the Vietnamese fish have improved. Consistency of volume due to strong aquaculture developments in Vietnam.” The firms that indicated decreased demand cited price, currency fluctuations, and availability. The firms that indicated fluctuating demand cited price and availability. The firms that cited no change in demand did not provide any explanations.

With respect to future foreign demand for certain frozen fish fillets, the firms that anticipate increased future demand cited decreasing supply of alternative wild-caught fish species, the current economic climate favors less expensive fish, and for many of the other reasons cited above for increased demand during the historical period. No firms anticipated a decrease in foreign demand. The firms that anticipate fluctuating foreign demand cited the current economic crisis, supply, cost, and quality. The firms that anticipate no change in foreign demand did not provide any explanations.

Prices

Price fluctuations for frozen fish fillets generally reflect global supply and demand conditions. Vietnamese unit values tend to be consistently lower in the EU with respect to other suppliers. In fact, in 2005, the low prices for Vietnamese basa and tra were reportedly putting downward pressure on other substitute products, such as Nile perch.⁴⁹ Supply shortages in 2006 caused global prices to rise considerably (by 40-50 percent from 2006 to 2007).⁵⁰ Global prices also increased throughout 2008 due to scarcity of supplies.⁵¹ Nonetheless, wide price differences exist in various national and regional markets. For example, prices in Russia in 2008 were about \$1 per pound below those paid in the EU.⁵² Such price differences may reflect a variety of factors, including substantial variations in fish size and quality.

U.S. processors and importers of the certain frozen fish fillets were requested in their questionnaire responses to compare market prices of these products in the U.S. and non-U.S. markets.⁵³ Fourteen U.S. processors of the frozen catfish fillets and seven U.S. importers of the certain frozen fish fillets, including the frozen basa and tra fillets from Vietnam, responded. However, 13 of the 14 responding U.S. processors and four of the seven responding U.S. importers reported that they did not have such information. The remaining U.S. processor and three U.S. importers provided some comments. ***, asserted that “prices vary by market due to freight differences and competitive offerings both domestically and imported.” Two of the three U.S. importers, ***, indicated that prices in the U.S. market were higher, and *** specifically attributed the higher prices to the antidumping duty order. The remaining importer providing comments, ***, asserted that “certain frozen fish fillets are a global commodity. When unencumbered by duties, the U.S. market competes evenly for purchases, but when subject to duties, competing markets have a significant advantage.”

⁴⁹ Truong Tri Vinh, VASEP for FAO Globefish, “Increase in Vietnamese Pangasius Sales to EU Markets,” Pangasius Market Report, December 2005.

⁵⁰ FAO, Pangasius Market Report, May 2007.

⁵¹ Helga Josupeit, FAO Globefish, Catfish Market Report, September 2008.

⁵² Helga Josupeit, FAO Globefish, Catfish Market Report, September 2008.

⁵³ U.S. producer and importer questionnaire responses, sections IV-20 and III-23, respectively.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICING

U.S. prices of certain frozen fish fillets can fluctuate based on demand factors such as overall U.S. economic activity, seasonal U.S. demand, and sectoral demand, particularly in restaurant and grocery store retailing. On the supply side, prices of certain frozen fish fillets fluctuate based on the cost of the live fish, which in turn, is affected substantially by the cost of feed; prices may also fluctuate due to seasonal domestic supply factors and due to a number of product specifications, including, but not restricted to, the size of the fillets, whether regular, shank, or strip fillets, and whether plain, breaded, or marinated. In addition, the prices of certain frozen fish fillets can fluctuate due to quantities contracted and the relative bargaining strength between purchasers and suppliers. U.S. prices of certain frozen fish fillets may also be affected by prices of alternative fish products, including certain *fresh* fish fillets.¹

Raw Material Costs

Total raw materials used to process frozen catfish fillets averaged 72.9 percent of U.S. processors' total cost of goods sold during 2003-08.² The primary raw material used to process domestic frozen catfish fillets is U.S. live farm-raised catfish. U.S. processors reported that the cost of live catfish averaged 71.9 percent of the cost of goods sold of their frozen catfish fillets during 2003-08.³

Quarterly prices and quantities of U.S. live farm-raised catfish shipped to U.S. processors of frozen catfish fillets during January 2003-December 2008 are shown in figure V-1.⁴ Quarterly shipment prices of live catfish fluctuated but generally increased during this period, while quantities fluctuated but generally decreased. From a period low of \$0.55 per pound during January-March 2003, live catfish prices increased to a period high of almost \$0.84 per pound during January-March 2007, then fluctuated but ended at \$0.82 per pound by October-December 2008, for an increase of 49.1 percent over the entire period. As seen in tables V-1 through V-4 and figure V-1, the U.S. processors' quarterly selling prices of the specified frozen catfish fillet products and their quarterly purchase prices of live catfish trended closely together during January 2003-December 2008.⁵

¹ Part II discusses in detail substitution between certain frozen fish fillets and alternative products and substitution between the U.S.-produced frozen catfish fillets and imports of the certain frozen fish fillets from nonsubject countries.

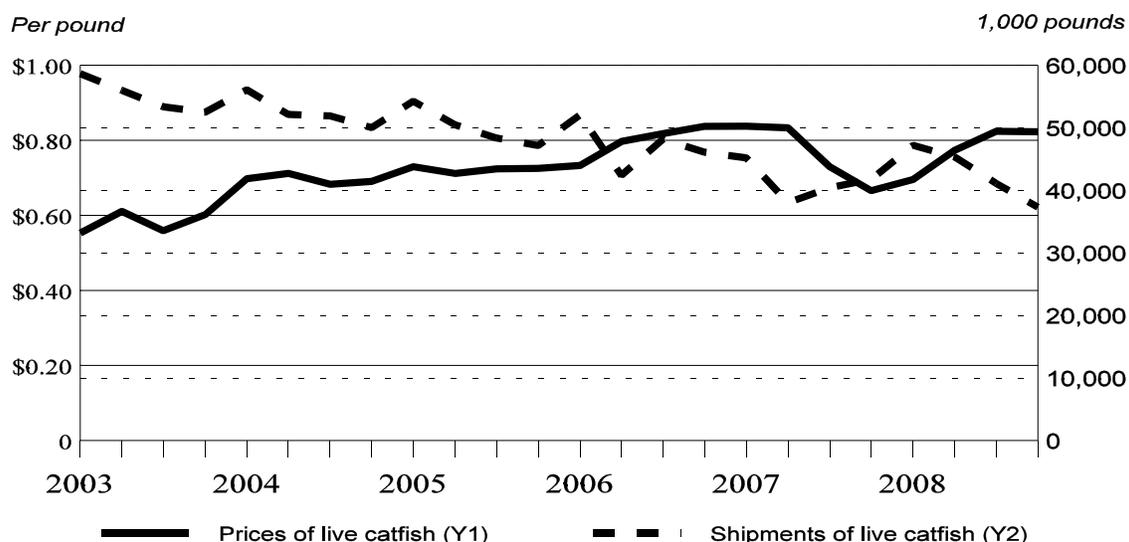
² U.S. producer questionnaire responses, section III-10.

³ Ibid. Most of the raw material consists of live catfish; breeding and marinade for the value-added frozen fillets and other incidentals comprise the remainder of raw materials.

⁴ The quarterly price data were calculated as simple averages of monthly price data reported by the USDA. U.S. processors of frozen catfish fillets typically purchase the live catfish on a spot basis. Staff telephone interview with ***.

⁵ Statistical correlation can quantify the degree to which these selling and purchase prices move together. A frequent measure of statistical correlation is a linear correlation coefficient, where a coefficient of 1 indicates perfect correlation, declining values indicate progressively decreasing correlation, and a correlation coefficient of zero indicates no correlation between the data series. The correlation coefficients between quarterly selling prices of the frozen catfish fillet products and the purchase prices of live catfish ranged from 0.87 involving product 4 to 0.98 involving product 2 during January 2003-December 2008.

Figure V-1
Live catfish: Quarterly selling prices and quantities (weight) of live farm-raised catfish shipped to U.S. processors of frozen catfish fillets during January 2003-December 2008



Source: NASS, USDA, Monthly Catfish Report, <http://usda.mannlib.cornell.edu/MannUsda/ViewDocumentInfo.do?documentID=1015>, retrieved March 13, 2009.

Quarterly shipment quantities of the live catfish to U.S. processors began at a period high of 58.7 million pounds during January-March 2003 and decreased irregularly to end at a period low of 37.3 million pounds during October-December 2008, for a total decrease of 36.5 percent. Due at least partially to seasonality in demand for the frozen catfish fillets, the largest quarterly shipments occurred in the first quarter of each year, while the smallest quarterly shipments typically occurred in the final quarter of each year. The declining shipment trends were also evident when comparing shipment quantities in the first quarter of each year and the last quarter of each year.⁶

Generally rising feed prices increased U.S. farmers' cost to produce the live catfish during 2003-08,⁷ but reportedly farmers were not always able to raise their selling prices sufficiently to cover their higher costs.⁸ During this period, several farmers reportedly drained some of their catfish ponds and

⁶ During the first quarter of each year, shipment quantities of live catfish to processors fell almost steadily from 58.7 million pounds during January-March 2003 to 47.2 million pounds during January-March 2008, or by almost 20 percent. During the final quarter of each year, shipment quantities fell steadily from 52.5 million pounds during October-December 2003 to 37.3 million pounds during October-December 2008, or by almost 29 percent.

⁷ Catfish farms purchase feed from mills that specialize in and produce only catfish feed (E-mail from ***). Feed costs typically account for *** percent of catfish farmers production costs (staff telephone interview with ***). Catfish feed is made of soybeans, corn, and wheat, although corn gluten instead of corn meal has been used to some extent to reduce the price of feed by \$50 to \$60 per ton. *Fuel, Feed costs crippling U.S. catfish industry*, June 23, 2008, provided in domestic interested parties' response to the notice of institution, exhibit 16.

⁸ U.S. producer questionnaire responses, sections IV-14 and IV-21.

switched the use of some of the reclaimed land to more profitable uses, such as corn, cotton, and soybeans production.⁹ Water surface acres used for U.S. catfish production decreased by 12.9 percent during 2003-08, from a period high of 187,200 acres in 2003 to a period low of 163,100 acres in 2008.¹⁰ Water surface acres for catfish production in 2009 are estimated to be 146,900 acres, 9.9 percent lower than in 2008.¹¹ U.S. processors of frozen catfish fillets indicated that rising costs to catfish farmers have reduced the supply of U.S. live farm-raised catfish and projected that declining supply will continue in the future.¹²

Quarterly prices of feed to U.S. producers of farm-raised catfish during January 2003-December 2008 are shown for 28-percent protein feed and 32-percent protein feed in figure V-2.¹³ Quarterly prices of the 32-percent protein feed were somewhat higher than the 28-percent protein feed throughout 2003-08, while both price series followed the same trends during this period. Because of this similarity in trends, only prices of the 32-percent protein feed are discussed here. Quarterly prices of the 32-percent protein feed to U.S. catfish farmers began at a period-low of \$224.33 per ton in January-March 2003 and increased to \$300.67 per ton by April-June 2004, before generally decreasing to equal the period-low level of \$224.33 per ton by January-March 2005. Quarterly prices then fluctuated but generally increased to a period high of \$428.33 per ton by July-September 2008, before decreasing to end at \$368.67 per ton in October-December 2008, for an increase of 64.3 percent over the entire period. Thus while the quarterly prices of live catfish in figure V-1 and quarterly prices of feed in figure V-2 both increased, they did not trend closely together during 2003-08.¹⁴ One explanation for the weak relationship in the movement of these prices during this period may be that U.S. catfish farmers sell their live catfish on a spot basis and purchase a portion of their feed on an annual contract basis.

⁹ *** U.S. producer questionnaire response, section IV-21; *** purchaser questionnaire response, section III-9; and *** purchaser questionnaire responses, section III-14.

¹⁰ *Catfish Production*, USDA, NASS, February 5, 2004 and January 30, 2009 issues.

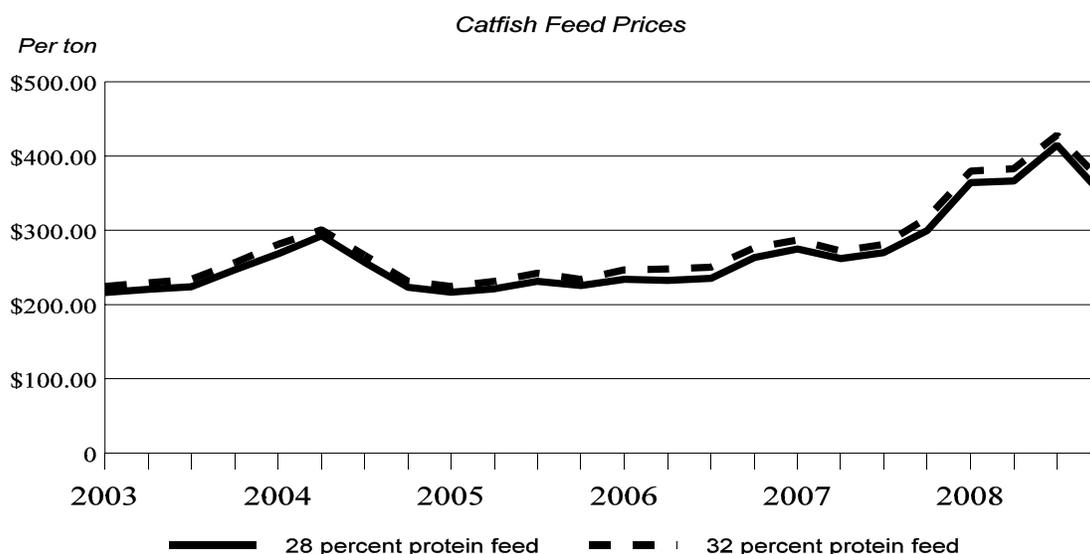
¹¹ *Catfish Production*, USDA, NASS, January 30, 2009 issue.

¹² U.S. producers questionnaire responses, section IV-22.

¹³ The quarterly price data were calculated as simple averages of monthly price data reported by Mississippi State University. U.S. catfish farmers buy up to *** percent of their annual feed requirements on an annual contract basis, especially if future feed prices are expected to increase; the remaining requirements are purchased on a ***. E-mail from ***.

¹⁴ The correlation coefficient between quarterly prices of live catfish and the quarterly purchase prices of catfish feed was approximately 0.41 during January 2003-December 2008.

Figure V-2
Catfish feed: Quarterly prices of feed to U.S. catfish farmers, by protein content, during January 2003-December 2008



Source: Mississippi State University, Agricultural Economics Department, <http://www.agecon.msstate.edu/rsearch/catfish2007db.php>, retrieved March 15, 2009.

Tariff Rates and Transportation Costs to the U.S. Market

The U.S. import duty rate under HTS statistical reporting numbers 0304.20.6030/6032/6033 and 0304.29.6032/6033 were free for imports of frozen fish fillets from Vietnam during January 2003-December 2008. Transportation charges to ship frozen fish fillets from Vietnam to the U.S. ports of entry, as a ratio to the U.S. official customs value, averaged 8.2 percent during 2003-08.¹⁵ This transport cost ratio fluctuated during the period, reaching a high of 13.4 percent during 2005 and then falling to a low of 6.9 percent in 2007, before ending at 8.0 percent during 2008.

U.S.-Inland Transportation Costs

Fifteen responding U.S. processors of frozen catfish fillets and seven responding U.S. importers of frozen basa and tra fillets from Vietnam reported the average U.S. freight costs to their U.S. customers' locations.¹⁶ U.S.-inland freight costs for domestic frozen catfish fillets averaged 5.0 percent of the delivered prices, and U.S.-inland freight costs of imported frozen basa and tra fillets from Vietnam averaged 2.3 percent of the delivered prices. The 15 responding U.S. processors of frozen catfish fillets

¹⁵ As a ratio to the landed duty-paid value of certain frozen fish fillets, these transportation charges averaged 7.6 percent for Vietnam during this period.

¹⁶ U.S. producer and importer questionnaire responses, sections IV-10a and III-10a, respectively; responding U.S. processors and importers of certain frozen fish fillets reported that they generally arranged U.S.-inland freight to their U.S. customers (U.S. producer and importer questionnaire responses, sections IV-10b and III-10b, respectively).

and the seven responding U.S. importers of frozen basa and tra fillets from Vietnam estimated their U.S. shipments of the domestic and subject imported products, during 2003-08, that were shipped to U.S. customers in three specified distance categories.¹⁷ The U.S. processors' and importers' reported shipment shares of the domestic and subject imported certain frozen fish fillets, by distance categories from their U.S. selling locations,¹⁸ are shown in the following tabulation.

Distance shipped	Share of U.S. shipments during 2003-08 (percent)	
	U.S. frozen catfish fillets	Imported frozen basa and tra fillets from Vietnam
Within 100 miles	8.0	***
101 to 1,000 miles	76.1	***
Over 1,000 miles	15.9	***
Total	100.0	100.0

Fifteen U.S. processors of frozen catfish fillets, seven U.S. importers of frozen basa and tra fillets from Vietnam, and three U.S. importers of certain frozen fish fillets from all other countries reported the U.S. geographic market area(s) during 2008 that they shipped their domestic and subject imported certain frozen fish fillets.¹⁹ The weighted-average U.S. shipment shares by each of the specified geographic areas for the subject products processed domestically, imported from Vietnam, and imported from all other countries are shown in the tabulation on the following page.

U.S. processors testified that, while a significant volume of subject imports enters the United States through the West Coast, these imports are further distributed and compete with domestic catfish throughout the country.²⁰

¹⁷ U.S. producer and importer questionnaire responses, sections IV-10c and III-10c, respectively.

¹⁸ U.S. processors typically shipped their frozen catfish fillets from their processing locations, whereas two of the five responding U.S. importers reported shipping the frozen basa and tra fillets from Vietnam from their U.S. storage facilities, two other U.S. importers reported shipping from their U.S. port(s) of entry, and the sole remaining importer did not report its shipping location. Ibid.

¹⁹ U.S. producer and importer questionnaire responses, sections IV-19 and III-22, respectively.

²⁰ Hearing transcript, pp. 149-152 (Klett and Renfro) and domestic interested parties' posthearing brief, exhibit 1, pp. 50-52.

U.S. geographic area	Share of U.S. shipments in 2008 (percent)		
	U.S. frozen catfish fillets	Imported frozen basa and tra fillets from Vietnam	Imported certain frozen fish fillets from all other countries
Northeast ¹	2.5	***	***
Midwest ²	14.1	***	***
Southeast ³	42.5	***	***
Central Southwest ⁴	35.7	***	***
Mountains ⁵	2.2	***	***
Pacific Coast ⁶	2.6	***	***
Other ⁷	0.3	***	***
Total	100.0	100.0	100.0

¹ Includes CT, ME, MA, NH, NJ, NY, NY, PA, RI, and VT.
² Includes IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, and WI.
³ Includes AL, DE, DC, FL, GA, KY, MD, MS, NC, SC, TN, VA, and WV.
⁴ Includes AR, LA, OK, and TX.
⁵ Includes AZ, CO, ID, MT, NV, NM, UT, and WY.
⁶ Includes CA, OR, and WA.
⁷ Includes all other markets in the United States not previously listed, including AK, HI, PR, VI, among others.

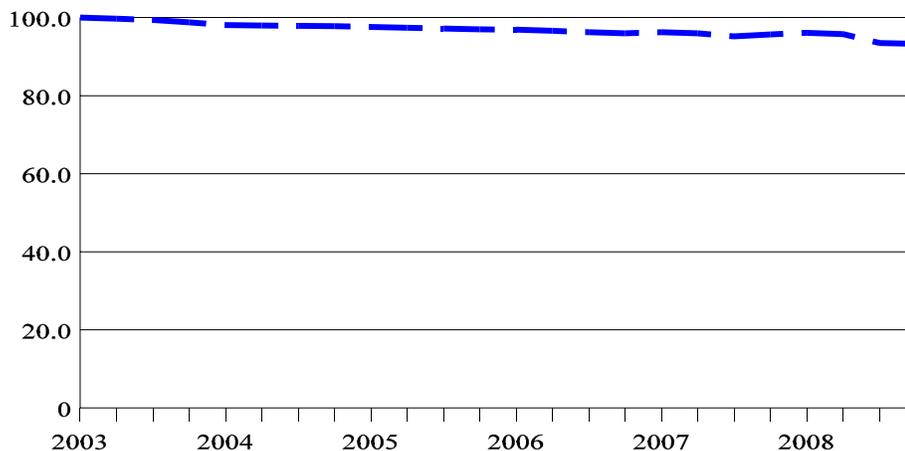
Note.—Totals may not add to 100 due to rounding.

Exchange Rates

Figure V-3 shows quarterly nominal exchange rate indices of the Vietnamese Dong relative to the U.S. dollar during January 2003-December 2008.²¹ The quarterly nominal exchange rate for the Vietnamese dong against the U.S. dollar generally decreased during January 2003-December 2008, by 7.7 percent (figure V-3).

²¹ A producer price index was not available for Vietnam such that only the nominal exchange rate index could be shown for this country. The exchange rate index was based on exchange rates expressed in U.S. dollars per unit of the foreign currency, such that index numbers below 100 represent depreciation and numbers above 100 represent appreciation of the foreign currency vis-a-vis the U.S. dollar.

Figure V-3
Nominal exchange rate index of the Vietnamese dong relative to the U.S. dollar, by quarters, January 2003-December 2008



Note.--Index (Jan.-Mar. 2003=100). Exchange rates are in U.S. dollars per Vietnamese dong.

Source: International Monetary Fund, *International Financial Statistics*, online, <http://imfstatistics.org/imf>, retrieved February 19, 2009.

PRICING PRACTICES²²

U.S. processors of frozen catfish fillets and U.S. importers of frozen basa and tra fillets from Vietnam sell the majority of their products to food service distributors, much of the remainder to other purchasers, and some direct sales by U.S. processors to restaurants. The food service distributors sell to restaurants, grocery stores, other retailers (e.g., cafeterias, military, etc.), and to other distributors. The majority of U.S. sales of the domestic and imported certain frozen fish fillets from Vietnam is typically sold on a spot basis with most of the remaining sales sold on a short-term basis. Sixteen U.S. processors of the frozen catfish fillets and seven U.S. importers of the frozen basa and tra fillets from Vietnam reported their 2008 U.S. shipments by type of sale.²³ Shares of the 2008 U.S. commercial shipment

²² Information on pricing practices discussed in this section was based on questionnaire responses of the U.S. processors of frozen catfish fillets and importers of frozen basa and tra fillets from Vietnam, unless otherwise noted.

²³ U.S. producer and importer questionnaire responses, sections IV-6 and III-6, respectively.

quantities of the domestically produced and subject imported certain frozen fish fillets, by type of sale,²⁴ are shown in the following tabulation.²⁵

Type of sale	Share of U.S. shipments in 2008 (percent)	
	U.S. frozen catfish fillets	Imported frozen basa and tra fillets from Vietnam
Spot sales	71.4	***
Short-term sales	28.0	***
Long-term sales	0.7	***
Total	100.0	100.0
Note.—Figures may not add to 100 due to rounding.		

Twenty-six purchasers reported on the frequency of their purchases of certain frozen fish fillets.²⁶ Twenty-one purchasers reported buying their certain frozen fish fillets daily, weekly, biweekly, or monthly. One of these latter firms reported also purchasing the products quarterly and annually. One other firm reported purchasing the products annually and the four remaining purchasers reported purchasing the products as needed.

Sixteen U.S. processors of frozen catfish fillets and six U.S. importers of frozen basa and tra fillets from Vietnam reported that they generally determined price on an individual transaction basis, especially for large-quantity and contract customers.²⁷ The firms used their price lists when selling to small-quantity customers; ***. ***.

Eleven U.S. processors of frozen catfish fillets and two U.S. importers of frozen basa and tra fillets from Vietnam reported the terms of their short-term contracts.²⁸ The U.S. processors reported that (1) contract periods ranged from 1 to 12 months; (2) prices were generally not renegotiated; (3) contracts typically specified price, but sometimes quantity also; and (4) contracts generally did not have meet or release provisions. The two responding U.S. importers reported that (1) contract periods ranged from 45 days to six months; (2) they were split between whether prices could be renegotiated; (3) contracts fixed both price and quantity; and (4) contracts had meet or release provisions.

²⁴ Spot sales are usually one-time delivery, within 30 days of the purchase agreement; short-term sales are for multiple deliveries for up to 12 months after the purchase agreement; and long-term sales are for multiple deliveries for more than 12 months after the purchase agreement. Short-term and long-term sales can be arranged by contracts or verbal agreements.

²⁵ None of the 26 responding U.S. purchasers of certain frozen fish fillets reported buying their products on the internet. U.S. purchaser questionnaire responses, section III-35.

²⁶ U.S. purchaser questionnaires, section III-20.

²⁷ U.S. producer and importer questionnaire responses, sections IV-3 and III-3, respectively.

²⁸ U.S. producer and importer questionnaire responses, sections IV-8 and III-8, respectively.

Sixteen responding U.S. processors of frozen catfish fillets and seven responding U.S. importers of frozen basa and tra fillets from Vietnam reported on discount policies.²⁹ Eight U.S. processors reported offering quantity discounts, two of which offered annual quantity discounts,³⁰ and the remaining eight processors reported having no discount policy. Five of the seven responding importers reported offering quantity discounts,³¹ and the remaining two importers reported having no discount policy.

Sixteen responding U.S. processors of frozen catfish fillets and seven U.S. importers of frozen basa and tra fillets from Vietnam reported how they quote their prices and the payment terms that they offer on their U.S. sales of certain frozen fish fillets.³² Eleven of the 16 U.S. processors reported selling their products on a delivered price basis and the remaining 5 reported selling on an f.o.b. U.S. plant basis. Three of the seven U.S. importers reported selling their products on a delivered basis, two reported selling on an f.o.b. U.S. location basis, and the remaining two reported selling on both delivered and f.o.b. bases.³³ The 16 responding U.S. processors reported offering payment terms that ranged from net 7 days to net 30 days, whereas the seven responding importers reported offering payment terms of net 30 days, although one of these importers reported also offering net 10 days, but only for container orders.

Fifteen U.S. processors of frozen catfish fillets and six U.S. importers of frozen basa and tra fillets from Vietnam reported their lead times for delivery of their products and shipment shares that were from inventory and from production during 2008.³⁴ The shipment shares and lead times are shown in the following tabulation.

Shipment source	U.S. frozen catfish fillets		Imported frozen basa and tra fillets from Vietnam	
	Share of U.S. shipments in 2008 (percent)	Lead time (days) ¹	Share of U.S. shipments in 2008 (percent)	Lead time (days) ¹
U.S. inventory	78.2	5	***	***
U.S. production	21.8	11	***	***
Vietnam inventory	-	-	***	***
Vietnam production	-	-	***	***
Total	100.0		100.0	

¹ Average lead times were rounded to a full day.

²⁹ U.S. producer and importer questionnaire responses, sections IV-4 and III-4, respectively.

³⁰ Three of these seven processors also reported offering ***. Ibid.

³¹ One of these five U.S. importers, ***. Ibid.

³² U.S. producer and importer questionnaire responses, sections IV-5 and III-5, respectively.

³³ Fifteen of the 16 responding U.S. processors and six of the seven responding importers reported arranging freight to their U.S. customers' locations. The remaining U.S. processor and importer reported that their customers arranged the freight. U.S. producer and importer questionnaire responses, sections IV-10 and III-10, respectively.

³⁴ U.S. producer and importer questionnaire responses, sections IV-9 and III-9, respectively.

U.S. purchasers were requested to identify any price leaders in the U.S. market for certain frozen fish fillets since 2003.³⁵ Fourteen purchasers responded; 6 firms indicated that no price leaders existed,³⁶ whereas the remaining 8 firms identified a total of 13 suppliers that they considered price leaders. Of the 13 suppliers identified as price leaders, 5 were U.S. processors, 3 were U.S. importers, and the remaining 5 firms were distributors. Identified most frequently as a price leader was ***, followed by ***.

PRICE DATA

U.S. selling value and quantity data were requested from U.S. processors and importers for sales to all their unrelated U.S. customers for the following certain frozen fish fillet products produced in the United States and imported from Vietnam:³⁷

Product 1.--2 to 3 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Product 2.--over 3 ounce to 5 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Product 3.--over 5 ounce to 7 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Product 4.--over 7 ounce to 9 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

U.S. processors and importers were requested to report their quarterly net U.S. f.o.b. selling price data for their respective shipments of the specified domestic frozen catfish fillets and the imported frozen basa and tra fillets from Vietnam during January 2003-December 2008.

Fifteen U.S. processors of frozen catfish fillets and six U.S. importers of frozen basa and tra fillets from Vietnam reported useable selling price information, but not necessarily for all periods or all products. The responding U.S. processors reported total sales quantities of the U.S.-produced frozen catfish fillets for pricing purposes during January 2003-December 2008 that amounted to 257,505,707 pounds, or 43.9 percent of their total reported U.S. commercial shipments of the U.S.-produced frozen catfish fillets during this period. The responding U.S. importers reported total sales quantities for pricing purposes during January 2003-December 2008 that amounted to 64,828,818 pounds of frozen basa and tra from Vietnam, which accounted for 27.3 percent of total reported U.S. imports of the subject products from Vietnam during this period.

The total sales quantities of the specified certain frozen fish fillet products for which U.S. processors and importers reported their requested pricing data during January 2003-December 2008 are shown in the following tabulation.

³⁵ U.S. purchaser questionnaire responses, section III-32.

³⁶ One of these six purchasers, ***, asserted that the live fish market determines price changes.

³⁷ The same four specified products were used for pricing data in *Certain Frozen Fish Fillets, Inv. No. 731-TA-1012 (Final)*. The domestic interested parties, the only parties commenting on the draft questionnaires in this review, did not comment specifically about the pricing products.

Quantities of certain frozen fish fillets (1,000 pounds)			
Products	U.S. frozen catfish fillets	Imported frozen basa and tra fillets from Vietnam	Totals
Product 1 ¹	18,252	***	***
Product 2 ²	107,583	***	***
Product 3 ³	91,898	***	***
Product 4 ⁴	39,774	***	***
Totals	257,507	64,831	322,338

¹ Product 1 consists of 2 to 3 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.
² Product 2 consists of over 3 ounce to 5 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.
³ Product 3 consists of over 5 ounce to 7 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.
⁴ Product 4 consists of over 7 ounce to 9 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

The domestic frozen catfish fillet products 2 and 3, which consisted of the medium size fillets, were respectively the largest-quantity domestic products and quarterly prices of these products each averaged about \$2.80 per pound during 2003-08. The domestic product 1, which consisted of the smallest fillets and was the lowest-quantity product, was similar in price, averaging \$2.79 per pound during this period, and the domestic product 4, which consisted of the largest fillets, was the lowest in price, averaging \$2.62 per pound.

For imported basa and tra frozen catfish fillets from Vietnam, products 3 and 4 respectively were the largest-quantity products and the quarterly prices averaged \$*** and \$*** per pound, respectively, during 2003-08. The imported product 2, which was the third-largest-quantity product averaged \$*** per pound during the period, while the imported product 1, which consisted of the smallest fillets and was the lowest-quantity product, averaged \$*** per pound. The sales distribution of different sizes of frozen basa and tra fillets imported from Vietnam was based on somewhat limited price data relative to that reported by U.S. processors. Domestic interested parties asserted that the subject imports from Vietnam are heavily concentrated in the smaller and medium sizes of fillets.³⁸

Price trends and price comparisons of quarterly weighted-average selling prices and the quarterly shipment quantities are based on the reported net U.S. f.o.b. selling price data. The price data are shown by each of the four specified products in tables V-1 through V-4 and figures V-4 through V-7, respectively.

³⁸ Domestic interested parties' prehearing brief, p. 13, fn. 56.

Table V-1

Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 1¹ and margins of underselling, by quarters, January 2003-December 2008

Period of shipment	United States			Vietnam			
	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Margin (percent)
2003:							
Jan.-Mar.	\$2.36	938	11	***	***	***	***
Apr.-June	2.45	787	11	***	***	***	***
July-Sept.	2.45	734	11	***	***	***	***
Oct.-Dec.	2.45	655	11	***	***	***	***
2004:							
Jan.-Mar.	2.69	739	11	***	***	***	***
Apr.-June	2.72	664	11	***	***	***	***
July-Sept.	2.69	759	11	***	***	***	***
Oct.-Dec.	2.78	592	11	***	***	***	***
2005:							
Jan.-Mar.	2.82	739	12	***	***	***	***
Apr.-June	2.83	673	12	***	***	***	***
July-Sept.	2.83	814	12	***	***	***	***
Oct.-Dec.	2.85	588	12	***	***	***	***
2006:							
Jan.-Mar.	2.79	1,094	13	***	***	***	***
Apr.-June	2.98	1,202	13	***	***	***	***
July-Sept.	3.07	1,015	13	***	***	***	***
Oct.-Dec.	3.16	694	13	***	***	***	***
2007:							
Jan.-Mar.	3.16	661	13	***	***	***	***
Apr.-June	3.03	691	13	***	***	***	***
July-Sept.	2.72	821	13	***	***	***	***
Oct.-Dec.	2.60	643	13	***	***	***	***
2008:							
Jan.-Mar.	2.70	897	13	***	***	***	***
Apr.-June	2.93	664	13	***	***	***	***
July-Sept.	2.95	689	12	***	***	***	***
Oct.-Dec.	3.01	499	11	***	***	***	***
Totals	(²)	18,252	14	(²)	***	***	(²)

¹ Product 1 consists of 2 to 3 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

² Not applicable.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa and tra fillets.

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

Table V-2

Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 2¹ and margins of underselling, by quarters, January 2003-December 2008

Period of shipment	United States			Vietnam			
	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Margin (percent)
2003:							
Jan.-Mar.	\$2.42	5,276	11	***	***	***	***
Apr.-June	2.51	4,791	11	***	***	***	***
July-Sept.	2.44	5,192	11	***	***	***	***
Oct.-Dec.	2.47	3,666	11	***	***	***	***
2004:							
Jan.-Mar.	2.68	4,914	11	***	***	***	***
Apr.-June	2.77	4,391	11	***	***	***	***
July-Sept.	2.71	5,007	11	***	***	***	***
Oct.-Dec.	2.74	3,595	11	***	***	***	***
2005:							
Jan.-Mar.	2.82	4,820	12	***	***	***	***
Apr.-June	2.83	4,753	12	***	***	***	***
July-Sept.	2.82	5,276	12	***	***	***	***
Oct.-Dec.	2.79	4,218	12	***	***	***	***
2006:							
Jan.-Mar.	2.82	5,413	13	***	***	***	***
Apr.-June	3.02	4,405	13	***	***	***	***
July-Sept.	3.10	4,939	13	***	***	***	***
Oct.-Dec.	3.07	3,784	13	***	***	***	***
2007:							
Jan.-Mar.	3.15	4,239	13	***	***	***	***
Apr.-June	3.10	4,222	13	***	***	***	***
July-Sept.	2.90	4,692	13	***	***	***	***
Oct.-Dec.	2.76	3,838	13	***	***	***	***
2008:							
Jan.-Mar.	2.78	5,123	13	***	***	***	***
Apr.-June	2.94	4,614	13	***	***	***	***
July-Sept.	3.03	3,977	12	***	***	***	***
Oct.-Dec.	3.12	2,438	11	***	***	***	***
Totals	(²)	107,583	14	(²)	***	***	(²)

¹ Product 2 consists of over 3 ounce to 5 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

² Not applicable.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa and tra fillets.

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

Table V-3

Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 3¹ and margins of underselling, by quarters, January 2003-December 2008

Period of shipment	United States			Vietnam			
	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Margin (percent)
2003:							
Jan.-Mar.	\$2.41	4,095	11	***	***	***	***
Apr.-June	2.54	3,956	11	***	***	***	***
July-Sept.	2.47	4,284	11	***	***	***	***
Oct.-Dec.	2.47	3,158	11	***	***	***	***
2004:							
Jan.-Mar.	2.64	4,061	11	***	***	***	***
Apr.-June	2.76	3,912	11	***	***	***	***
July-Sept.	2.70	4,436	11	***	***	***	***
Oct.-Dec.	2.62	3,760	11	***	***	***	***
2005:							
Jan.-Mar.	2.72	5,101	12	***	***	***	***
Apr.-June	2.81	4,554	12	***	***	***	***
July-Sept.	2.79	4,516	12	***	***	***	***
Oct.-Dec.	2.78	3,308	12	***	***	***	***
2006:							
Jan.-Mar.	2.81	4,714	13	***	***	***	***
Apr.-June	2.97	4,230	13	***	***	***	***
July-Sept.	3.10	4,649	13	***	***	***	***
Oct.-Dec.	3.12	3,227	13	***	***	***	***
2007:							
Jan.-Mar.	3.13	3,760	13	***	***	***	***
Apr.-June	3.15	3,350	13	***	***	***	***
July-Sept.	2.91	3,801	13	***	***	***	***
Oct.-Dec.	2.76	3,228	13	***	***	***	***
2008:							
Jan.-Mar.	2.75	4,187	13	***	***	***	***
Apr.-June	2.94	3,371	13	***	***	***	***
July-Sept.	3.01	2,591	12	***	***	***	***
Oct.-Dec.	3.06	1,649	11	***	***	***	***
Totals	(²)	91,898	14	(²)	***	***	(²)

¹ Product 3 consists of over 5 ounce to 7 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

² Not applicable.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa and tra fillets.

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

Table V-4

Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 4¹ and margins of underselling, by quarters, January 2003-December 2008

Period of shipment	United States			Vietnam			
	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Price (per pound)	Quantity (1,000 pounds)	No. of firms	Margin (percent)
2003:							
Jan.-Mar.	\$2.29	2,238	11	***	***	***	***
Apr.-June	2.35	1,952	10	***	***	***	***
July-Sept.	2.34	2,050	11	***	***	***	***
Oct.-Dec.	2.37	1,607	11	***	***	***	***
2004:							
Jan.-Mar.	2.55	2,085	11	***	***	***	***
Apr.-June	2.65	1,745	11	***	***	***	***
July-Sept.	2.58	1,734	11	***	***	***	***
Oct.-Dec.	2.57	1,412	11	***	***	***	***
2005:							
Jan.-Mar.	2.52	2,553	12	***	***	***	***
Apr.-June	2.53	2,324	12	***	***	***	***
July-Sept.	2.48	2,461	12	***	***	***	***
Oct.-Dec.	2.52	1,920	12	***	***	***	***
2006:							
Jan.-Mar.	2.68	1,643	13	***	***	***	***
Apr.-June	2.91	1,219	13	***	***	***	***
July-Sept.	3.04	1,383	13	***	***	***	***
Oct.-Dec.	3.09	1,052	13	***	***	***	***
2007:							
Jan.-Mar.	3.11	1,310	13	***	***	***	***
Apr.-June	2.63	1,698	13	***	***	***	***
July-Sept.	2.77	1,412	13	***	***	***	***
Oct.-Dec.	2.71	1,108	13	***	***	***	***
2008:							
Jan.-Mar.	2.63	1,637	13	***	***	***	***
Apr.-June	2.85	1,312	13	***	***	***	***
July-Sept.	3.00	1,019	12	***	***	***	***
Oct.-Dec.	2.90	900	11	***	***	***	***
Totals	(²)	39,774	14	(²)	***	***	(²)

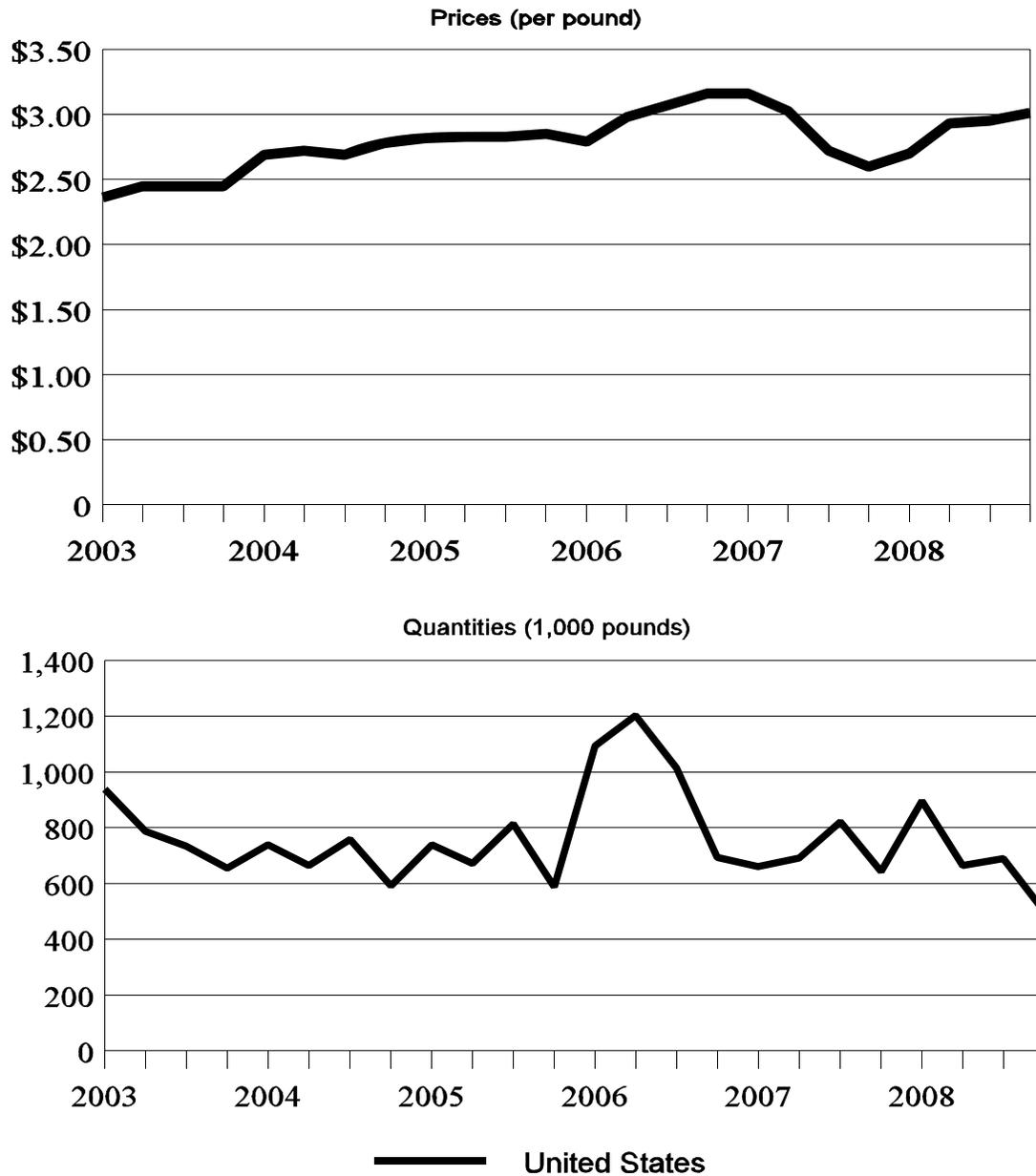
¹ Product 4 consists of over 7 ounce to 9 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

² Not applicable.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise include frozen basa and tra fillets.

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

Figure V-4
Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 1,¹ by quarters, January 2003-December 2008

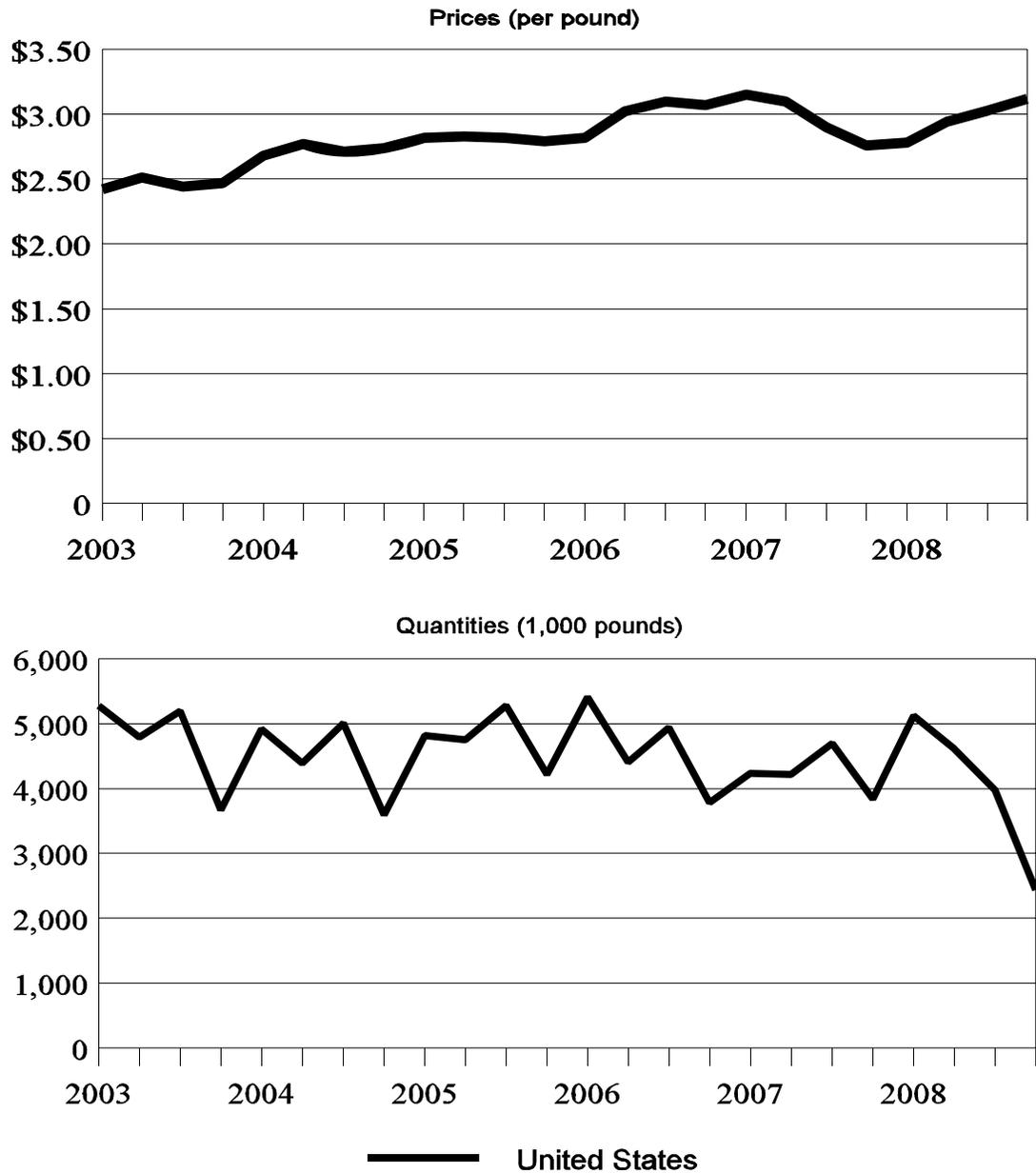


¹ Product 1 consists of 2 to 3 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise, which include frozen basa and tra fillets, were deleted due to confidentiality.

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

Figure V-5
Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 2,¹ by quarters, January 2003-December 2008

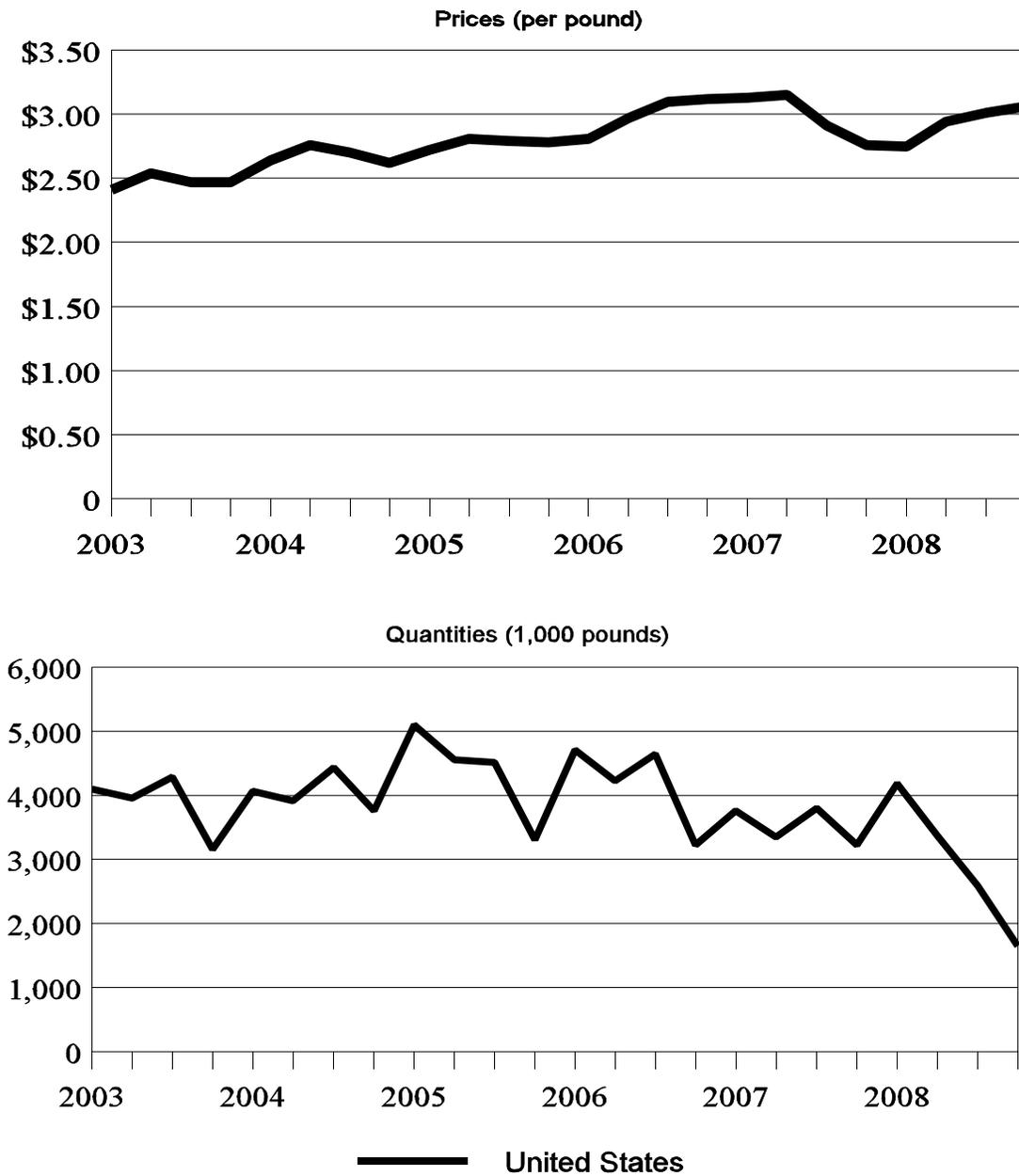


¹ Product 2 consists of over 3 ounce to 5 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise, which include frozen basa and tra fillets, were deleted due to confidentiality.

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

Figure V-6
Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 3,¹ by quarters, January 2003-December 2008

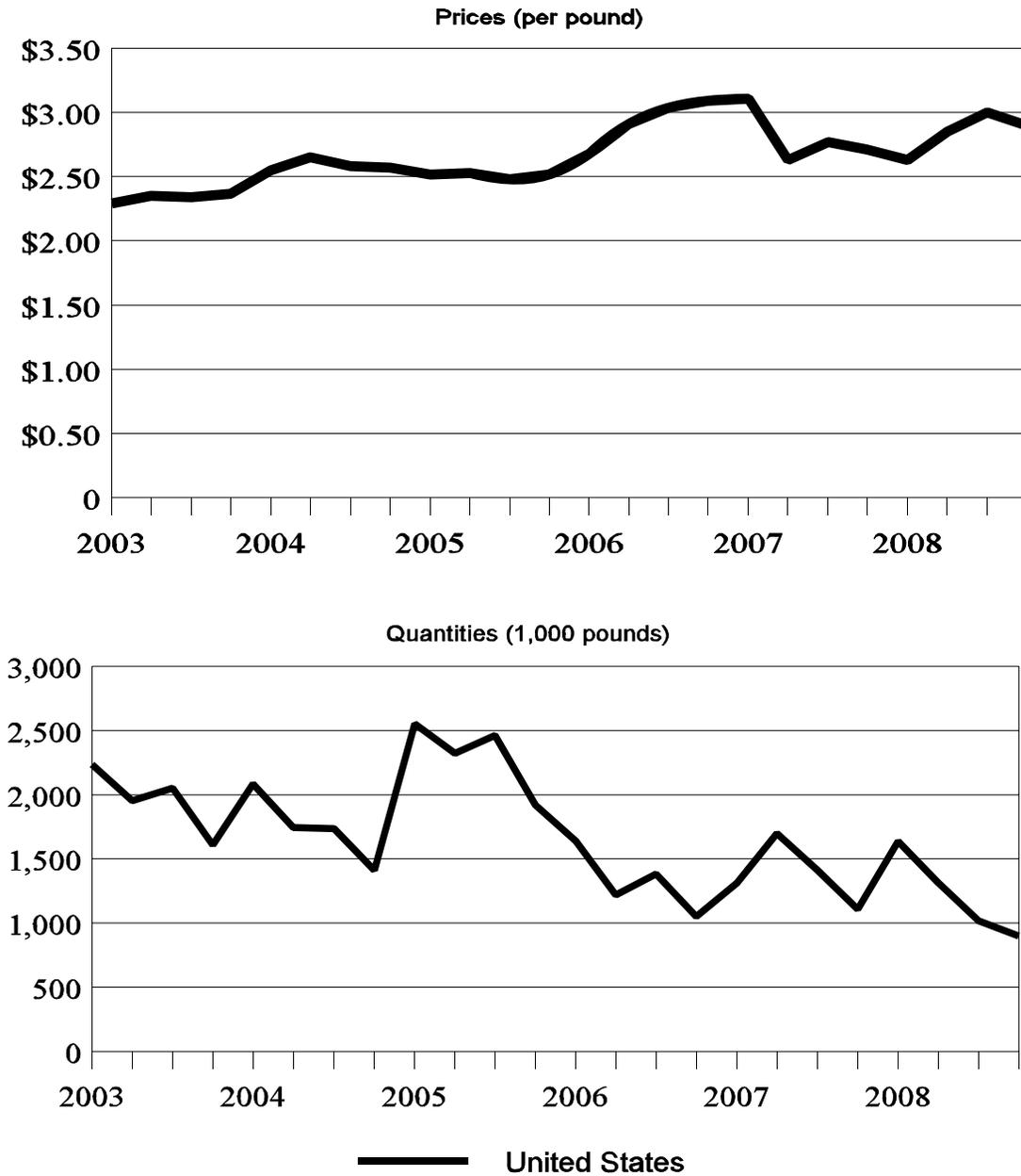


¹ Product 3 consists of over 5 ounce to 7 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise, which include frozen basa and tra fillets, were deleted due to confidentiality.

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

Figure V-7
Certain frozen fish fillets: Net weighted-average U.S. f.o.b. selling prices and quantities of domestic and subject imported certain frozen fish fillets for product 4,¹ by quarters, January 2003-December 2008



¹ Product 4 consists of over 7 ounce to 9 ounce frozen fillets, not breaded or marinated, in 15 lb. to 22 lb. boxes.

Note.—Data for the domestic product include frozen catfish fillets. Data for the subject Vietnamese merchandise, which include frozen basa and tra fillets, were deleted due to confidentiality.

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

Price Trends

Quarterly prices of the domestic frozen catfish fillet products 1-4 fluctuated but generally increased during January 2003-December 2008, while quarterly prices of the imported frozen basa and tra fillet products 1-4 from Vietnam also fluctuated and increased over the incomplete periods reported, but generally decreased from their period-high prices, the latter during various quarters of 2006, through October-December 2008.³⁹ Quarterly prices of the domestic frozen catfish fillet products 1-4 generally decreased during 2007,⁴⁰ the only year in which prices of all four domestic products generally decreased, but then typically increased during 2008. On the other hand, quarterly prices of the imported basa and tra frozen fillet products 1-4 generally decreased throughout 2007-08. Quarterly shipment quantities of the four domestic products showed more pronounced fluctuation than prices of the domestic products, but generally decreased during January 2003-December 2008, while shipment quantities of the four imported frozen basa and tra fillet products from Vietnam fluctuated but generally increased for the incomplete periods reported. The trends in reported prices and quantities of the subject imported products from Vietnam may be somewhat skewed because only limited price data were reported in the early periods compared to larger volume price data reported in more recent periods. A summary of price trends and high/low prices for the domestic and imported subject products from Vietnam are shown in table V-5.

Quarterly prices of the four domestic frozen catfish fillet products increased similarly during 2003-08, with prices increasing over the full period by 27.5 percent for product 1, 28.9 percent for product 2, 27.0 percent for product 3, and 26.6 percent for product 4. Quarterly prices of the domestic frozen catfish fillet products 1-4 decreased during 2007, by 17.7 percent for product 1, 12.4 percent for product 2, 11.8 percent for product 3, and 12.9 percent for product 4. On the other hand, quarterly prices of the domestic frozen catfish fillet products 1-4 increased during 2008, by 11.5 percent for product 1, 12.2 percent for product 2, 11.3 percent for product 3, and 10.3 percent for product 4.

Quarterly prices of the imported frozen basa and tra fillet products 2-4 increased from the initial periods reported, by *** percent during October-December 2003 through October-December 2008 for product 2, and, during April-June 2003 through October-December 2008, by *** percent for product 3 and *** percent for product 4.⁴¹ On the other hand, quarterly prices of the subject imported products 2-4 generally decreased from their period highs; prices of product 2 decreased by *** percent during July-September 2006 through October-December 2008, prices of product 3 decreased by *** percent during April-June 2006 through October-December 2008, and prices of product 4 decreased by *** percent during July-September 2006 through October-December 2008.

³⁹ Weighted-average prices and quantities of domestic frozen catfish fillet products 1-4 were available for every quarter during 2003-08, whereas the price data for imported frozen basa and tra fillet products 1-4 from Vietnam were not reported for every quarter during this period. The reported price data for imported frozen basa and tra fillet product 1 from Vietnam were more limited than for products 2-4, leading to less complete price trends; therefore, trends in the price data for imported product 1 are discussed more briefly than those for imported products 2-4.

⁴⁰ U.S. apparent consumption of certain frozen fish fillets decreased by approximately 8.2 percent in 2007 from the previous year, and a 2006 inventory buildup by U.S. processors of their domestic frozen catfish fillets reportedly had to be moved in 2007 at tremendous write downs. Hearing transcript, p. 119-120 (Walker).

⁴¹ Quarterly prices of the imported frozen basa and tra fillet product 1 increased by *** percent during October-December 2003 through October-December 2008. However, quarterly prices of the imported product 1 decreased by *** percent from its period-high during April-June 2006 through October-December 2008.

Table V-5

Certain frozen fish fillets: Summary of trends in quarterly weighted-average net f.o.b. selling prices for domestic and subject imported certain frozen fish fillet products 1-4, by country of origin, January 2003-December 2008

Country	Number of quarters reported	Highest price in the period (<i>per pound</i>)	Lowest price in the period (<i>per pound</i>)	Percentage change in price in the period ¹
Product 1 (2-3 ounce frozen fillets)				
United States	24	\$3.16	\$2.36	27.5
Vietnam	12	***	***	*** ²
Product 2 (over 3 ounce to 5 ounce frozen fillets)				
United States	24	3.15	2.42	28.9
Vietnam	20	***	***	*** ³
Product 3 (over 5 ounce to 7 ounce frozen fillets)				
United States	24	3.15	2.41	27.0
Vietnam	21	***	***	*** ⁴
Product 4 (over 7 ounce to 9 ounce frozen fillets)				
United States	24	3.11	2.29	26.6
Vietnam	21	***	***	*** ⁵
<p>¹ Price change is from the first quarter of 2003 to the fourth quarter of 2008 if available. If data for these quarters are not available, it is the change from the first quarter to the last quarter for which the data are available; this price change does not necessarily show the change between the highest and lowest prices, unless such prices were in the first and last quarters for which data are available.</p> <p>² Price change is based on data for the fourth quarter of 2003 and for the fourth quarter of 2008.</p> <p>³ Price change is from the fourth quarter of 2003 to the fourth quarter of 2008.</p> <p>⁴ Price change is from the second quarter of 2003 to the fourth quarter of 2008.</p> <p>⁵ Price change is from the second quarter of 2003 to the fourth quarter of 2008.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>				

Total quarterly shipment quantities reported by the U.S. processors of the domestic frozen catfish fillet products 1-4 fluctuated but decreased during January 2003-December 2008. Measuring the trend in shipment quantities for the entire period by the change from January-March 2003 through October-December 2008 may overstate the decreases. The reported quarterly shipment quantities show that during 2003-08, at least partially as a result of seasonal demand factors, the first quarter of each year generally represented the largest quarterly quantity for the year, while the fourth quarter of each year consistently represented the lowest quarterly quantity for each year.⁴² Declining shipment trends were

⁴² Quarterly shipment quantities of domestic product 1 decreased by 46.8 percent during January-March 2003 through October-December 2008, but product 1 shipment quantities decreased by 4.4 percent and 23.8 percent based on first-quarter comparisons (January-March 2003 through January-March 2008) and fourth-quarter comparisons (October-December 2003 through October-December 2008), respectively. Quarterly shipment quantities of domestic product 2 decreased by 53.8 percent during January-March 2003 through October-December 2008, but product 2 shipment quantities decreased by 2.9 percent and 33.5 percent based on first-quarter and fourth-quarter comparisons, respectively. Quarterly shipment quantities of domestic product 3 decreased by 59.7 percent during January-March 2003 through October-December 2008, but product 3 shipment quantities increased by 2.2 percent... (continued...)

evident whether comparing shipment quantities in the first and last quarter of the period 2003-08, or comparing shipments in the first quarters of 2003 and 2008 or the last quarters of 2003 and 2008.

Total quarterly shipment quantities reported by the U.S. importers of the frozen basa and tra fillet products 1-4 from Vietnam fluctuated but increased during the various periods reported for each such product. Part of this increase in quarterly quantities resulted because of the limited reported price data of the subject imported products during the early part of 2003-08 and more complete data in the latter part of this period. In addition, because the reported price data for the imported products was less complete than that of the domestic producers, seasonal factors were less prominent in the shipment quantities of the subject imported products than the domestic products.⁴³

Price Comparisons

A total of 74 quarterly net weighted-average U.S. f.o.b. selling price comparisons were possible between the domestic frozen catfish fillet products 1-4 and the imported frozen basa and tra fillet products from Vietnam during January 2003-December 2008. All 74 selling price comparisons showed that the imported products were priced less than the domestic products. The selling price comparisons are shown by period and by product in table V-6.

U.S. purchasers were requested in their purchaser questionnaire responses to comment whether domestic frozen fish fillets were higher in price than imported frozen basa and tra fillets from Vietnam.⁴⁴ Twelve of the 14 responding purchasers reported that prices of domestic frozen catfish fillets were higher, whereas 2 reported that prices of the domestic products were lower. One of the latter two purchasers, ***, reported that prices of imported frozen basa fillets from Vietnam were higher than prices of

⁴² (...continued)

and decreased by 47.8 percent based on first-quarter and fourth-quarter comparisons, respectively. Quarterly shipment quantities of domestic product 4 decreased by 59.8 percent during January-March 2003 through October-December 2008, but product 4 shipment quantities decreased by 26.9 percent and 44.0 percent based on first-quarter and fourth-quarter comparisons, respectively.

⁴³ Quarterly shipment quantities of the imported product 1 from Vietnam increased by *** percent during October-December 2003 (the earliest period for which price data were reported for this product) through October-December 2008; but product 1 shipment quantities increased by *** percent based on first quarter comparisons (January-March 2007 (earliest reported period for this product) through January-March 2008. Quarterly shipment quantities of the imported product 2 from Vietnam increased by *** percent during October-December 2003 (earliest reported period for this product) through October-December 2008, but product 2 shipment quantities increased by *** percent based on first-quarter comparisons (January-March 2004 (earliest reported period for this product) through January-March 2008). Quarterly shipment quantities of the imported product 3 from Vietnam increased by *** percent during April-June 2003 (earliest reported period for this product) through October-December 2008, but product 3 shipment quantities increased by *** and *** percent based on first-quarter comparisons (January-March 2004 (earliest reported first-quarter period for this product) through January-March 2008) and fourth-quarter comparisons (October-December 2003 through October-December 2008), respectively. Quarterly shipment quantities of the imported product 4 from Vietnam increased by *** percent during April-June 2003 (earliest reported period for this product) through October-December 2008, but product 4 shipment quantities increased by *** percent and *** percent based on first-quarter comparisons (January-March 2004 (earliest reported first-quarter period for this product) through January-March 2008) and fourth-quarter comparisons (October-December 2003-October-December 2008), respectively.

⁴⁴ U.S. purchaser questionnaire responses, section IV-9b.

Table V-6

Certain frozen fish fillets: Number of quarterly net weighted-average U.S. f.o.b. selling price comparisons between U.S. frozen catfish fillets and imported frozen basa and tra fillets from Vietnam, by year and by product, import quantities, and ranges of underselling, January 2003-December 2008

* * * * *

domestic frozen catfish fillets, but prices of imported frozen tra fillets from Vietnam were lower than prices of the domestic products.⁴⁵

U.S. purchasers were also requested to indicate how frequently (always, usually, sometimes, or never) they purchased certain frozen fish fillets that were the lowest in price.⁴⁶ Of the 25 purchasers that responded, 7 reported that they usually purchase certain frozen fish fillets that were lowest in price, 11 reported that they sometimes do so, and 7 reported that they never do so.

Table V-7 presents the number, import quantity, and ranges of underselling from the original investigation. The number of price comparisons from the original investigation were based on monthly price data.

Table V-7

Certain frozen fish fillets: Number of monthly net weighted-average U.S. f.o.b. selling price comparisons between U.S. frozen catfish fillets and imported frozen basa and tra fillets from Vietnam, by year and by product, import quantities, and ranges of underselling, January 2000-March 2003

* * * * *

Unit Sales Values and Quantities of U.S. Frozen and Fresh Catfish Fillets

Although U.S. processors produce primarily frozen catfish fillets, they also produce fresh catfish fillets. Data published by the USDA show U.S. processors' unit sales values and quantities of their frozen and fresh catfish fillets for all fillet sizes combined, including regular, shank and strip fillets, but excluding breaded products. The quarterly weighted-average unit sales values and quantities for the U.S. processors' frozen and fresh catfish fillets during 2003-08 are shown in table V-8 and figure V-8.⁴⁷

⁴⁵ *** also reported that most Vietnamese production initially was basa, which was raised in floating cages in the vast Mekong River Delta. However, in recent years, almost all Vietnamese fish farmers have switched to tra, which now accounts for more than *** percent of Vietnam's combined production and a reported *** percent of exports. *** purchaser questionnaire response, section I-7.

⁴⁶ U.S. purchaser questionnaire responses, section III-31.

⁴⁷ The quarterly data were developed from the monthly data reported by USDA, NASS.

Table V-8

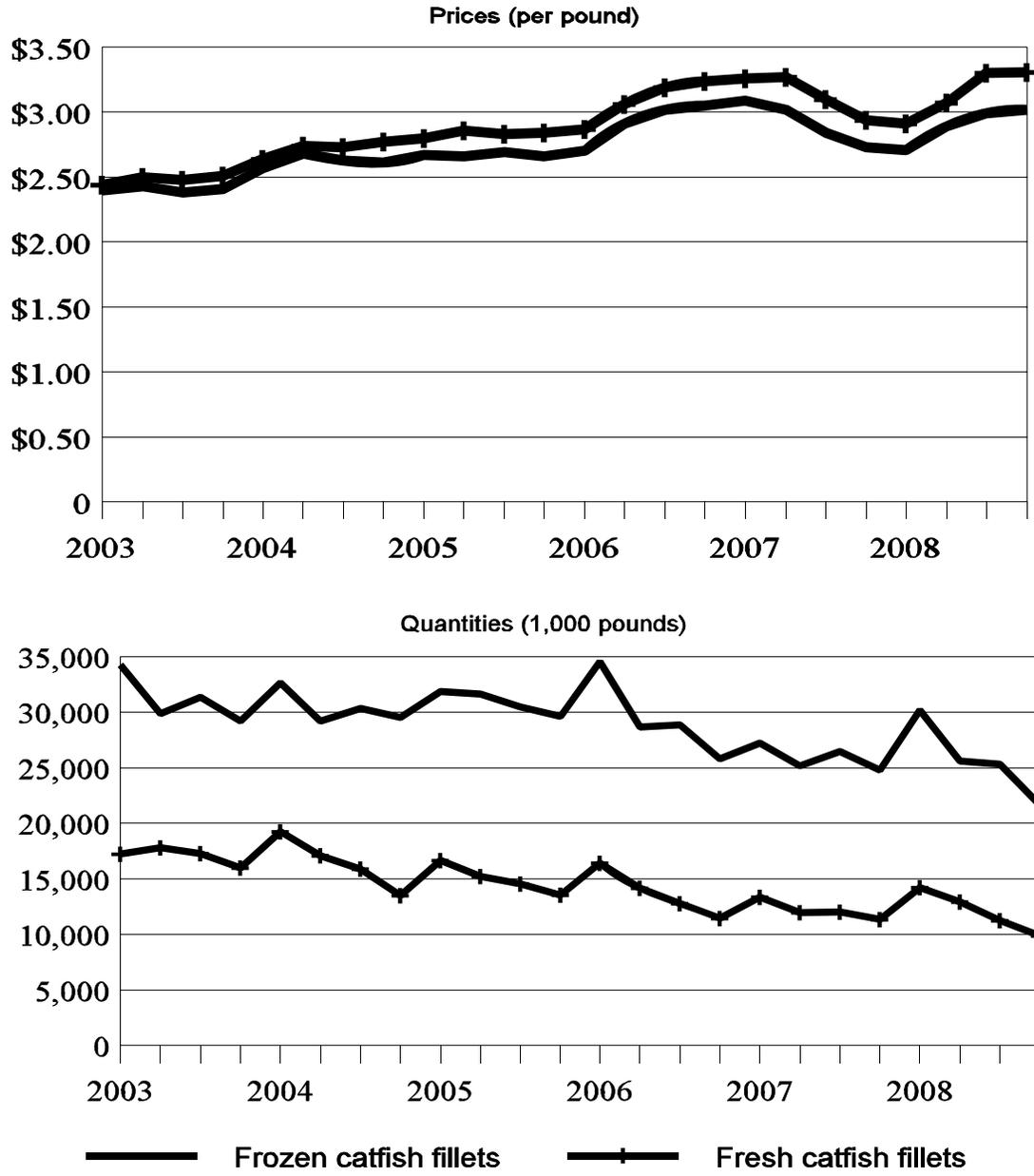
U.S. frozen and fresh catfish fillets: Gross weighted-average U.S. f.o.b. unit sales values and quantities of the domestic frozen and fresh catfish fillets, by quarters, January 2003-December 2008

Period of shipment	Frozen catfish fillets		Fresh catfish fillets	
	Unit value (per pound)	Quantity (1,000 pounds)	Unit value (per pound)	Quantity (1,000 pounds)
2003:				
Jan.-Mar.	\$2.40	34,280	\$2.44	17,235
Apr.-June	2.43	29,856	2.50	17,801
July-Sept.	2.38	31,371	2.48	17,305
Oct.-Dec.	2.41	29,193	2.51	15,979
2004:				
Jan.-Mar.	2.57	32,647	2.64	19,234
Apr.-June	2.68	29,212	2.74	17,075
July-Sept.	2.63	30,379	2.73	15,907
Oct.-Dec.	2.61	29,562	2.77	13,490
2005:				
Jan.-Mar.	2.67	31,911	2.80	16,684
Apr.-June	2.66	31,664	2.86	15,240
July-Sept.	2.69	30,492	2.83	14,560
Oct.-Dec.	2.66	29,616	2.84	13,572
2006:				
Jan.-Mar.	2.70	34,582	2.87	16,445
Apr.-June	2.91	28,666	3.06	14,172
July-Sept.	3.02	28,855	3.19	12,762
Oct.-Dec.	3.05	25,800	3.24	11,462
2007:				
Jan.-Mar.	3.09	27,250	3.26	13,372
Apr.-June	3.02	25,172	3.27	11,989
July-Sept.	2.84	26,483	3.10	12,009
Oct.-Dec.	2.73	24,788	2.94	11,358
2008:				
Jan.-Mar.	2.71	30,228	2.91	14,234
Apr.-June	2.89	25,592	3.07	12,906
July-Sept.	2.99	25,322	3.30	11,249
Oct.-Dec.	3.02	21,640	3.31	9,881
Totals	(¹)	694,561	(¹)	345,921

¹ Not applicable.

Source: *Catfish Processing, Monthly Survey*, USDA, NASS, various issues.

Figure V-8
U.S. frozen and fresh catfish fillets: Gross weighted-average U.S. f.o.b. unit sales values and quantities of the domestic frozen and fresh catfish fillets, by quarters, January 2003-December 2008



Source: *Catfish Processing, Monthly Survey*, USDA, NASS, various issues.

The U.S. processors sell about twice the quantity of frozen catfish fillets compared to fresh catfish fillets, but fresh catfish fillets are sold at higher prices than frozen catfish fillets.⁴⁸ As seen in table V-8 and figure V-8, the U.S. processors produced a total of approximately 694.6 million pounds of frozen catfish fillets during 2003-08, and 345.9 million pounds of fresh catfish fillets during this period. At the same time, based on annual data, the unit value of fresh catfish fillets increased vis-a-vis frozen catfish fillets, from \$0.07 per pound or 2.9 percent higher in 2003 to \$0.24 per pound or 8.3 percent higher in 2008.⁴⁹ Although not shown, this latter differential remained about the same during January-February 2009, as unit values of the domestic frozen and fresh catfish fillets decreased somewhat at the beginning of 2009.

⁴⁸ The higher price of the fresh product compared to the frozen product may be due at least partially to the differences in shelf life. The fresh product has a shelf life of days compared to months for the frozen product, such that more of the fresh product is likely discarded than the frozen product. This factor and more careful handling of the fresh product likely raises costs of the fresh product compared to the frozen product. In addition, domestic interested parties asserted that the increasing prices of the domestic fresh catfish fillets relative to prices the domestic frozen catfish fillets was due to less competition of the fresh product with the imported products. Hearing transcript, p. 122 (Walker).

⁴⁹ The quarterly unit values of both domestic frozen and fresh catfish fillets generally increased during 2003-08, and the correlation coefficient between the quarterly unit values of the frozen and fresh catfish fillets was 0.98 during this period.

APPENDIX A
***FEDERAL REGISTER* NOTICES AND**
STATEMENT ON ADEQUACY

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (“Sunset”) Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) is automatically initiating a five-year review (“Sunset Review”) of the antidumping and countervailing duty orders listed below. The International Trade Commission (“the Commission”) is publishing concurrently with this notice its notice of *Institution of Five-*

year Review which covers the same orders.

EFFECTIVE DATE: July 1, 2008.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department’s procedures for the conduct of Sunset Reviews are set forth

in its *Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in the Department’s Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A-552-801	731-TA-1012	Vietnam	Frozen Fish Fillets	Alex Villanueva (202) 482-3208
A-570-848	731-TA-752 (Second Review)	PRC	Freshwater Crawfish Tail Meat	Lyn Johnson (202) 482-5287
C-580-851	701-TA-431	Korea	Dynamic Random Access Memory Semiconductors	Nancy Decker (202) 482-0196

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department’s regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department’s sunset Internet Web site at the following address:

≥<http://ia.ita.doc.gov/sunset/>.” All submissions in these Sunset Reviews must be filed in accordance with the Department’s regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (“APO”) immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department’s regulations on

submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department’s regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department’s regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note

that certain information requirements differ for respondent and domestic parties. Also, note that the Department’s information requirements are distinct from the Commission’s information requirements. Please consult the Department’s regulations for information regarding the Department’s conduct of Sunset Reviews.¹ Please consult the Department’s regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: June 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-14910 Filed 6-30-04; 8:45 am]

BILLING CODE 3510-DS-S

¹ In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

continue the collection of information under 30 CFR part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0036.

DATES: Comments on the proposed information collection must be received by September 2, 2008, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. The collection is contained in 30 CFR part 780, Surface Mining Permit Applications Minimum Requirements for Reclamation and Operation Plans. OSM will request a 3-year term of approval for this information collection activity. Applicants must complete and submit the information for this part in order to receive a permit for surface coal mining.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0036.

Summary: Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require applicants to submit operations and reclamation plans for coal mining activities. Information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents:

Applicants for surface coal mine permits on Federal lands, and State Regulatory Authorities. Total Annual Responses: 225 applicants and 221 State responses.

Total Annual Burden Hours for Applicants: 131,378.

Total Annual Burden Hours for States: 76,115.

Total Annual Burden for All Respondents: 207,853.

Total Annual Burden Costs for All Respondents: \$1,992,392.

Dated: June 23, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8–14757 Filed 6–30–08; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

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

Certain Frozen Fish Fillets From Vietnam

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on certain frozen fish fillets from Vietnam.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is August 20, 2008. Comments on the adequacy of responses may be filed with the Commission by September 15, 2008. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On August 12, 2003, the Department of Commerce issued an antidumping duty order on imports of certain frozen fish fillets from Vietnam (68 FR 47909). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–184, expiration date July 31, 2008. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as frozen catfish fillets, whether or not breaded or marinated.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as processing operations producing frozen catfish fillets (whether or not breaded or marinated), not including catfish farming operations.²

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is August 12, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review 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 review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will

maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR. 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and

investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 20, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 15, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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 permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name,

²The Commission, nevertheless, took into account the role of catfish farmers as a condition of competition in the industry because the record of the original investigation demonstrated the importance of catfish farmers to catfish processors and vice versa.

telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise on the Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/

which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company

transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply

conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11)(Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 16, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-14181 Filed 6-30-08; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-752 (Second Review)]

Crawfish Tail Meat From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on crawfish tail meat from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; ¹ to be assured of

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the

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.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: October 14, 2008

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-24890 Filed 10-17-08; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1012 (Review)]

Certain Frozen Fish Fillets From Vietnam

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on certain frozen fish fillets from Vietnam.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), 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 review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On October 6, 2008, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (73 FR 37487, July 1, 2008) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 14, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-24894 Filed 10-17-08; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-752 (Second Review)]

Crawfish Tail Meat From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on crawfish tail meat from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), 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 review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On October 6, 2008, the Commission determined that the domestic interested party group response to its notice of institution (73 FR 37489, July 1, 2008) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 30, 2008, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the review, may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

² The Commission has found the responses submitted by the Crawfish Processors Alliance to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

- University of California-Davis, Shields Library, Documents Department, 100 NW Quad University of California, Davis, CA 95616-5292

- Merced County Public Library, 1312 South 7th Street, Los Banos, CA 93635-4757

- Fresno County Public Library Government Publications, 2420 Mariposa Street, Fresno, CA 93721-2204

- Stanislaus County Library, 1500 I Street, Modesto, CA 95354

- Resources Agency Library, 1416 Ninth Street, Suite 117, Sacramento, CA 95814-5510

- California State Library, 914 Capitol Mall, Suite E-29, Sacramento, CA 95814-4802

- University of California, Berkeley, Water Resources Archive, 410 O'Brien Hall, Berkeley, CA 94720-1718

If special accommodation is required, please contact Susan Mussett at 209-826-9696 or susan.mussett@sldmwa.org by January 30, 2009 to enable the Authority to secure the needed services.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 11, 2008.

John F. Davis,

Deputy Regional Director, Mid-Pacific Region.
[FR Doc. E9-723 Filed 1-14-09; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1012 (Review)]

Certain Frozen Fish Fillets From Vietnam

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on certain frozen fish fillets from Vietnam.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to

continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 9, 2009.

FOR FURTHER INFORMATION CONTACT:

Russell Duncan (202-708-4727, russell.duncan@usitc.gov), 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 review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:
Background.—On October 6, 2008, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (73 FR 62318, Monday, October 20, 2008). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review 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 this review 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, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

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 this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review 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 review will be placed in the nonpublic record on April 16, 2009, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 6, 2009, 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 May 1, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 4, 2009, 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), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 27, 2009. 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 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 15, 2009; witness testimony must be filed no later than two days before the hearing. In

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 16, 2009, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 27, 2009. 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 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 15, 2009; witness testimony must be filed no later than two days before the hearing. In

Witness testimony.—Witness testimony must be filed no later than two days before the hearing. In

addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 15, 2009. On June 8, 2009, 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 June 10, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the 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 permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (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 review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 12, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-800 Filed 1-14-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on January 9, 2009, a proposed Consent Decree (Decree) in *United States v. Citibank Global Market Holdings, Inc.*, Civil Action No. 09-CV-4002-SAC, was lodged with the United States District Court for the District of Kansas.

In this action the United States, on behalf of the U.S. Environmental Protection Agency, sought to recover CERCLA response costs from Citibank Global Holdings, Inc. and U.S. Steel Corporation. The costs were incurred for the National Zinc Superfund Site (Site) in Cherryvale, Kansas. The Complaint alleges that Defendants are liable as successors to owners or operators of a smelter that was located and operated at the Site. The Decree would settle the government's claim for past response costs in return for a total payment of \$1 million into the Hazardous Substances Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Citibank Global Market Holdings, Inc.*, D.J. Ref. 90-11-3-08705/1.

The Decree may be examined at the Office of the United States Attorney, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the

Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9-709 Filed 1-14-09; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0051]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Certification of Secure Gun Storage or Safety Devices.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until March 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Power, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

Dated: January 26, 2009.

Ronald Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-2182 Filed 1-30-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before February 23, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 08-054. Applicant: University of Wisconsin—Madison, Purchasing Services, 21 N. Park Street, Suite 6101, Madison, WI 53715-1218. Instrument: FEI Titan 80-200 Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to measure the structure, composition and bonding of a wide variety of materials and phenomena, such as semiconducting and metallic glasses, superconductors including magnesium diboride, semiconductors including zinc oxide, geochemical reactions confined to natural nanopores in minerals, nanotubes of titanium dioxide and related oxides with and without loading of catalytic nanoparticles, and metal nanoparticles used as labels in cells. Application accepted by Commissioner of Customs: October 8, 2008.

Docket Number: 08-059. Applicant: Emory University, 1599 Clifton Road, 4th Floor, Atlanta, GA 30322-4250. Instrument: Electron Microscope, Model JEM-1011. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used in anatomical studies to help students understand a disease such as Parkinson's. Specifically, students will be able to visualize axonal tracers after intracerebral injection, perfusion,

sectioning, incubations, EM processing, embedding, ultra-thin sectioning and observation at the electron microscope level. Application accepted by Commissioner of Customs: December 16, 2008.

Docket Number: 08-060. Applicant: University of Arizona, Department of Chemistry, 1306 E. University Boulevard, Tucson, AZ 85721. Instrument: FEI Inspect S Scanning Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to characterize a wide variety of materials in terms of surface morphology and chemical composition. It will also be used as the base system for an electron beam lithography module which will be used to pattern and characterize nanoscale features that represent the next generation of molecular electronic devices, and as the base system for an Energy Dispersive Spectrometer that will allow the chemical mapping at the same resolution as the SEM images. Application accepted by Commissioner of Customs: December 16, 2008.

Dated: January 27, 2009.

Chris Cassel,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E9-2194 Filed 1-30-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

DATES: *Effective Date:* February 2, 2009.

SUMMARY: On July 1, 2008, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty order on certain frozen fish fillets ("fish fillets") from the Socialist Republic of Vietnam ("Vietnam"). On the basis of a notice of intent to participate, and an adequate substantive response filed on behalf of domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

The dumping margins are identified in the *Final Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT:

Matthew Renkey, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2312.

SUPPLEMENTARY INFORMATION:

Background

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

Scope of the Order

The product covered by this Order 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 1604.19.4000, 1604.19.5000,

0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").¹ This Order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from John M. Andersen, Acting Deputy Assistant Secretary for Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of

continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on fish fillets from Vietnam would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted-average margin (percent)
An Giang Fisheries Import and Export Joint Stock Company ("Agifish")	47.05
Vinh Hoan Company Limited ("Vinh Hoan")	36.84
Nam Viet Company Limited ("Nam Viet")	53.68
Can Tho Agricultural and Animal Products Import Export Company ("CATACO")	45.81
An Giang Agriculture and Food Import Export Company ("Afiex")	45.55
Can Tho Animal Fishery Products Processing Export Enterprise ("CAFATEX")	45.55
Da Nang Seaproducts Import-Export Corporation ("Da Nang")	45.55
Mekongfish Company ("Mekonimex")	45.55
QVD Food Company Limited ("QVD")	45.55
Viet Hai Seafood Company Limited ("Viet Hai")	45.55
Vinh Long Import-Export Company ("Vinh Long")	45.55
Vietnam-Wide	63.88

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials 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 sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: January 27, 2009.

Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

[FR Doc. E9-2195 Filed 1-30-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

House Ear Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-

36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 08-055. *Applicant:* House Ear Institute, Los Angeles, CA 90057. *Instrument:* Electron Microscope, Model Technai G2 20 TEM. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 73 FR 74703, December 9, 2008.

Docket Number: 08-057. *Applicant:* Louisiana State University, Baton Rouge, LA 70803. *Instrument:* Electron Microscope, Model FEI Quanta 3D FEG DualBeam. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 73 FR 70961, November 24, 2008.

¹ Until July 1, 2004, these products were 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 HTSUS. Until February 1, 2007, these

products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Frozen Fish Fillets from Vietnam
Inv. No. 731-TA-1012 (Review)

On October 6, 2008, the Commission determined that it will proceed to a full review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission received a response to the notice of institution of the five-year review of the antidumping duty order on imports of frozen fish fillets from the Catfish Farmers of America and the following U.S. catfish processors: America's Catch, Inc.; Consolidated Catfish Companies, LLC, dba Country Select Catfish; Delta Pride Catfish, Inc.; Alabama Catfish Inc., dba Harvest Select Catfish, Inc.; TT&W Farm Products, Inc., dba Heartland Catfish Co.; Magnolia Processing, Inc., dba Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co. LLC. The Commission found this domestic interested party response to the notice of institution to be individually adequate. Because these companies account for the majority of U.S. production of the domestic like product, frozen catfish fillets, the Commission determined that the domestic interested party group response was adequate.

The Commission received one response to the notice of institution from the Vietnam Association of Seafood Exporters and Producers and 24 member companies that produce and/or export the subject merchandise. The Commission found this respondent interested party response to the notice of institution to be individually adequate for the association and the 24 member companies. Because the Commission received an adequate response from foreign producers accounting for the majority of the subject exports from Vietnam, the Commission determined that the respondent interested party group response was adequate. Accordingly, the Commission determined to proceed to a full review.

A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (<http://www.usitc.gov>).

APPENDIX B
HEARING WITNESSES

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 (Review)
Date and Time: May 6, 2009 - 9:30 a.m.

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

OPENING REMARKS:

In Support of Continuation of Order (**Valerie A. Slater**, Akin Gump Strauss Hauer & Feld LLP)

In Support of Continuation of Antidumping Duty Order:

Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.
on behalf of

Catfish Farmers of America
America's Catch
Consolidated Catfish Companies, LLC D/B/A Country Select Catfish
Delta Pride Catfish, Inc.
Harvest Select Catfish, Inc.
Heartland Catfish Company
Pride of the Pond
Simmons Farm Raised Catfish, Inc.

Danny Walker, Chief Executive Officer, Heartland
Catfish Company

Randy Rhodes, President, Harvest Select Catfish, Inc.

**In Support of Continuation of
Antidumping Duty Order (continued):**

Ray Renfroe, National Accounts and Southern
Regional Manager, Harvest Select Catfish, Inc.

Joey Lowery, President, Catfish Farmers of America

Daniel W. Klett, Economist, Capital Trade, Inc.

Thomas Rogers, Economist, Capital Trade, Inc.

Valerie A. Slater)
J. David Park)
) – OF COUNSEL
Jarrold M. Goldfeder)
Natalya D. Dobrowolsky)

CLOSING REMARKS:

In Support of Continuation of Order (**Valerie A. Slater**, Akin Gump
Strauss Hauer & Feld LLP)

APPENDIX C
SUMMARY DATA

Table C-1
Certain frozen fish fillets: Summary data concerning the U.S. market, 2003-08

(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					
	2003	2004	2005	2006	2007	2008	2003-08	2003-04	2004-05	2005-06	2006-07	2007-08
U.S. consumption quantity:												
Amount	161,482	170,548	182,439	220,693	202,628	212,137	31.4	5.6	7.0	21.0	-8.2	4.7
Producers' share (1)	87.1	80.2	77.2	61.8	57.3	54.1	-33.0	-6.9	-2.9	-15.5	-4.5	-3.2
Importers' share (1):												
Vietnam	12.2	18.4	17.8	24.3	23.1	25.1	12.9	6.2	-0.5	6.4	-1.2	2.1
All other sources	0.7	1.5	4.9	14.0	19.7	20.8	20.1	0.7	3.4	9.1	5.7	1.1
Total imports	12.9	19.8	22.8	38.2	42.7	45.9	33.0	6.9	2.9	15.5	4.5	3.2
U.S. consumption value:												
Amount	364,413	405,920	424,880	519,595	474,482	487,039	33.7	11.4	4.7	22.3	-8.7	2.6
Producers' share (1)	92.9	88.3	88.5	75.6	70.6	67.9	-25.0	-4.5	0.1	-12.9	-5.0	-2.7
Importers' share (1):												
Vietnam	6.6	10.6	8.3	14.0	14.2	16.1	9.5	4.0	-2.3	5.7	0.2	1.9
All other sources	0.5	1.0	3.2	10.4	15.2	16.0	15.5	0.5	2.2	7.2	4.8	0.8
Total imports	7.1	11.7	11.5	24.4	29.4	32.1	25.0	4.5	-0.1	12.9	5.0	2.7
U.S. imports from:												
Vietnam (2):												
Quantity	19,689	31,349	32,548	53,531	46,728	53,305	170.7	59.2	3.8	64.5	-12.7	14.1
Value	24,228	43,150	35,258	72,872	67,606	78,559	224.2	78.1	-18.3	106.7	-7.2	16.2
Unit value	\$1.23	\$1.38	\$1.08	\$1.36	\$1.45	\$1.47	19.8	11.9	-21.3	25.7	6.3	1.9
Ending inventory quantity	***	***	***	***	***	***	***	***	***	***	***	***
All other sources (3):												
Quantity	1,176	2,499	8,962	30,870	39,863	44,129	3,651.6	112.5	258.6	244.5	29.1	10.7
Value	1,775	4,169	13,686	54,159	72,121	77,823	4,285.1	134.9	228.2	295.7	33.2	7.9
Unit value	\$1.51	\$1.67	\$1.53	\$1.75	\$1.81	\$1.76	16.9	10.6	-8.5	14.9	3.1	-2.5
Ending inventory quantity (2)	***	***	***	***	***	***	***	***	***	***	***	***
All sources:												
Quantity	20,865	33,848	41,510	84,401	86,591	97,434	367.0	62.2	22.6	103.3	2.6	12.5
Value	26,003	47,319	48,944	127,031	139,727	156,382	501.4	82.0	3.4	159.5	10.0	11.9
Unit value	\$1.25	\$1.40	\$1.18	\$1.51	\$1.61	\$1.61	28.8	12.2	-15.7	27.6	7.2	-0.5
Ending inventory quantity	39	1,457	2,118	7,466	4,798	5,377	13,687.8	3635.9	45.4	252.5	-35.7	12.1
U.S. producers' (2):												
Average capacity quantity	146,079	146,482	150,802	150,001	149,127	137,129	-6.1	0.3	2.9	-0.5	-0.6	-8.0
Production quantity	106,591	111,483	114,138	111,763	94,408	97,068	-8.9	4.6	2.4	-2.1	-15.5	2.8
Capacity utilization (1)	73.0	76.1	75.7	74.5	63.3	70.8	-2.2	3.1	-0.4	-1.2	-11.2	7.5
U.S. shipments:												
Quantity	106,315	107,744	115,750	109,265	96,366	94,572	-11.0	1.3	7.4	-5.6	-11.8	-1.9
Value	255,666	283,331	308,986	318,030	281,420	277,076	8.4	10.8	9.1	2.9	-11.5	-1.5
Unit value	\$2.40	\$2.63	\$2.67	\$2.91	\$2.92	\$2.93	21.8	9.4	1.5	9.0	0.3	0.3
Export shipments:												
Quantity	9	0	0	0	0	0	-100.0	-100.0	(4)	(4)	(4)	(4)
Value	23	0	0	0	0	0	-100.0	-100.0	(4)	(4)	(4)	(4)
Unit value	\$2.56	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Ending inventory quantity	7,502	10,864	9,376	11,592	9,472	11,837	57.8	44.8	-13.7	23.6	-18.3	25.0
Inventories/total shipments (1)	7.1	10.1	8.1	10.6	9.8	12.5	5.5	3.0	-2.0	2.5	-0.8	2.7
Production workers	2,612	2,608	2,753	2,681	2,480	2,589	-0.9	-0.2	5.6	-2.6	-7.5	4.4
Hours worked (1,000s)	5,338	5,128	5,308	5,427	4,925	4,684	-12.3	-3.9	3.5	2.2	-9.3	-4.9
Wages paid (\$1,000s)	37,566	37,508	40,095	41,343	39,086	38,994	3.8	-0.2	6.9	3.1	-5.5	-0.2
Hourly wages	\$7.04	\$7.31	\$7.55	\$7.62	\$7.94	\$8.32	18.3	3.9	3.3	0.9	4.2	4.9
Productivity (pounds per hour)	20.0	21.7	21.5	20.6	19.2	20.7	3.8	8.9	-1.1	-4.2	-6.9	8.1
Unit labor costs	\$0.35	\$0.34	\$0.35	\$0.37	\$0.41	\$0.40	14.0	-4.5	4.4	5.3	11.9	-3.0
Net sales:												
Quantity	107,402	108,368	115,235	110,709	97,706	99,273	-7.6	0.9	6.3	-3.9	-11.7	1.6
Value	258,897	282,459	306,899	317,991	286,029	288,972	11.6	9.1	8.7	3.6	-10.1	1.0
Unit value	\$2.41	\$2.61	\$2.66	\$2.87	\$2.93	\$2.91	20.8	8.1	2.2	7.9	1.9	-0.6
Cost of goods sold (COGS)	216,773	245,778	267,658	279,551	258,519	257,065	18.6	13.4	8.9	4.4	-7.5	-0.6
Gross profit or (loss)	42,124	36,681	39,241	38,440	27,510	31,907	-24.3	-12.9	7.0	-2.0	-28.4	16.0
SG&A expenses	26,048	28,274	29,613	28,926	26,936	28,332	8.8	8.5	4.7	-2.3	-6.9	5.2
Operating income or (loss)	16,076	8,407	9,628	9,514	574	3,575	-77.8	-47.7	14.5	-1.2	-94.0	522.8
Capital expenditures	5,343	4,220	5,684	3,936	2,107	2,225	-58.4	-21.0	34.7	-30.8	-46.5	5.6
Unit COGS	\$2.02	\$2.27	\$2.32	\$2.53	\$2.65	\$2.59	28.3	12.4	2.4	8.7	4.8	-2.1
Unit SG&A expenses	\$0.24	\$0.26	\$0.26	\$0.26	\$0.28	\$0.29	17.7	7.6	-1.5	1.7	5.5	3.5
Unit operating income or (loss)	\$0.15	\$0.08	\$0.08	\$0.09	\$0.01	\$0.04	-75.9	-48.2	7.7	2.9	-93.2	513.0
COGS/sales (1)	83.7	87.0	87.2	87.9	90.4	89.0	5.2	3.3	0.2	0.7	2.5	-1.4
Operating income or (loss)/sales (1)	6.2	3.0	3.1	3.0	0.2	1.2	-5.0	-3.2	0.2	-0.1	-2.8	1.0
U.S. processors' (5):												
U.S. shipments:												
Quantity	140,617	136,700	140,929	136,292	116,037	114,703	-18.4	-2.8	3.1	-3.3	-14.9	-1.1
Value	338,409	358,601	375,936	392,564	334,755	330,657	-2.3	6.0	4.8	4.4	-14.7	-1.2
Unit value	\$2.41	\$2.62	\$2.67	\$2.88	\$2.88	\$2.88	19.8	9.0	1.7	8.0	0.2	-0.1

- (1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Compiled from Commission questionnaire responses (imports from Vietnam reported as exports to the United States by VASEP).
(3) Compiled from official Commerce statistics.
(4) Not applicable.
(5) Compiled from official USDA/NASS statistics; used to calculate apparent U.S. consumption.

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, official Commerce statistics, and official USDA/NASS data.

APPENDIX D

**COMMENTS BY U.S. PRODUCERS, IMPORTERS, PURCHASERS,
AND FOREIGN PRODUCERS REGARDING THE EFFECTS OF THE
ORDERS AND THE LIKELY EFFECTS OF REVOCATION**

**U.S. PROCESSORS' COMMENTS REGARDING THE SIGNIFICANCE OF THE
ANTIDUMPING DUTY ORDER AND THE LIKELY EFFECTS OF REVOCATION**

**Effect Of The Order
(Question II-18)**

The Commission requested U.S. processors to describe the significance of the existing antidumping duty order covering imports of certain frozen fish fillets from Vietnam in terms of its effect on their firms' production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values. Their responses are as follows:

* * * * *

**Likely Effect Of Revocation Of The Order
(Question II-19)**

The Commission requested U.S. processors to describe any anticipated changes in their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values relating to the production of certain frozen fish fillets in the future if the antidumping duty order on certain frozen fish fillets from Vietnam were to be revoked. Their responses are as follows:

* * * * *

**Anticipated Changes In Operations In The Event The Order Is Revoked
(Question II-4)**

The Commission requested U.S. processors to describe anticipated changes in the character of their operations or organization relating to the production of certain frozen fish fillets in the future if the antidumping duty order on certain frozen fish fillets from Vietnam were to be revoked. Their responses are as follows:

* * * * *

**U.S. IMPORTERS' COMMENTS REGARDING THE SIGNIFICANCE OF THE
ANTIDUMPING DUTY ORDER AND THE LIKELY EFFECTS OF REVOCATION**

**Effect Of The Order
(Question II-11)**

The Commission requested U.S. importers to describe the significance of the existing antidumping duty order covering imports of certain frozen fish fillets from Vietnam in terms of its effect their firm's imports, U.S. shipments of imports, and inventories. Their responses are as follows:

* * * * *

**Likely Effect Of Revocation Of Order
(Question II-12)**

The Commission requested U.S. importers to describe anticipated changes in their imports, U.S. shipments of imports, or inventories of certain frozen fish fillets in the future if the antidumping duty order on certain frozen fish fillets from Vietnam were to be revoked. Their responses are as follows:

* * * * *

**Anticipated Changes In Operations In The Event The Order Is Revoked
(Question II-4)**

The Commission requested U.S. importers to describe anticipated changes in the character of their operations or organization relating to the importation of certain frozen fish fillets in the future if the antidumping duty order on certain frozen fish fillets form Vietnam were to be revoked.

* * * * *

PURCHASER COMMENTS REGARDING LIKELY EFFECTS OF REVOCATION

Likely Effects of Revocation (Question III-38)

The Commission requested U.S. purchasers to describe likely effects of any revocation of the antidumping duty order for imports of certain frozen fish fillets from Vietnam. As appropriate, please discuss any potential effects of revocation of the antidumping duty order on (1) the future activities of your firm and (2) the market as a whole.

* * * * *

FOREIGN PRODUCERS'/EXPORTERS' COMMENTS REGARDING THE SIGNIFICANCE OF THE ANTIDUMPING DUTY ORDER AND THE LIKELY EFFECTS OF REVOCATION

**Significance Of The Order
(Question II-14)**

The Commission requested foreign producers/exporters to describe the significance of the existing antidumping duty order covering imports of certain frozen fish fillets from Vietnam in terms of its effect on their firms' production capacity, production, home market shipments, exports to the United States and other markets, and inventories. Their responses are as follows:

* * * * *

**Anticipated Changes If The Order Revoked
(Question II-15)**

The Commission requested foreign producers/exporters to describe any anticipated changes in their production capacity, production, home market shipments, exports to the United States and other markets, or inventories relating to the production of certain frozen fish fillets from Vietnam if the antidumping duty order on certain frozen fish fillets from Vietnam were to be revoked. Their responses are as follows:

* * * * *

**Anticipated Changes In Operations In The Event The Order Is Revoked
(Question II-4)**

The Commission requested foreign producers/exporters to describe anticipated changes in the character of their operations or organization relating to the production of certain frozen fish fillets in the future if the antidumping duty order on certain frozen fish fillets from Vietnam were to be revoked. Their responses are as follows:

* * * * *

APPENDIX E

**QUESTIONNAIRE RESPONSES OF U.S. PROCESSORS AND PURCHASERS
DISCUSSING THE EFFECTS OF CHANGES IN PRICES OF RAW
MATERIALS AND OTHER FACTORS ON DOMESTIC PROCESSORS**

Effects of changes in prices of raw materials and other factors on domestic processors
* * * * *

APPENDIX F
OVERVIEW OF VARIANCE CALCULATION

Table F-1

Certain frozen fish fillets: Variance analysis on results of operations of U.S. processors in the production of frozen catfish fillets, 2003-08

	Calendar and fiscal year					
	2003-08	2003-04	2004-05	2005-06	2006-07	2007-08
Value (\$1,000)						
Total net sales:						
Price variance	49,670	21,233	6,541	23,146	5,387	(1,644)
Volume variance	(19,595)	2,329	17,899	(12,054)	(37,349)	4,587
Total net sales variance	30,075	23,562	24,440	11,092	(31,962)	2,943
Cost of sales:						
Total raw material cost:						
Cost variance	(55,564)	(32,788)	(4,366)	(19,149)	6,511	(11,210)
Volume variance	11,239	(1,336)	(11,572)	7,798	24,654	(2,867)
Net total raw material cost	(44,325)	(34,124)	(15,938)	(11,351)	31,165	(14,077)
Direct labor:						
Cost variance	(6,090)	1,576	669	(2,190)	(1,388)	(4,735)
Volume variance	2,247	(267)	(1,799)	1,159	3,587	(455)
Net direct labor variance	(3,843)	1,309	(1,130)	(1,031)	2,199	(5,190)
Other factory costs:						
Cost variance	2,156	3,250	(2,749)	(1,688)	(17,602)	20,945
Volume variance	3,126	(371)	(2,435)	1,713	5,118	(899)
Net other factory cost variance	5,282	2,879	(5,184)	25	(12,484)	20,046
Byproduct revenue from offal:						
Price variance	2,799	907	141	622	678	601
Volume variance	(205)	24	231	(158)	(526)	74
Net byproduct revenue from offal	2,594	931	372	464	152	675
Net cost of sales:						
Cost variance	(56,699)	(27,055)	(6,306)	(22,406)	(11,802)	5,600
Volume variance	16,407	(1,950)	(15,574)	10,513	32,834	(4,146)
Total net cost of sales variance	(40,292)	(29,005)	(21,880)	(11,893)	21,032	1,454
Gross profit variance	(10,217)	(5,443)	2,560	(801)	(10,930)	4,397
SG&A expenses:						
Expense variance	(4,256)	(1,992)	453	(476)	(1,408)	(964)
Volume variance	1,971	(234)	(1,792)	1,163	3,397	(432)
Total SG&A variance	(2,284)	(2,226)	(1,339)	687	1,989	(1,396)
Operating income variance	(12,501)	(7,669)	1,221	(114)	(8,941)	3,001

Table continued on next page.

Table F-1--Continued

Certain frozen fish fillets: Variance analysis on results of operations of U.S. processors in the production of frozen catfish fillets, 2003-08

	Calendar and fiscal year					
	2003-08	2003-04	2004-05	2005-06	2006-07	2007-08
Value (\$1,000)						
Operating income variance						
Price variance	49,670	21,233	6,541	23,146	5,387	(1,644)
Net cost/expense variance	(60,955)	(29,047)	(5,853)	(22,882)	(13,210)	4,636
Net volume variance	(1,217)	145	533	(378)	(1,117)	9

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

Overview of Variance Analysis Calculation

The variance analysis is a useful tool for estimating the extent to which changes in overall revenue, cost of sales/expenses, and profitability were due to changes in average values (sales, cost of sales, SG&A expenses) and/or changes in sales volume. It is divided into three primary sections: net sales variance, cost of sales variance, and SG&A expense variance. Two additional sections, the gross profit variance and the operating income variance, represent the sum of the two preceding variance sections, respectively; i.e., the gross profit variance equals the sum of the net sales variance and the net cost of sales variances, while the operating income variance equals the sum of the gross profit variance and the SG&A expense variance.¹ The relevant calculations used in the Commission’s standard variance analysis are outlined as follows:

Total Net Sales Variance

Equals the sum of the price variance and the volume variance.

Price variance equals the change in unit price (i.e., the average unit sales value in year 2 minus the average unit sales value in year 1) multiplied by the total sales volume in year 2.

Volume variance equals the change in sales volume (i.e., total sales volume in year 2 minus the total sales volume in year 1) multiplied by the average unit sales value in year 1.²

Total Cost of Sales Variance

Equals the sum of the cost variance and the volume variance.

Cost variance equals the change in average unit cost of sales (i.e., the average unit cost of sales in year 1 minus the average unit sales value in year 2) multiplied by the total sales volume in year 2.

¹ The variance analysis in this report presents separate variances for raw material, direct labor, other factory costs, and byproduct revenue. While the underlying mechanics are the same, a standard variance analysis presents a single variance analysis for cost of sales.

² If the average sales value for year 2 is higher than the average sales value for year 1, the value of the price variance shown in the table is positive in terms of explaining the total change in revenue. Similarly, if the total sales volume in year 2 is greater than the total sales volume in year 1, the sales volume variance is also positive. If the reverse is true, the price variance and the volume variance would both be negative.

Volume variance equals the change in sales volume (i.e., total sales volume in year 1 minus the total sales volume in year 2) multiplied by the average unit cost of sales in year 1.^{3 4}

Gross Profit Variance

Equals the sum of the total net sales variance and the total cost of sales variance.⁵

Total SG&A Expense Variance

Equals the sum of the SG&A expense variance and the volume variance.

SG&A expense variance equals the change in average SG&A expenses (i.e., average unit SG&A expenses in year 1 minus the average unit SG&A expense value in year 2) multiplied by the total sales volume in year 2.

Volume variance equals the change in sales volume (i.e., total sales volume in year 1 minus the total sales volume in year 2) multiplied by average unit SG&A expenses in year 1.⁶

Operating Income Variance

Equals the sum of the price variance, the sum the cost of sales variance and the SG&A expenses variance, and the sum of all volume variances. Since the volume variances related to sales and costs of sales/SG&A expenses generally offset each other (i.e., an increase in sales volume results in a positive volume variance in the calculation of the net sales variance, while the same increase results in a negative volume variance in the calculation of the cost of sales variance), the primary components of the operating income variance are usually the price variance and the cost of sales/SG&A expense variance.

³ While the total net sales variances and the total cost of sales variance use the same basic methodology, the total net sales variance uses average sales value, while the cost of sales variance uses the average cost of sales. The total net sales variances and the total cost of sales variance are also different in terms of whether changes in prices, costs, and/or volume are viewed as positive or negative. Since the objective of the variance analysis is to quantify the effect of changes in prices, costs, expenses, and volume on changes in operating income, changes that increase operating income (i.e., increasing average sales value, decreasing average costs, increasing sales volumes when sales are profitable, and decreasing sales volumes when sales are unprofitable) are positive. In contrast, changes which decrease operating income (i.e., decreasing average sales values, increasing average costs, decreasing sales volumes when sales are profitable, and increasing sales volumes when sales are unprofitable) are negative.

⁴ Some care should be given when considering the cost of sales variance and the corresponding volume variance. The variance analysis does not distinguish between changes in average cost of sales due to increases/decreases in variable costs and/or changes due to increases/decreases in fixed cost absorption related to variations in production/sales volume. While the expanded variance analysis presented in this report separately presents raw materials, direct labor, and other factory costs, the impact of changes in fixed cost absorption, which would generally be reflected most noticeably in other factory costs, is not separately isolated.

⁵ The gross profit variance is the net change in gross profit for the two periods considered; i.e., a negative gross profit variance indicates that total gross profit was lower in year 2 compared to year 1, while a positive gross profit variance indicates that total gross profit was higher in year 2 compared to year 1.

⁶ Similar to the cost of sales variance, the SG&A expense variance has the same limitation noted above in terms of explaining changes due to increases/decreases in variable costs versus changes due to increased/decreased fixed cost absorption. A positive SG&A expense variance means that total SG&A expenses declined in year 2 compared to year 1, while a negative SG&A expense variance indicates that total SG&A expenses increased.

