

United States Senate

WASHINGTON, DC 20510

January 17, 2024

The Honorable Gina M. Raimondo
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Raimondo,

We are writing to express our serious concern with a recent preliminary decision by the U.S. Department of Commerce in the 19th administrative review of the antidumping duty order on U.S. imports of *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*. If unchanged, Commerce's decision will significantly harm U.S. industries and workers that rely on robust enforcement of the trade laws against non-market economy (NME) countries and will be especially detrimental to our states.

For two decades, the Commerce Department has classified Vietnam as an NME given the Communist Party of Vietnam's (CPV) pervasive control over industries and companies. This includes the CPV dictating domestic prices of raw materials, labor, energy, and land, as well as the Vietnamese government mandating which producers/exporters will participate in Commerce proceedings and deciding which will be prohibited from doing so. Commerce acknowledged that Vietnam is an NME country in the instant 19th review.

Here, consistent with normal practice, Commerce individually reviewed two Vietnamese producers/exporters and calculated company-specific antidumping duty rates for them given that the producers/exporters demonstrated independence from CPV control. The average of these two companies' rates was \$0.14/kg. For another small subset of Vietnamese producers/exporters that were not individually examined, yet proved their independence from CPV control through a short questionnaire, Commerce applied the \$0.14/kg rate calculated for the two examined producers/exporters.

But then the Commerce Department went a step further and arbitrarily applied this \$0.14/kg rate to the hundreds of Vietnamese companies that had historically not participated in this proceeding and/or not demonstrated independence from CPV control. This breaks with longstanding precedent. As a factual matter, in NME proceedings, Commerce recognizes that the NME government, the CPV in this instance, manipulates participation in proceedings so that only producers/exporters with low rates are permitted by the NME government to participate and those with likely high rates are prohibited from doing so. The NME government's incentive for manipulation is to have the average of the low antidumping duty rates form the basis of the rates assigned to all companies

not individually examined. But because NME governments, including the CPV, can rig the outcomes of antidumping proceedings in this way, Commerce creates a special rate for all non-participating producers/exporters and all producers/exporters that have not demonstrated independence from the NME government. This rate is not the average of the examined companies' rates; it is a rate derived from alternative sources that is high enough to deter non-participation and government control in the future. This high rate is called the "NME-wide rate," and has been the cornerstone of all NME cases for several decades.

In the instant *Frozen Fish Fillets* proceeding, the NME-wide rate has been \$2.39/kg for many years, and it has been an effective deterrent. It now defies logic that the Commerce Department is proposing to reduce the \$2.39/kg rate to \$0.14/kg, and assign this low rate to all Vietnamese producers/exporters that have, to date, failed to participate in the proceeding and/or failed to establish independence from the CPV. Commerce's approach here will incentivize hundreds of non-participating/CPV-controlled companies – i.e., those with likely higher antidumping duty rates – to flood the U.S. market with cheap, dumped imports without the discipline of an effective remedy. Under no circumstance should non-participating/CPV-controlled companies benefit from the same low rate assigned to participating companies that are independent from CPV control—without exception.

Furthermore, the Commerce Department's preliminary decision in the *Frozen Fish Fillets* proceeding creates a dangerous precedent for all other NME cases, whereby all non-participating/NME government-controlled companies can benefit from a rate traditionally reserved for companies that participate and demonstrate independence from the NME government. Commerce's preliminary decision, in other words, allows NME governments to more aggressively game the system by forcing entities with low rates to participate, preventing those with high rates from participating, and thereby enabling the average of the low rates to be assigned to all non-participating/CPV-controlled companies.

Commerce's decision, if not reversed, will upend decades of agency precedent and weaken the trade relief granted to domestic industries. It will cause a flood of unfairly priced imports from NME countries like Vietnam, China, and Russia into the United States which will irreparably harm American industries. The adverse impact stretches across approximately 250 NME proceedings. The Commerce Department must revise its preliminary decision in the *Frozen Fish Fillets* 19th review and reinstate the \$2.39/kg NME-wide rate, or a higher rate, for all Vietnamese producers/exporters that have, to date, refused to participate in this proceeding and/or have not demonstrated independence from CPV control.

The U.S. farm-raised catfish industry remains a pillar industry in rural communities across our states. U.S. farm-raised catfish farmers and processors work day in and day

out to provide a source of wholesome, unadulterated protein to the public, in addition to providing good-paying American jobs. This industry deserves a level playing field. We thus strongly urge Commerce to reverse its decision and rebalance the playing field for our constituents and workers across the United States.

Thank you for your attention to this important matter.

Sincerely,



CINDY HYDE-SMITH
United States Senator



JOHN BOOZMAN
United States Senator



TOM COTTON
United States Senator



TOMMY TUBERVILLE
United States Senator



ROGER F. WICKER
United States Senator



BILL CASSIDY, M.D.
United States Senator



JOHN KENNEDY
United States Senator



KATIE BOYD BRITT
United States Senator