Case Study

27 Feb 2003

Catfish Fight

Vietnam's tra and basa fish exports to the US

On August 8th, 2002 a meeting of the US International Trade Commission (ITC) concluded with the following statement: "Based on the preliminary findings, we determine that there is a reasonable indication that the domestic industry producing frozen catfish fillets, whether or not breaded or marinated, is threatened with material injury by reason of subject imports from Vietnam that are allegedly sold in the United States at less than fair value." This decision came forty days after the Catfish Farmers of America (CFA), a trade association of US catfish farmers, accused 53 Vietnamese fishery exporters and processors of dumping frozen tra and basa fillets on the US market, causing major damage to local catfish producers.

Thus, the initial round of the first dumping case between the US and Vietnam ended. The case was then passed to the US Department of Commerce for a dumping investigation. The verdict is expected in July 2003 if the case continues till its last stage. If the verdict is in favor of the CFA, i.e. the petitioner, then imports of frozen tra and basa fillets from Vietnam will be subject to antidumping duties as high as 191 percent. This is in contrast to the current rate of zero percent.

Since the dumping charge was initiated shortly after the US-VN BTA became effective, it drew enormous attention from the government and the business community in Vietnam. There is particular concern for the impact this case would have on the livelihood of almost 200,000 farmers in the Mekong Delta. The CFA has argued that they are just simply trying to maintain a level playing field in trade In contrast, the Vietnamese have cited protectionism as the main reason behind the CFA's claim which started with the catfish-labeling dispute several months before the dumping charge was made.

The purpose of this case study is to describe the trade dispute settlement mechanism in the US and address the issue of fair trade. It also analyzes the various arguments put forward by the Vietnamese side and the likely impact that an antidumping duty would have on the Vietnam's frozen fish processing industry and fish farmers.

Other issues raised by this case are to what extent are the regulations on labeling, dumping, subsidy, environment, and labor reasonable tools in ensuring fair trade or to what extent are they just implicit trade barriers? How strong is protectionism in rich countries and how does it affect Vietnam's integration and outward-looking strategy? Should Vietnam be treated as a non-market economy or a market economy in this

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trade dispute? What advantages would Vietnam have in defending the case if it were a member of the WTO?

Tra and Basa Culture in the Mekong Delta

Fresh scaleless fish in Southeast Asia belong to the Pangasius family and are raised mainly in river cages or ponds by small-scale farmers. In Vietnam, *basa* and *tra* (also called hypobasa) are the two most popular scaleless fish in the Mekong Delta. Before 1995, brood stocks were fingerlings (small fish) caught in nature. After each mating season, fingerlings swam along the Mekong River from Laos and Cambodia to the Mekong Delta. They were caught and sold to fish farmers. As a result, farmers suffered the problems of high-cost brood stocks due to limited supply, unsecured supply, and a high death rate of fish due to changes in the living environment. Breeding technology was introduced in 1995,[1] which reduced the cost of fingerlings by two-thirds, according to some breeding firms. Subsequent improvements in farming techniques and the use of industrial feed have helped reduce the growing period and increased the yield per kilogram of feed.

The system of catfish farming in the Mekong Delta is characterized by fish cages and ponds locating along the Hau River in An Giang and Dong Thap. Caged-fish farming, which was adopted in the late 1980s from the experience of fishermen in Cambodia's Tonlesap Lake, quickly became the dominant form of tra and basa farming. Chau Doc has the highest concentration of fish cages and is also the major supply source of brood stocks for the whole region. The natural conditions in the Mekong Delta are the most important factor in determining the efficiency of tra and basa fish farming. Strong water flows help increase the fish farming intensity per cage, leading to high yields. The average yield is 120-150 kilograms of fish per one cubic meter of water. Thus, on average a small cage produces 30 tons per crop, while a large cage produces 50-60 tons per crop.[2] The warm weather in the Mekong Delta ensures that the fish are bred and grown throughout the year. One crop can last from 6 to 12 months. After an eight-month crop, a tra can reach 1-1.3 kilograms and a basa can reach 1.3-1.5 kilograms.

Low production costs were the main reason for the rapid growth of fish output when market opportunities opened. Over the past five years, tra and basa production has increased continuously. The fish output in 2001 was 120,000 tons, which was a six-fold increase compared to the level in 1997. From the two provinces in the upstream of Hau River, An Giang and Dong Thap, tra and basa farming has spread to other provinces in the Mekong Delta such as Can Tho, Ben Tre, Vinh Long and Tien Giang.

Investment and Production Costs of Tra and Basa[3]

Cage construction accounts for the largest investment cost born by tra and basa farmers. A small cage costs around ₫100 million, while a large cages costs ₫200 million. Farmers use mainly their own money or money borrowed from friends and relatives to finance the purchase of these cages. Only after the cages are constructed and registered with the authorities can farmers use the cages as collateral to secure loans from banks. Other fixed investments are mixer and feeding machines, which cost ₫3-4 million and ₫5-6 million respectively.

Recurrent expenses include the costs of fingerlings, feed, labor, fuel, disease control, interests, and taxes. The cost of fingerlings is ₫3,500 for basa and ₫500-1,500 for tra.

A fingerling has a normal weight of 70-80 grams and is grown into a full-sized fish of 1-1.2 kilograms before being harvested. The average loss ratio due to diseases and deaths is 10 percent of the final output.

There are two types of feed: homemade and industrial. Small-scale fish farmers usually depend on homemade feed produced from sea fish (such as herring and anchovy), bran, and vegetables. The cost of homemade feed is ₫2,000 per kilogram. Large-scale farmers often use both homemade and industrial feed. The industrial feed has a higher protein ration and does not dissolve in water. Although the industrial feed is more expensive, it reduces the amount of feed requirement to grow a one kilogram fish and prevents the spread of diseases. Cargill, an American feed processing firm, is a major supplier of feed for tra and basa production. A kilogram of Cargill's feed costs around ₫4,000-₫5,000. Based on farmers' estimation, three kilograms of feed are needed to grow a one kilogram tra, and four kilograms of feed are needed to grow a one kilogram basa.

As fish production expands, outside labor is hired to supplement the farmer's own labor. A caged-fish owner often hires one or two workers to look after a cage at a wage rate of ₫500,000 a month. However, the true effective labor cost is ₫750,000 a month since the worker is offered free meals at a cost of ₫250,000 a month.

Other production inputs include fuel for running feeding machines, and supplies for the treatment and prevention of fish diseases. It is estimated that one ton of fish output needs 20 litters of fuel at a cost of ₫3,800 per litter. The medicinal cost is ₫10 million a cage. Taxes and fees amount to ₫1 million a cage.

A significant cost component is borrowing cost. Besides the fixed investment requirements, fish farmers need a large amount of working capital to buy brood stocks and feed. On average, a fish farmer has to borrow from ₫100 million to ₫150 million for one fish cage. There are diversified sources for borrowing money. Farmers can use their fish cages as collateral to borrow money from Agribank or Incombank at monthly interest rates of 0.75 percent. Seafood processing firms, customers of the fish farmers, provide loans of 0.85-0.95 percent a month on the condition that the farmers have to sign future contracts with the firms. Loans have maturities ranging from 6 to 8 months corresponding to the crop duration. Farmers lacking collateral or those who choose not to provide collateral have to turn to private moneylenders for loans at rates of 2-3 percent a month.

Box 1 – Tra Production: Cost Summary

- Cost of cage investment: ₫200 million; 10-year depreciation
- Cost of mixers and feeding machines: ₫9 million; 5-year depreciation
- Cost of fingerlings: ₫1,400 per fish (44.000 fingerlings; 0.075 kg per fingerling; 10% loss; 40.000 fish of output)
- Crop duration: 8 months (fish average weight increases from 0.075 kg to 1 kg)
- Total output: 40 tons of fish per cage
- Cost of feed: ₫2,500 per kg; Feed-to-weight ratio: 3.0; Cost of feed per 1 kg of fish output: (1 kg – 0.075 kg)*3*2,500 đ/kg = ₫6,937.5
- Hired labor: 1.5 workers on average with monthly average wage of ₫750,000
- Cost of fuel: ₫3.800 a liter; Fuel consumption ratio: 20 liters per 1 ton of fish
- Disease prevention and treatment: ₫10 million per cage
- Taxes and fees (including water-surface rentals): ₫1 million.
- Loans: ₫140 million; interest rate: 1% a month

Table 1: Cost structure of tra production

Cost categories	Value (đ)
Cost of goods sold	**38,9194,000**
Fingerlings (44,000 * ₫1,400 đ)	61,600,000
Feed (44.000 * ₫6,937.5)	305,250,000
Wages (1.5 * 8 * ₫750.000)	9,000,000
Fuel (20 * 44 * ₫3,800)	3,344,000
Disease prevention and treatment	10,000,000
Depreciation	**14,533,333**
Cage depreciation (10% * 8/12 * ₫200,000,000)	13,333,333
Feeding machine depreciation (20% * 8/12 * ₫9,000,000)	1,200,000
Interests (1% * 8 * ₫140,000,000)	**11,200,000**
Taxes and fees	**1,000,000**
Total cost	**415,927,333**
Unit cost	**10,398**

Production costs vary significantly among different areas and among different farmers in the same area, depending on farming skills, cage investment, type of feed, and borrowing expenses. The calculations in Table 1 produce a result which is relatively high since large investment and industrial feed costs are used. The calculations made by ActionAid Vietnam, a UK-based non-profit organization, based on data supplied by the An Giang Department of Agriculture and Rural Development in July 2002, show that the unit cost of tra farming is only ₫8,600 a kilogram of fish. According to An Giang's fish farmers, unit production costs vary from ₫8,500 to ₫10.500.

Average prices paid by processing firms to farmers range from ₫10,000 to ₫13,000 a kilogram. Thus, using the results of Table 1, the average income per cage is:

(12,000 – 10,400)*40,000 = ₫64,000,000. This income consists of wages and salaries paid to the self-employed farmers and net profits.

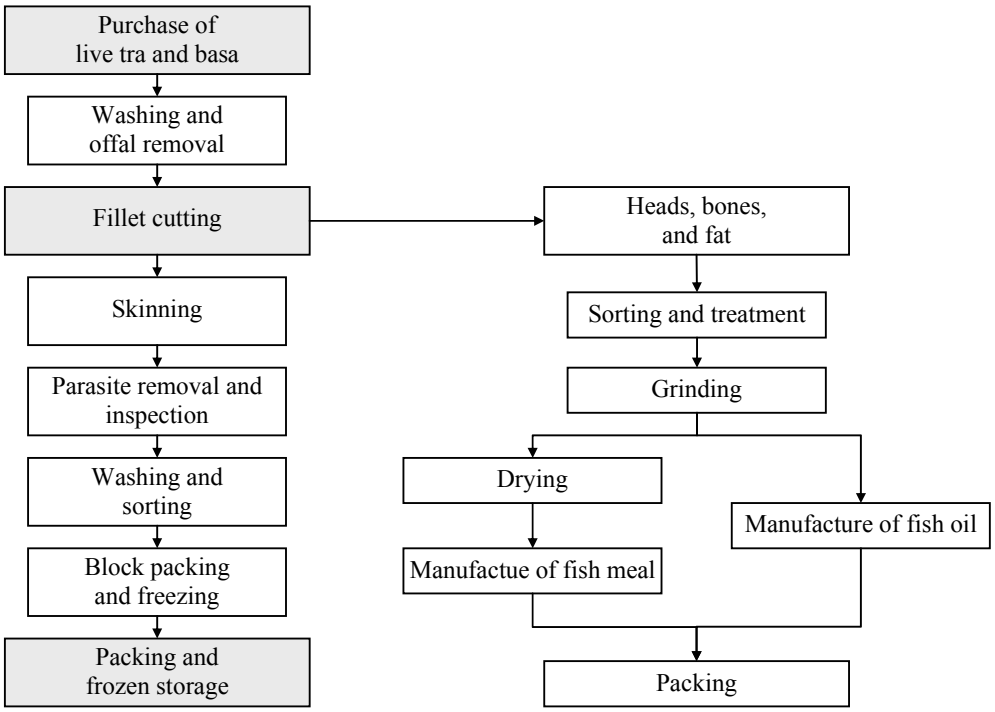
Compared to tra, basa have higher production costs due to higher costs of fingerlings, longer growing time and higher level of feed consumption. On average, the unit cost of basa is ₫1,000 to ₫2,000 higher than that of tra. However, harvested basa enjoy a higher price with the difference being ₫1,000. Before 1998, farmers mainly raised basa, but are now switching more and more to tra.

The above information was based on cage-fish farming. In addition to this farming practice, however, there is also pond-fish farming. Both the unit cost and market price of cage-fish are ₫1,000 higher than those of pond-fish.[4] According to the Farmers Association of An Giang, 3,400 fish cages and 1,430 ponds were officially registered and operated in 2002.

Processing and Exports of Frozen Tra and Basa

The majority of live tra and basa fish are processed before reaching final consumers. Fish processing plants also locate in the Mekong Delta near cage-fish villages. Facing a fast-moving and competitive marketplace, most of the processors use imported freezing equipment and implement the HACCP standards for food sanitation and safety. Figure 1 shows a typical production process of frozen fish fillets.

Figure 1: Production Process of Frozen Fish Fillets



Source: Agifish, "Prospectus of An Giang Joint-stock Fisheries Export-Import Company", 2002.

Live fish are the most important material used in the processing of frozen tra and basa fillets. On average, fillets account for 30-40% of the weight of a whole fish. More specifically, 3.2 kilograms of live tra or 3.9 kilograms of basa are required to produce one kilogram of fillets. Fish waste generated in the fillet production such as the head,

tail, skin and viscera is processed into fish meal or fish oil, which help the processors recover some of the costs. In addition to the cost of live fish (which accounts for 82% of the net price of fillets), the processors incur costs of labor for fillet cutting, electricity for ice, freezing machines and storage, water, chemicals, and packing materials. Table 2 below shows the cost structure of a fillet production process.

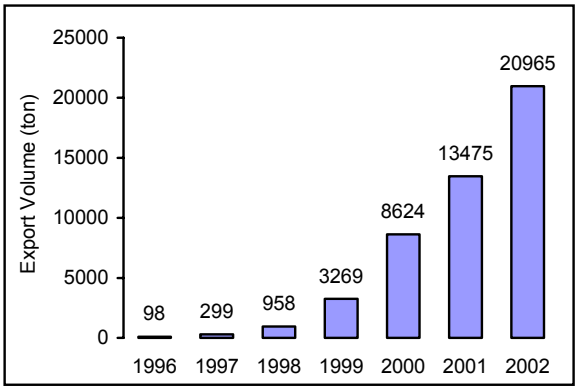
The processors ship most of their tra and basa fillets abroad. An Giang, the center of tra and basa farming, is where the largest exporters locate. These include An Giang Joint-stock Fisheries Export-Import Company (Agifish), An Giang Food and Agricultural Product Export-Import Company (Afiex), and Nam Viet Ltd. (Navico). Large processors in other provinces include Vinh Hoan (in Dong Thap), Cataco (in Can Tho), and Cafatex (in Can Tho). These firms together account for 95% of the export volume of frozen fish fillets (Table 3).

Table 2: Fillet production cost structure

	Value (đ)	Share in net price
Net price per kg of fillets (at factory gate, excluding selling costs)	43,000	
Cost of live tra (VND per kg of live fish)	12,000	
Processing ratio (weight of live fish per kg of fillets)	3.2	
Cost of live tra (VND per kg of fillets) (3.2 * ₫12.000)	38,400	
Waste recovery (skin, viscera, bone, head, fat) (VND per kg of fillets)	3,200	
Cost structure (VND per kg of fillets)		
Net cost of live tra (38,400 – 3,200)	35,200	81.86%
Labor	3,397	7.90%
Electricity, water, chemicals, and packing materials	594	1.38%
Rent	63	0.15%
Depreciation	365	0.85%
Interests	453	1.05%
Tax	1,088	2.53%
Profits	1,840	4.28%

Vietnam started to export frozen tra and basa fillets to the US in 1996 following normalization in relation between these two countries. After a few years of sluggish growth, exports shot up beginning in 2000. Between 1998 and 2002 the export volume of frozen fish fillets increased more than 20-fold, reaching 21,000 tons in 2002 (Figure 2). The f.o.b. export prices of the fillets fluctuated around $1.15-$1.5 a pound (or ₫38,755-₫50,550 a kilogram).

Figure 2: Export Volume and Value of Frozen Scaleless Fish Fillets to the US



Source: US International Trade Commission, DataWeb.

Table 3: Market Shares of Vietnam's Frozen Fish Fillet Exporters in 2000

Exporters	Share
Agifish (joint-stock)	40%
Vinh Hoan (ltd)	25%
Cafatex (state-owned)	10%
Afiex (state-owned)	9%
Cataco (state-owned)	6%
Navico (ltd)	5%
Others	5%

Source: Agifish, "Prospectus", 2002.

An advantage enjoyed by Vietnamese exporters was low import tariffs. According to the US Harmonized Tariff Schedule, imported frozen catfish fillets from countries that have normal trade relations (NTR) with the US enjoy a zero-percent tariff. However, the fish fillets imported from non-NTR countries are subject to a tariff of ¢4.4 a kilogram. Thus, up to the effective date of the BTA (December 2001), 4.4 cents of import duty were collected for each kilogram of imported tra and basa fillets. With the average price of $3.5 a kilogram, the tariff was around 1.3 percent of the import value. But from December 2001 onwards, there is no longer tariff on the product.

Currently, the US market accounts for 40 percent of total exports of frozen tra and basa fillets. Other important foreign markets for these products are the EU, Australia and some Asian countries.

Catfish Farming in the US

Up until 1970, catfish was only a regional specialty in the US with demand very limited due to its image as a low-quality fish. However, catfish's image gradually improved due to aggressive marketing campaigns by catfish farmers and processors. The general message of the advertisements was simple. Farm-raised catfish are low in fat, cholesterol, and calories and high in protein, vitamins, and minerals; farm-raised catfish have no fishy smell, no small bones, and can be cooked with many different recipes. The results of these campaigns have been very positive. Catfish has now become a main-course feature in many seafood restaurants and appears in most supermarket chains. The per capita consumption of catfish in the US increased from 0.41 pound in 1985 to one pound in 2001.[5]

In 1970, US catfish farmers produced only 5.7 million pounds (2,580 tons) of catfish. In 2001 the production output was 597 million pounds (271,000 tons), representing a market of half of a billion dollars. Catfish farms are concentrated in the Mississippi Delta in the states of Mississippi, Alabama, Arkansas and Louisiana. They are different from the cage-raised fish found in the Mekong Delta, since all are raised in ponds. Today, there are over 150,000 acres (76,000 hectares) of catfish ponds in the United States, with Mississippi accounting for 58% of the total. Catfish has now become the fourth most important agricultural product in Mississippi.

The growing catfish market in the United States, however, attracted imports from foreign countries including Brazil, Guyana, China, and Vietnam.[6] After a long period of increases in both volume and price enjoyed by US producers, the US catfish farmers had to accept price cuts in 2001 due to this increasing competition. The average unit price paid by processors declined from 75 cents in 2000 to 66 cents in 2001 and 50 cents in 2002. The Catfish Farmers of America (CFA) argued that the price they received was 15 cents lower than their cost of production. Total sales of catfish to domestic processors went down by 20% from $446 million in 2000 to $385 million in 2001. Tra and basa imported from Vietnam were singled out by CFA as the main reason for this decline as Vietnamese products were sold at one dollar per pound less than locally-raised catfish.

In response to this situation, CFA felt that it needed to do something. Its first action was on the use of the name 'catfish'.

The Labeling Dispute

Arguments of CFA

The surprising success of Vietnam's tra and basa exporters, according to the US catfish farmers, was due a trick in marketing strategy. Basa was the name used in the first shipments of Vietnam's fish. It did not work well. In 1996, tra and basa exporters sold only 59 tons of frozen fish fillets in the US and this increased to only 260 tons in 1998. The name was then changed to catfish and the sales went up. (See Figure 2.)

The US catfish farmer's complaints went further in saying that packaging of Vietnamese products was similar to that of local products. In some places, the imported goods were even promoted as 'fresh delta', which was felt to mislead consumers in believing that they came from the Mississippi Delta when they were actually from the Mekong Delta.

CFA concluded that the Vietnamese exporters were leveraging on the marketing efforts of the US catfish farmers. Hugh Warren, CFA president, said in a interview that the CFA's action was not protectionist, but to prevent dishonest trade and labeling.

As part of their efforts, CFA and their lobbyists tried to prove that Vietnam's tra and basa fish are not really catfish and therefore it is illegal to use the catfish label in packaging.

"The channels [i.e. catfish] belong to a family, Ictaluridae. The fish from Vietnam are from a family called the Pangasiidae," says Engle, director of the Aquaculture-Fisheries Center at the University of Arkansas at Pine Bluff, one of the catfish-growing areas. It is true that both basa and tra do not have scales, have barbells or whiskers, and exhibit characteristics that could lead one to assume they're a type of catfish, says Engle. But there are many types of fish with similar looks that are not considered catfish.[7]

Politicians in the catfish-growing states also joined in to support the CFA. Tim Huchinson, a senator from Arkansas, spoke before the Senate claiming that: "many among the 12,000 workers employed by the industry will lose their jobs if imports continue to displace US-raised fish".[8] On September 2, 2001, twelve US Senators and Members of Congress representing the catfish-growing states sent a letter to the US

Trade Representative (USTR) asking for measures to prevent the cheaper imports and preserve the US catfish industry.

Arguments of Vietnamese Exporters

According to the Vietnamese producers, tra and basa look like catfish, taste like catfish, and are in fact catfish. "Catfish" is a common English word describing hundreds of types of fish. According to Webster, catfish is "any of numerous scaleless, chiefly freshwater fishes of the order Siluriformes, with whisker-like barbells near the mouth." The US Food and Drug Administration (FDA) also admitted that it is appropriate to use names like 'basa catfish' for the Vietnamese products.

"To think it is not a catfish is hooey, because it is. It is not a North American catfish. It is an Asian catfish. But to say it is not a catfish is wrong," said ichthyologist Ed Wiley of the University of Kansas's biodiversity research center.[9]

The Vietnamese Ministry of Fisheries said that all of the exported tra and basa had "Product of Vietnam" or "Made in Vietnam" on their packaging and were labeled in accordance with FDA's regulations. Basa, bocourti, bocourti fish, basa catfish, and bocourti catfish were used as the commercial names for basa. Swai, striped catfish, sutchi catfish were used as the commercial names for tra.

Nguyen Thi Hong Minh, President of Vietnam Association of Seafood Exporters and Producers (VASEP), wrote that the catfish labeling issue was "to protect the interests of a relatively small group of wealthy catfish industrialists at the expense of the free trade spirit and the best interests of the US consumer."

Catfish production in the Mississippi Delta is not very competitive due to high costs. In addition to high wages, there are several other factors. First, investment in fish ponds in the US is at least as costly as cage investment in Vietnam. Second, given the pond's static water, the fish density is not high; the use of water-stirring equipment adds more costs to the production. Third, catfish in the US grow very slowly during the cold winter. Fourth, pond fish in the Mississippi Delta are often caught and eaten by wild birds resulting in the loss ratio of as high as 30% as opposed to the loss ratio of 10% in the Mekong Delta.

Post Labeling Dispute

The efforts of CFA eventually produced results. The US Congress in November 2001 passed agriculture legislation that limited the definition of catfish to any member of the Ictaluridae family of fish that is native to the Mississippi Delta. This decision effectively prohibits US importers, restaurants and supermarkets from labeling fish from Vietnam as catfish.

CFA hoped that by prohibiting Vietnamese exporters from using the name 'catfish' in their labeling the consumers' demand for tra and basa would decline, or at least the Vietnamese exporters and US importers would have to incur additional costs in running new marketing programs.

Within the first one or two months of the labeling decision, imports of frozen tra and basa fillets from Vietnam suffered setbacks. However, the main reason for this decline was that the Vietnamese exporters had to temporarily suspend their shipments in order to change their labels. According to the new labeling guidelines of the Vietnamese

Ministry of Fisheries, three new names, hypo basa, sutchi basa and trasa, were to be applied to the exported frozen tra and basa fillets.

What CFA did not expect was the increased publicity of the catfish labeling dispute, which virtually provided a marketing campaign for the Vietnamese fish. And as the Vietnamese exporters began marketing their products as tra and basa, they enjoyed a 30-percent increase in price. Export volume also picked up as the change to new labels was completed. In the first six months of 2002, imports of tra and basa fillets to the US recorded a year-on-year growth rate of 24 percent in dollar terms.[10]

The new marketing of tra and basa proved effective in other markets as well. Demand for the products was strong in the EU, Japan, and Australia. The Vietnamese producers also moved into the production of new products such as instant dry basa, tra sausage, salted shredded tra, and smoked basa.

Thus, despite the labeling restrictions imports from Vietnam were not reduced. A more drastic measure was needed. And after months of preparation, CFA filed an anti-dumping case against the Vietnamese fish.

The Dumping Case

On June 28, 2002, the Catfish Farmers of America filed a petition with the US Department of Commerce (DOC) and the International Trade Commission (ITC) accusing Vietnamese producers of frozen tra and basa fillets of illegally charging prices below fair market value in the US market, resulting in material injury to the domestic industry. The petitioners are 500 catfish farmers belonging to CFA and eight individual catfish processors. The respondents are 53 Vietnam's seafood processors belonging to the Vietnam Association of Seafood Exporters and Producers.

In the petition, CFA proposed for DOC's consideration two alternatives to correct the 'dumping' practice: 1) if Vietnam is considered a non-market economy, an antidumping duty of 190 percent will be imposed on imported frozen tra and basa fillets; and 2) if Vietnam is considered a market economy, the antidumping duty is 144 percent.

This is the first dumping charge between Vietnam and the US, and a situation which may potentially have a significant impact on the fisheries sector of the Vietnamese economy. Up until now, Vietnam has dealt with eight dumping accusations involving both agricultural and manufacturing goods.[11] According to WTO's statistics, the US is the most frequent user of antidumping actions. From 1995 to 2001, 255 dumping allegations were made by the US representing 14 percent of all cases. During the same period, the US had to defend 102 dumping accusations initiated by foreign countries. (See Boxes 2 and 3.)

Box 2 – Dumping cases against Vietnamese businesses

The first dumping case against Vietnam occurred in 1994 when a petition was filed in Colombia that Vietnamese rice exporters exported rice at a price 9 percent below its normal value. The case ended without any antidumping action since there was no evidence of injury caused by imported rice from Vietnam to Colombian rice.

In the second case in 1998, the EU accused Vietnam of dumping monosodium glutamate in the EU market. The final decision was a 16.8-percent antidumping duty on the imported product from Vietnam. EU also investigated another dumping case in 1998 involving producers of footwear from China, Thailand, Indonesia, and Vietnam. Given their small market share, the Vietnamese producers escaped antidumping duty.

In 2000, Poland initiated a dumping case against Vietnam's gas lighters, and subsequently imposed an antidumping duty of €0.09 per unit of the imported product.

In 2001, Canada claimed that Vietnamese garlic exporters sold their products at less than fair value in the Canadian market and imposed a US$1.48 per kilogram duty.

In 2002, there have been three dumping claims against Vietnamese exports, all of which are under investigation. In the first case, the Canadian Footwear Association sued Vietnamese footwear exporters of dumping waterproof shoe soles. In the second case, Vietnamese gas lighter producers were accused of selling their products below fair value in the EU market. The third case involves the frozen tra and basa fillets.

Box 3 – Antidumping actions statistics

From January 1, 1995 to December 31, 2001, there were 1,845 dumping cases initiated among trading nations, of which 1,066 cases ended with the imposition of antidumping duties (accounting for 58% of the total cases). Principal targets of antidumping actions were the newly industrializing economies (including China and India) which defended 39% of the actions. EU was the second largest target, defending 19% of the actions.

During the same period, the US initiated 255 dumping investigations, of which 169 ended with antidumping duties (accounting for 66% of all investigations). China remained the largest single target, defending 33 cases in which it lost 29. Japan, South Korea, and Taiwan were other targeted countries. Between 1995 and 2001, the US had to defend 102 cases, of which it lost 57.

Source: World Trade Organization (WTO), "Antidumping Statistics", website: www.wto.org.

What Is Dumping?

Dumping is defined as the practice of a firm selling a good in a foreign market at *less than fair value*. The product fair value or normal value is based on the price at which the good is sold in the home market. In cases where the domestic price is absent or the size of the home market is insignificant, the normal value is the highest comparable price for the like product for export to any third country, or the cost of production of the product in the home country plus an allowance for selling cost and profit.

However, dumping rules are applied differently in cases involving export products of former centrally planned economies. As often alleged by dumping petitioners, prices in the so-called 'non-market' economies do not reflect the forces of demand and supply, and therefore prices in a 'comparable' market economy should be used to

calculate the normal value for dumping determination. For example, the US treated China as a non-market economy in all of its antidumping investigations against Chinese exporters. As a result, factor-of-production prices in a 'surrogate' (i.e. comparable) country, which produces and exports a similar product and whose per capita income is similar to that of China, are chosen to calculate the product normal value.

If it is determined that a product is being sold at less than fair value and there is evidence of *material injury* to the local import-competing industry due to dumping, then antidumping duties will be levied against imports of the subject product. The duties are assessed as a percentage of the value of the imports and are equivalent to the *dumping margin*, which is measured on the basis of the difference between the export price and the normal value of the product (see Box 4).

Operation of the US Antidumping Law

In the US, dumping investigations are carried out by the Department of Commerce and the International Trade Commission. However, the investigative tasks of the two agencies are separated. The DOC is responsible for determining whether an imported product is being sold in the US market below fair value. The ITC is responsible for determining whether the imports cause or threaten to cause material injury to the domestic industry. Only if both the two findings are positive, then antidumping duties may be assessed against the imports. In this case the US Customs Service will be instructed to impose duties as a percentage of the value of the imports equivalent to the dumping margin.

Box 4 – Dumping Margin Calculation (*)

Dumping margin calculation involves two sets of information: export price (EP) and normal value (NV).

First, the export price is calculated on a net-price basis. Selling costs such as insurance, freight, and advertisement costs are deducted from the gross price charged by exporters in the exporting market to arrive at the 'factory-gate' export price.

Second, the normal value is assessed using different methods depending on the treatment of the exporting economy. For market economy cases, home market prices are the basis for normal value calculation. Again, the net-price principle applies. That is, the normal value is equal to the 'factory-gate' home market price. If the home market price is absent or the home market sales are smaller than 5% of the export volume, then either the net price of exports to a third country or the constructed value based on production costs shall be used.

For non-market economy cases, the product normal value has to be constructed. Actual quantities of factors of production such as labor, energies, and raw materials needed to produce a unit of the export product are obtained from the exporters. Theses quantities are then multiplied by their respective prices obtained from a 'comparable' market economy to calculate the unit production cost. The normal value is equal to the unit cost plus allowances for overheads and profits calculated from financial statements of similar companies in the comparable market economy.

Finally, the dumping margin is expressed as a percentage of the difference between the normal value and export price to the export price. For example, if the normal value is $120 and the export price is 100$, the dumping margin is: (120-100)/100 = 20%.

(*) For further information, see USITC, "Antidumping and Countervailing Duty Handbook", 1999.

The investigation follows a standardized timetable and can last anywhere from 45 to 280 days. Some investigations can be lengthier if there are complicating factors. The Department of Commerce itself can initiate antidumping investigations, but in actual practice nearly all investigations are initiated by domestic producers. Once an antidumping petition has been filed, ITC will undertake the preliminary determination of whether there is a "reasonable indication" that an industry in the United States has suffered an injury or is threatened with injury caused by the dumping alleged in the petition. This is the first test and during the past ten years only 10% of the cases ended with negative findings from this test.

If ITC's determination is affirmative, the case will be passed to DOC for determining whether the imports are sold at "less than fair value". The DOC is required at this stage only to determine whether there is a 'reasonable basis to believe or suspect' that the product is being dumped. If no dumping margins are found on a company's sales or the dumping margin is below some minimum level (two percent), the preliminary determination will be negative. The investigation, however, will continue. If the preliminary determination is affirmative, DOC will order the suspension of liquidation of imports and require that the importer post with the US Custom Service cash, a bond, or other security to cover the anticipated duties. Goods that are imported after an affirmative preliminary determination are subject to any antidumping duties that might be imposed later.

In the next phase, DOC continues its investigation to arrive at a final determination. If the dumping margin is found to be zero or negligible, the case is ended with the lifting

of the liquidation suspension. On the other hand, if DOC still finds a dumping margin above the two percent level , the case goes back to ITC.

In its final phase of investigation, ITC determines whether an industry in the US is materially injured, is threatened with material injury, or the establishment of an industry in the US is materially retarded, by the dumping practice. “Material injury” is defined as “harm which is not inconsequential, immaterial, or unimportant.” The ITC depends on information such as import volumes, impact on the affected industry, and market share for its final decision.

If the ITC makes a negative determination, the case will be ended without any antidumping measure. If the determination is affirmative, antidumping duties will be imposed on the imported product.

Any determinations that are made by DOC or ITC can be challenged by either the petitioners or the respondents in appeals to the Court of International Trade, and this court’s decisions are subject to appeal in the Court of Appeals for the Federal Circuit.

Box 5 shows the timetable for the catfish dumping case.

Box 5 – Timetable for the Dumping Case ‘Certain frozen fish fillets from Vietnam’

June 28, 2002
CFA filed a petition with the US International Trade Commission (ITC) and the US Department of Commerce (DOC) accusing Vietnamese exporters of selling frozen tra and basa fillets below fair value.

August 08, 2002
ITC issued its preliminary finding on material injury.

January 24, 2003
DOC is expected to issue its preliminary dumping determination on December 05. However, it is postponed until January 24.

June 16, 2003 (original date: February 18, 2003)
DOC will issue its final dumping determination. The case will be ended if the determination is negative. If the finding is positive, the case will be transferred to ITC.

July 31, 2003 (original date: April 04, 2003)
ITC will issue its final determination of material injury.

August 7, 2003 (original date: April 15, 2003)
Am antidumping order is issued if the ITC’s final determination is positive.
The case is ended if the ITC’s final determination is negative.

Petitioners' and Respondents' Standpoints

The Petitioners – CFA and US catfish processors

Regarding domestic industry and material injury:

- The petitioners, including 500 US catfish farmers and eight individual processors, argue that they represent 86% of domestic production. Catfish farmers sell most of their live catfish to processors and processors rely wholly on farmers for their input. Furthermore, there is cross-ownership among the catfish farmers and processors. Therefore, the petitioners can represent the domestic industry in the dumping case.
- Although there is no product produced in the US that is exactly like Vietnamese frozen tra and basa fillets, the petitioners argue that the "most similar product in characteristics and uses" to subject imports is frozen catfish fillets. Catfish, tra and basa all are fresh-water white fish, which can be used interchangeably in cooking.
- There was a substantial increase in the volume of imports of frozen tra and basa fillets from Vietnam from 1999 to 2001. As a result, the subject' imports share of US consumption reached 20 percent in 2001. To support this claim, CFA provided evidence showing increased volume of imports and reduced domestic output.
    - ✓ First, the subject imports from Vietnam appear mainly in category 'frozen catfish fillets' of the Harmonized Tariff Schedule whose import volume in 2001 is 7,765 tons. However, some of the imports are classified under three other categories, namely, frozen fish fillets - nesoi, frozen freshwater fish fillets, and frozen sole fillets. As a result, the total volume of imports from Vietnam in 2001 is 13,500 tons.[12]
    - ✓ Second, the domestic like product is frozen catfish fillets and does not include other white fish fillets. The total US consumption of frozen catfish, tra, and basa fish fillets in 2001 is less than 70,000 tons.
- The subject imports undersold the domestic like product by approximately US$0.8-1 a pound in every quarter for which there were sales of products from both the US and Vietnam. This was despite of strong demand and increased consumption in the US. The increasing volume of the subject imports and their low prices have caused a depressionary impact on domestic prices and significant injury to the US catfish industry.

Regarding dumping:

- In its petition to initiate the dumping investigation, CFA provided dumping margin calculations based on both market economy and non-market economy treatments.
- In the market economy scenario, CFA pointed to the very small size of the Vietnamese market for frozen tra and basa fillets as a reason for disqualifying the use of home market prices. In its own calculation during the initiation phase, CFA calculated the normal value based on constructed production costs

citing that it was unable to get data on third country prices of Vietnamese frozen fish fillets.

- ✓ Vietnamese input prices for live fish, labor, electricity, and water were used.
- ✓ Where Vietnamese pricing data were unavailable, CFA used production costs and factors provided by a domestic US producer of frozen fish fillets.
- ✓ By comparing the constructed normal value with the export price, CFA came up with the dumping margin of 143.7 percent.

- In the non-market economy scenario, CFA chose India as the 'comparable' country because India is a market economy which has a comparable level of economic development to Vietnam and is a significant producer of torpedo-shaped catfish.

  Indian prices of materials used in the production of torpedo-shaped catfish were applied for normal value calculation. For the quantities of production factors, CFA claimed that they could not get reliable data from Vietnam. Under the assumption that frozen fish fillet production processes are almost similar everywhere in the world, CFA relied on quantities of production factors of a US processor, after adjusting for known differences in Vietnam.

  According CFA's calculation, which is similar to the one in Table 4, the normal value of frozen tra and basa fillets is US$4.19 a pound, while the export price is US$1.44 a pound. The dumping margin, therefore, is 190.20 percent.

Table 4: CFA's dumping margin calculation in the non-market economy case

Factors of Production	Usage ratio	Surrogate value (¢/lb)	Unit cost (¢/lb)
Live fish	4	0.53	2.12
Fish waste recovery	3	0.01	(0.03)
Others			0.41
Net unit cost			2.50
	% of net unit cost		
Overhead	20.4%		0.51
Interests + depreciation	46.0%		1.15
Profits	1.2%		0.03
Normal value			4.19

Source: Numerical examples given by the DOC delegation to the Vietnamese tra and basa processors in October 2002 based on the information supplied by the petitioners.

- The petitioners spent a great deal of effort advocating the non-market economy treatment. Following are some comments on the non-market economy status sent by CFA to DOC.
    - ✓ The Vietnam dong is not fully convertible for current or capital account purposes.
    - ✓ Vietnamese wage rates are not determined by free bargaining between labor and management.
    - ✓ Vietnam maintains significant restrictions on joint ventures and other foreign investment.
    - ✓ The Vietnamese government maintains ownership and control of the means of production in Vietnam.
    - ✓ The Vietnamese Government controls resource allocation and the price and output decisions of enterprises

The Respondents – Vietnamese tra and basa processors

Regarding domestic industry and material injury:

- The catfish labeling decision clearly shows that there is no US product that is exactly like frozen tra and basa fillets. As a result, the case has to be based on the most similar product, which includes not only frozen catfish fillets but also other frozen white fish fillets such as tilapia and striped bass fillets. Moreover, breaded and marinated frozen products should also be included. These inclusions produce a large total US consumption. Correspondingly, the market share of the Vietnamese imports is only 2 percent rather than 20 percent as claimed by CFA. With such a small market share, the Vietnamese imports cannot cause damage to the US catfish industry. (See endnote 12.)
- The domestic industry under consideration is fish fillet processing. As such, catfish farmers should be disqualified as representatives of the domestic industry.
- The US catfish processing industry is not materially injured because both domestic sales and imports have been increasing over time, and there is no direct price competition between the two. Moreover, financial indicators of the domestic industry show some improvements in the last two years, despite deteriorating conditions of the whole economy. The difficulties (if there are any) suffered by the domestic industry are mainly due to past excessive investments.[13]
- There is no threat of future material injury as Vietnamese exporters also export their products to other markets including the EU and several Asian markets. Exports to these markets have been increasing steadily. Processing facilities in Vietnam are used to produce other types of seafood products, meaning that the processors can expand their production into other activities rather than only concentrating on tra and basa exports to the US.

Regarding dumping:

- Vietnam aggressively argues for its market economy status countering every point made by CFA in its non-market economy comment. "Vietnam has shed its central planning system and has made sufficient progress in its economic liberalization in accordance with international practices such that it should be considered a market economy under the US trade laws" – says the Government. While conceding the fact that some market distortions might remain in the economy, the Vietnamese Government provides evidence showing that all of these distortions exist in many market economies.

  The Vietnam Association of Seafood Exporters and Producers (VASEP) also made the same point by comparing Vietnam to Kazakhstan, a country recognized by DOC in March 2002 as a market economy . Judging by various criteria, "Vietnam meets or exceeds the level of progress achieved by Kazakhstan."

  US and other international companies operating in Vietnam also provided written comments in support of Vietnam's market economy status. Among these companies are Citibank, Unilever, Cargill, American Standard, New York Life International, Vedan, and Chinfon.

- Given the market economy status, the fish fillet price in Vietnam's domestic market, which is much lower than the export price, should be used for normal value calculation. Even if the domestic market was considered too small in size, constructed normal value based on costs of production factors similar to those provided in Tables 1 and 2 would show that there was no dumping on the part of the Vietnamese producers.

  The competitive prices of frozen tra and basa fillets are due mainly to low costs of live fish. As shown in Table 1, Vietnamese fish farmers pay market prices for their inputs of brood stock, feed, electricity, and fuel in raising tra and basa. Some inputs are taxed by the government. For fish-cage investment and working capital, some farmers are able to obtain loans from Agribank at preferential interest rates, while others have to borrow from processors and private moneylenders at market rates. Quite a few farmers borrow money at usurious rates. The average interest rate of one-percent a month contains no element of government subsidy, and is even higher than the loan rate charged to manufacturers in Ho Chi Minh City. With the average production cost of 10,500 dong a kilogram and the unit prices of 11,000-13,000 dong a kilogram, tra and basa farming is a profitable business.[14]

  As shown in Table 2, live fish account for 82% of processing costs. Labor, electricity, water, chemicals, interests, rents, packing materials, and depreciation account for the remaining costs. Labor, electricity, water, and packing costs are priced by the market. The inputs that are most likely subsidized are bank loans and land. But the subsidies (if there are any) cannot account for more than 1% of the production costs.[15]

- In the case of non-market economy treatment, the selection of India as the surrogate or comparable country by the petitioners is very questionable. First, despite being named as 'catfish', Indian torpedo-shaped catfish possess

characteristics which are different from Vietnamese tra and basa. Second, farming techniques, frozen fish fillet production processes and input prices are very different between the two countries. (See Table 5 below.)

Table 5: Comparison between Indian catfish and Vietnamese tra

Differences	Indian torpedo-shaped catfish	Vietnamese tra
Price of fingerlings	31,258 đ/gr (45 ¢/lb)	18,667 đ/gr (đ1,400 a fish)
Feed ratio	3.5/1	3/1
Price of live fish	18,000-19,000 đ/kg	13,000-14,000 đ/kg
Export price of frozen fillets	3.33 $/lb	1.30 $/lb

Source: VASC Orient, Information provided by Afiex, July 31, 2002.

In December 2002, DOC determined that Vietnam is a non-market economy (NME) country.

> "While Vietnam has made significant progress on a number of reforms, the Department's analysis indicates that Vietnam has not yet made the transition to a market economy. Until revoked, Vietnam's non-market economy status will apply to all future administrative proceedings covering periods of investigation or review that fall after the effective date of this decision."

As a result, DOC only requires data on output and factors of production from the Vietnamese firms. The Vietnamese firms will be in a great disadvantage if the prices in India[16] are chosen for the calculation of fair value.

One hope for the Vietnamese producers is from a recent Chinese experience in defending dumping charges. As it was shown, the way for exporters from non-market economies to escape dumping charges is to prove that their production processes are indeed efficient. In their case, two Chinese steel producers genuinely showed that the amounts of production inputs such as iron ore, coal and labor used in producing one ton of steel were low. Hence, even when the higher Indian prices were used, the constructed fair value was significantly lower than the export price. No antidumping duty was therefore imposed on the Chinese producers. However, in the past almost no other NME antidumping case ended up with a zero-dumping margin.

ITC's Preliminary Determination of Material Injury to the Domestic Industry

The ITC issued its preliminary analysis in August 2002. The subject imports include all frozen fish fillets processed from Vietnamese tra and basa regardless of tariff classification. The domestic like product is frozen catfish fillets (whether or not breaded or marinated). However, contrary to the respondents' argument, other frozen white fish fillets with similar characteristics are not included in the domestic like product.[17] Table 6 below shows the data used by ITC to calculate the market share of tra and basa imports.

Table 6: Market share of Vietnam's Imports

	1999	2000	2001
US consumption of frozen catfish, tra & basa fillets (tons)	63,969	67,056	71,278
Imports of frozen tra and basa fillets from Vietnam (tons)	2,179	5,357	11,078
Market share of Vietnam's imports (%)	3.4	8.0	15.5

Source: US International Trade Commission, "Certain Frozen Fish Fillets From Vietnam", Investigation No. 731-TA-1012 (Preliminary), Washington DC, August 2002.

In determining the domestic industry, the 1988 Omnibus Trade and Competitiveness Act authorizes ITC to include farmers of a raw agricultural product as producers within the domestic industry producing the processed agricultural product if –

(i) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production;

(A single continuous line of production exists if the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and the processed agricultural product is produced substantially or completely from the raw product.)

(ii) there is a substantial coincidence of economic interest between the growers and producers of the processed product.

In terms of the first condition, ITC's surveyed result shows that 54 percent of the live catfish are used for frozen fillet processing. ITC concluded that the percentage appears "to be insufficient to satisfy the statute's requirement that the raw product be substantially or completely devoted to the production of the processed product."

In terms of the second condition, there is a substantial amount of cross-ownership among US catfish farmers and processors, demonstrating the fact that they share the same economic interest. However, since the first condition is not met, the domestic industry is defined as frozen catfish fillets processing operations, not including catfish farming activities. Therefore, conditions of catfish farming were not taken into account in ITC's preliminary test of material injury.

As far as the conditions of the US frozen catfish fillets processing operations are concerned, ITC indicated that some performance indicators declined, but some other performance measures improved from 1999 to 2001. For example, while domestic producers' share of US consumption decreased steadily, their production increased in 2000 before showing some decline in 2001; the number of workers and the total number of hours declined between 1999 and 2001, but the domestic industry's productivity and wages improved during the same period; net sales declined while operating income increased in 2001 compared to 2000.[18]

Based on the above findings, there is no reasonable indication of present material injury as stated by one of ITC's commissioners. However, looking at the increasing production capacity, increasing market share, and low prices of the Vietnamese products, ITC found "a likelihood of substantially increased imports of the subject merchandise into the United States."

Taking the above factors into account, ITC preliminarily determined that "there is a reasonable indication that the domestic industry producing frozen catfish fillets, […], is threatened with material injury by reason of subject imports from Vietnam that are allegedly sold in the United States at less than fair value." Having passed this first test, the case was moved to DOC for its dumping determination.

The Next Steps

At the time of writing this case study, February 2003, DOC just issued its preliminary dumping determination based partly on the information provided by Vietnamese tra and basa processors. [19] The Vietnamese exporters of basa and tra were found to be guilty of dumping and, therefore, would be subject to the preliminary antidumping duty ranging from 38 to 64 percent.[20,21] And in March 2003, DOC will investigate the four largest tra and basa processors in Vietnam, namely Agifish, Vinh Hoan, Cataco and Nam Viet, and verify the data provided by these companies. In addition, the media reports that the DOC delegation will also conduct a direct interview with An Giang's basa and tra farmers. The findings from this trip will contribute to DOC's final decision. Then, the case will be transferred to USITC for final verdict in July 2003.

The case of basa and tra is the first but certainly not last major trade dispute that will when Vietnam integrate into the world economy. According to the Vietnamese Minister for Trade, Truong Dinh Tuyen, the tra and basa issue is only one of many international trade disputes and by no means the most difficult challenge that Vietnam faces in its integration into the world economy. More significant challenges lie ahead when Vietnam opens its domestic market to fulfill its WTO commitments. "A day we are not a member of WTO is a day we suffer from discrimination. The goal for Vietnam is to join WTO before the conclusion of the Doha round in 2005", says Mr. Tuyen.

Since Vietnam is not yet of member of the World Trade Organization, it can only appeal any decision made by ITC or DOC to the US Court of International Trade. Recourse to WTO's dispute settlement mechanism, in which independent arbitrators from countries other than Vietnam and the US would be appointed to decide on the case, is not available to Vietnam. Thus, Vietnam is feeling an urgent need to join WTO because of increased trade disputes with its trading partners. Rumors have circulated for some time that US shrimp farmers is preparing to file an antidumping case against Vietnam together with China and Thailand.

Endnote

[1] Breeding technology was jointly developed by Can Tho University, the French Research Institute CIRAD, and Agifish.

[2] A typical small cage has a dimension of 5m*10m*4m), while a typical large cage has a dimension of 14m*7m*5m.

[3] Data used in this section are taken from the Angiang fiedtrip of Class VII, Fulbright Economics Teaching Program in the Spring 2002, and from other sources, the most important of which is the Survey Report of ActionAid Vietnam – "Kết quả nghiên cứu nhanh các ảnh hưởng có thể xảy ra của vụ CFA kiện các doanh nghiệp thành viên VASEP đối với nghề nuôi cá tra và basa tại một số tỉnh Đồng bằng sông Cửu Long", Hanoi, August 2002.

[4] On July 3rd, 2002, the market price of a tra-fish raised in cage was ₫12.400, while that of a tra-fish raised in pond was ₫11.400.

[5] The per capita consumption of all fish and seafood in the US is 15 pounds. Catfish account for 3 to 4 percent of the total fish and seafood consumed, so the is a lot of potential for future growth.

[6] The Vietnamese products actually proved to be very competitive and drove out exports of other countries. Imports of frozen catfish from Vietnam currently account for 84% of the total imports into the US.

[7] David Bennet, "US., Vietnam in word battle over catfish", Delta Farm Press, June 14, 2002.

[8] Carter Dougherty, "One catch not fish of the day", The Washington Times, December 28, 2001.

[9] Eric Palmer, "Catfish at center of U.S.-Vietnamese trade battle", The Kansas City Star, April 22, 2002.

[10] In July alone, Vietnamese producers in An Giang exported 11,000 tons of tra and basa fillets, achieving a year-on-year growth rate of 126%.

[11] Vietnam was the responding side in all dumping cases that it involved. Vietnam does not have an antidumping law.

[12] Figure 2 shows the data of frozen fish fillet exports from Vietnam to the US when all four subheadings are included, namely, 0304.20.60.30 (frozen catfish fillets), 0304.20.60.43 (frozen freshwater fish fillets), 0304.20.60.57 (frozen sole fillets), and 0304.20.60.96 (frozen fish fillets, NESOI).

However, if only the first subheading (i.e. frozen catfish fillets), then the export data are as follows:

	1996	1997	1998	1999	2000	2001
Volume (ton)	59	55	261	903	3,191	7,765
Value (US$)	260,847	233,846	1,156,550	4,052,524	10,695,974	21,509,704

Source: US International Trade Commission, DataWeb.

[13] The Vietnamese side even cited a study of the US Department of Agriculture to argue that farmers' excessive investment leading to overcapacity was responsible for the decline in catfish prices. See Nguyen Huu Dung, "Catfish - Thử thách đầu tiên đối với Hiệp định Thương mại Việt - Mỹ", VASC Orient, November 30, 2001.

[14] See the section on tra and basa farming in the Mekong Delta.

[15] See the section on frozen tra and basa processing and exports.

[16] The five economies under consideration for are India, Pakistan, Bangladesh, Kenya, and Guinea. The Vietnamese firms prefered Bangladesh while the U.S. catfish farmers opted for India.

[17] The ITC says in its analysis that they "will consider specific arguments that the parties advance, including in their comments on draft questionnaires, regarding the potential inclusion in the domestic like product of frozen fish fillets produced from other white fish."

[18] Following are some data on the conditions of the domestic industry released by ITC: (i) the total shipments increased from 89.4 million pounds in 1999 to 90.2 million pounds in 2000, and declined to 84.8 million pounds in 2001; (ii) the end-of-period inventories increased from 6.4 million pounds in 1999 to 7.1 million pounds in 2000 and 9.6 million pounds in 2001; (iii) the level of capital expenditures decreased from $9.9 million in 1999 to $5.8 million in 2000 and increased to $22.9 million in 2001; (iv) operating profits rose from $6.7 million in 1999 to $8.5 million in 2001; and (v) 5 out of 11 domestic producers reported operating losses as compared to 3 out of 11 in 1999.

[19] CFA's calculations of dumping margin were only considered by DOC for initiating the case. Now, DOC has to take into account the information provided by Vietnamese processors. It is worth noting that DOC's job is only to investigate whether or not Vietnamese frozen tra and basa fillets are being sold at less than fair value in the US. The investigation has nothing to do with prices and production costs of U.S. frozen catfish fillets. Information on the U.S. producers is only relevant for ITC's analysis of material injury. However, just like VASEP, CFA has the right to provide reference information on the frozen fish fillets and comment on any DOC's decision.

[20] For the four mandatory respondents in this investigation, Agifish is subject to a preliminary antidumping tariff of 61.88 percent, Cataco 41.06 percent, Nam Viet 53.96 percent, and Vinh Hoan 37.94 percent. For those Vietnamese producers/exporters who voluntarily responded to the DOC's questionnaire (which include Afiex, Cafatex, Da Nang Seaproducts Import-Export Corporation, Mekonimex, QVD Food Company Limited, and Viet Hai, an antidumping tariff of 49.16 percent, based on the weighted-average rate for the mandatory respondents, is applied. Imports from all other Vietnamese producers/exporters will be subject to the Vietnam-wide rate of 63.88 percent.

However, in just a few weeks after the preliminary decision, DOC made some adjustments to its margin calculation. As a result, the antidumping margin for Agifish is reduced to 31.45%, that for Nam Viet to 38.09%, and the weighted-average margin to 36.76%. Other rates remain unchanged.

[21] In another twist to the case, the petioners claim that Petitioners alleged that critical circumstances exist with regard to imports of frozen fish fillets from Vietnam. During the preliminary phase, DOC has determined that critical circumstances exist with respect to imports from Nam Viet as the company increased its sales significantly to the US market while it was under dumping investigation. However, DOC has also concluded that critical circumstances do not exist with respect to imports from Agifish, Cataco, and VinhHoan. Under In critical circumstances, US law permits DOC to impose punitive tariff on importers of subject products.

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