US–Vietnam Trade War over Seafood: Free-trade not so free after all

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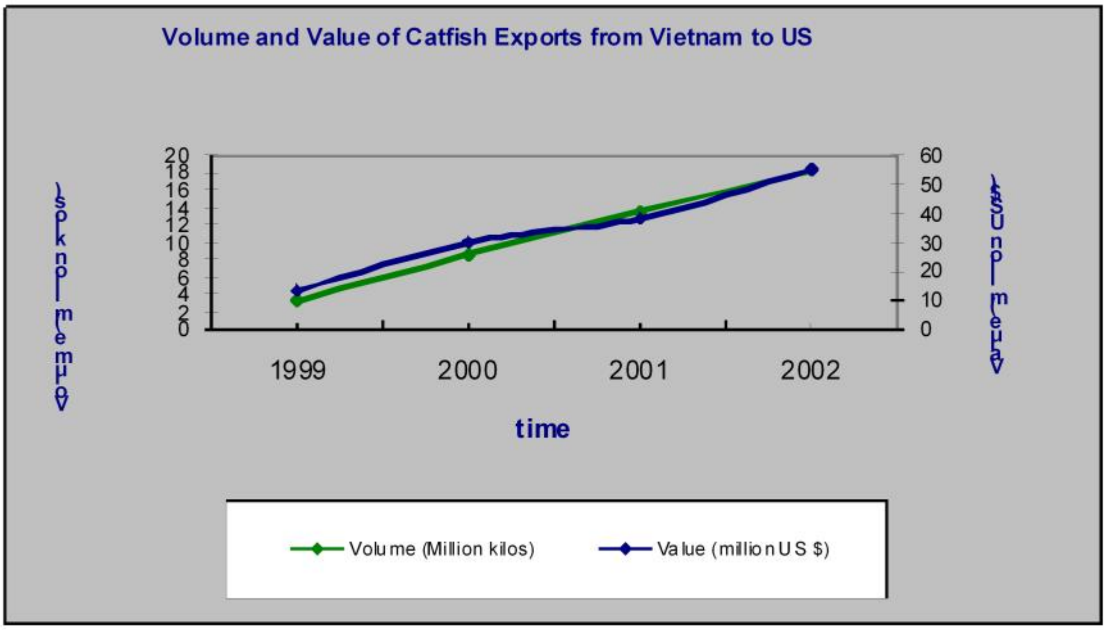
When Vietnam signed a bilateral trade agreement with the US in 2000 with huge optimism on the Vietnamese side, probably non one had seriously considered the possibility that trade between these countries had the chance of becoming less free in the years to come. This possibility was realized in July this year, when the US Department of Commerce and the International Trade Commission agreed to slap anti-dumping duties of up to 64% on Vietnam exports of catfish to America on the grounds of dumping. This puts in jeopardy the livelihood of a large number of catfish farmers in the Mekong Delta in Vietnam. More important, this casts a cloud over Vietnam's huge shrimp exports to America, exports that a much larger chunk of the Vietnamese population is dependent on.

Vietnam had been exporting catfish even before 1995, when the official embargo on Vietnamese exports was lifted by the US. However, the tremendous spurt in exports came in 1999 when raw seafood tariffs dropped to zero. At present, Vietnam exports some 18.3 million kilos of Catfish to the US, which is valued at 55.1 million $US (2002). The value of exports has been increasing at the amazing annual rate of 60.21% between 1999 and 2002. The volume of exports shows an even higher growth rate of 77% between 1999 and 2002. The change, which had started to take place from 1999, shows an incredible increase of over 160% per cent in 2000 when compared to the 1999 level of trade volume. The value of exports too showed a remarkable, though lesser, increase of 123.9 % between 1999 and 2000. This trend has evidently continued since Vietnam's exports have been boosted by a demand for its tasty, and cheap catfish.



Since tariffs dropped to zero, Vietnam had been able to export at its normal price, which comes out to be much cheaper than its American counterpart. This is because Vietnam has the advantage of cheap labour and other inputs. Raising fish in free flowing water has the dual advantages of first, producing more tasty fish, and second, producing fish at much cheaper rates compared to American Catfish which uses more expensive groundwater. The

American Catfish Farmers had been protesting that Vietnamese Catfish was not produced under hygienic conditions according to international standards. However, inspection by the department of Commerce had clearly revealed that this was not indeed the case. Vietnamese catfish is produced to international standards, and most of the fish-feed are supplied by an American company called Cargill.

Catfish: To be or not to be

Vietnam's gradually larger presence in the Catfish market soon started to spell trouble for the 590 million dollars US domestic catfish industry that is mainly located in Arkansas, Mississippi and a few other southern states. The trouble had been brewing for some time and a foreboding about the final pro-protection judgement emerged in 2002 itself, when the Department of Commerce in the US, in response to a litigation suit filed by the catfish industry located in the south of US, prevented the Vietnamese catfish from being called catfish at all. More specifically, the catfish Farmers of America (CFA) lobbied the Congress to include language in the 2002 Agriculture Appropriations Act that specifically barred Vietnamese exporters from labeling their fish as catfish. Their argument was that only catfish of the species 'Ictalurus Punctatus', obviously cultivated by CFA, could be called catfish. The species cultivated by Vietnam, 'Pangasius', has now been banned by the American Farm Security Act of 2002.

Vietnamese catfish are now labeled Basa and Tra, which are the local names for the subspecies. Given the fact that there are actually 2,500 subspecies in the catfish family, which includes both the American and the Vietnamese varieties, it was not clear why American Congress believed their farmers have some intrinsic right to the name catfish that is ranked above the rights of Vietnamese catfish farmers. But in a world where bigger fish eats smaller fish, it was not surprising that Vietnamese farmers were forced to swallow this piece of protectionism and hope for the best. As it turned out, the demand for Vietnamese catfish, after initially suffering a decline, picked up again. This was despite active campaigning by the CFA against it.

Though Vietnam increased its sales drastically since 1999, it had occupied less than 4% of the total catfish market in America over this period. However, the bone of contention was the export of frozen Basa and Tra fillet, which had occupied about 20% of the domestic market in the US. The American producers are facing competition from Vietnam, the only other big producer of catfish in the world, in other markets like the EU, Australia and Japan as well. So it was getting more and more urgent for them to protect their domestic market.

Anti Dumping: no hope for a non-market economy

The American products continued to suffer from stiff Vietnamese competition. This made the CFA, think of other measures to escape from it. The next best method was to suggest a re-course to the provision of anti-dumping in the WTO rules and push for anti dumping/countervailing tariffs against Vietnamese catfish. However, it was difficult to prove that the Vietnamese catfish industry was receiving government subsidies or that the producing/exporting units were undercutting their export price, which was necessary for proving that dumping was taking place.

This made it imperative for the CFA to chose another line of offense. Vietnam, given its historical background, lay vulnerable in one particular area – its market economy status. It was, as it turned out, easy for the CFA to argue that Vietnam is a 'non-market' economy. This clause in the WTO rules, basically suggests that any economy that falls under this category cannot claim to have competitive market prices. More specifically, their prices may include an involuntary subsidization given the fact that input prices (for example of labour) may not be competitively determined.

In this case, the price level of some other market economy, which has a close resemblance to the non-market economy in question, is used as a surrogate or proxy for determining whether prices at which products were offered for sale by the non-market economy, are competitive or not. This means for example, that for calculating Vietnam's competitive price level (prices that would have prevailed under a market economy) prices in some other country that produces similar products under similar conditions would be used as indicators. Anti-dumping measures could be resorted to if it was found that these proxy prices (adjusted according to other supply conditions in Vietnam) reigned above the actual non-market economy prices offered by Vietnam.

After determined petitioning by CFA and individual American catfish farmers, the Department of Commerce's import administration determined on November 2002 that Vietnam was to be treated as a non-market economy (effective from July 1, 2001) under the U.S. antidumping and countervailing duty laws. To quote from the report, "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".

This left the way open for finding a 'suitable' proxy. The Department of Commerce (DoC) chose to pick India and Bangladesh as surrogate economies for comparing catfish price levels. The DoC, found the price levels in these countries much higher than Vietnam levels. Despite protests by the Vietnamese Association of Seafood Exporters and Producers (VASEP), the Department of Commerce (DoC) concluded in its preliminary order on January 27th, 2003 that " Vietnamese producers/exporters have made sales to U.S. customers at less than fair value" and recommended the slapping of anti-dumping duties on all major producers' products of fish fillets . They calculated anti dumping margins ranging from 37.94 % (Vinh Hoan Company) and 63.88% (Vietnam-wide). Subject to a final recommendation by the DoC, and its approval by the US International Trade Commission (ITC), America was all set to slap huge anti dumping duties on Vietmnam's catfish fillet.

Preliminary Antidumping Margins Found by DOC

Company	Margins
Agifish	61.88%
Cataco	41.06%
Nam Viet	53.96%
Vinh Hoan	37.94%
Respondents who voluntarily submitted Section A responses	49.16%
Vietnam-Wide	63.88%

Source: Fact sheet on Preliminary determination in the Anti-dumping Duty Investigation of Certain Frozen Fish Fillets from Vietnam, Department of Commerce, USA, 27th January 2003.

The subsequent final recommendation by Doc on 17th June, upheld more or less its previous recommendation that Vietnam had been selling its Catfish 'at less than fair value'. Taking Bangladesh as the surrogate country, the report suggested anti dumping duties to the tune of 64% be imposed on Vietnam-wide catfish products with immediate effect. In case of some particular companies that had argued various critical circumstances, DoC made certain exceptions and applied different margins, some lower compared to the previous margins calculated by the preliminary findings. According to this final determination the Vietnam-wide rate of an incredibly high 63.88% applied to all entries of the merchandise under investigation except for entries from Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai and Vinh Long.

Final Weighted Average Dumping Margins on Certain Frozen Fish Fillets from Vietnam

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

Source: Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, US Department of Commerce, June 17th, 2003

The ITC, the highest authority within the US government on international trade issues, subsequently approved this final determination on July 23rd, 2003. Since domestic legislation on anti dumping or protectionist laws regulating product standard rules overrides bilateral trade agreements, the BTA between the two countries is unable to give any reprieve or confer any free trade advantages to Vietnam in this case. This however, puts into question the usefulness of such bilateral trade pacts between two countries that is supposed to offer mutual benefits to the signatories. If worst comes to worst, it might start off a trade war between the two. However in that eventuality, as is the fate of developing countries, Vietnam has much more to lose than its 'free-trade' partner.

Throughout the process, there were many protests by VASEP to the charges. The first of these was that Vietnam should not be considered a non-market economy. More importantly, Indian and Bangladesh prices do not properly reflect the price situation in Vietnam. Even more unfair, pointed out VASEP, was the fact that DoC used retail prices as a surrogate for wholesale prices in Vietnam. In addition, since the Vietnamese farmers were using American produced fish feed, that component of costs, a major one, could hardly be underestimated. Add to that the fact that no company in Vietnam nor the Vietnamese government was in the financial position to be able to subsidize their exports, either for a significant amount of time or a major quantity of products.

VASEP denounced the decision on catfish, saying it showed how “a small group of fillet breeders in some southern states of the U.S. can put pressure on American authorities” to ignore the principles of competition and free trade it preaches worldwide. But this did not change the decision of the DoC or the ITC. However, apparently the ITC did find that some miscalculation had taken place in calculation of the 63.88% margin and will probably re-calculate the dumping margin. But this is likely to be a minor change in the duty figure(s) and not a major shift in policy.

Shrimps: Another Victim in the Wings?

This is just the beginning of Vietnam’s worries. Further problems plague the seafood industry, the third highest export, in Vietnam. After the successful campaign against Vietnamese catfish, shrimps seem the obvious next target. US Shrimpers, especially from the Louisiana state that contributes 40% of the total shrimp production of the country, are all set to follow the example of catfish. They claim that pond raised cheap shrimp from Vietnam and other Asian and Latin American countries are flooding the American market and driving shrimp prices to the floor. The tentative list of countries to be targeted comprise of 16 countries including Brazil, China, Ecuador, India, Thailand and Vietnam.

For Vietnam, this would bring even deeper trouble than the catfish tariffs. Shrimp is the third highest export after crude oil and textiles and contributes the highest share of its seafood exports. The US is also its largest market as figures for 2002 show. Valued at 467 million US$, exports to the US accounts for 48% of Vietnamese seafood exports. A huge number of farmers in Vietnam are dependent on shrimp production and exports. It affects the whole of the country rather than a specific region as in the case of catfish. The fact that Vietnam has already been tagged a non-market economy, makes it even more vulnerable compared to other countries in the ‘offenders’ list. Further, being poor and small, its ability to defend itself is much lower compared to countries like Brazil, China and India.

In the case of shrimp, however, there are two factors that Vietnam might be able to make use of. First, the issue is much larger here and involves many big countries in the developing world. Therefore, any protectionist move on part of the US may land this dispute before the WTO. Even though Vietnam is not yet a member of WTO, if the US is prevented from imposing anti dumping tariffs on its member countries it should lose the moral justification to carry forward a similar anti dumping suit against Vietnam. However, the record of US morals, especially in trade negotiations, has not been very strong. But there is another more material problem that may arise for the US shrimp farmers. Since shrimp has a huge market in America, slapping anti dumping duties that raise the price of shrimps in the American domestic market may urge the large consumer base to actively oppose any such attempts. This should be a matter of some concern for the Department of Commerce.

Conclusion

The issue now affects the very poor catfish farmers of Vietnam in the Mekong Delta and may in future affect the whole country. Fish farmers in Vietnam are generally poor and operate on a very small scale. Apart from desperately needing good sales for making ends meet, many have the additional problem of paying off old production debts. Many poor farmers had already mortgaged their land for buying fish cages. Shrimp farmers are also heavily indebted after investing in drenches and ponds. In addition, most of the seafood farmers are based in the poorest parts of the country, where agriculture is not very productive given high soil salinity and frequent flooding of agricultural land.

The protectionist antics of a country that prides itself on pushing trade openness has unfairly robbed Vietnam's seafood farmers of the opportunity to come out of indebtedness and make a decent living on the basis of hard work. It also robs them of the advantage to make profitable use of their natural resources. In addition, this is one of only a few cases where low labour costs (and low opportunity cost of labour) can actually confer certain advantages, at least in part, to the poor in developing economies. This is so because the farmers themselves are very poor and also use a lot of family labour. But this is evidently not so in a system of free trade that is propagated by the US. Moreover, the fact that the Byrd amendment of US law, entitles companies that initiate such anti-dumping legal suits to revenues from such anti-dumping duties, is a further affront to the poor farmers in Vietnam. By a WTO ruling, this amendment is to be repealed but it would still be in effect till the end of 2003. So the American farmers are still set to make an additional monetary gain from these duties.

Under the circumstances, Vietnam has no choice but to go on with its seafood production, diversify both its export products and markets, cross its fingers and hope for the best! It is an irony that such protectionism has come from the US whereas the US and the EU are the very powers that have been intent on prizing open developing economies to free trade. The US has clearly shown that free trade for the powerful is the freedom to use every backdoor tactic to ensure that trade is protected according to the dictates of their own interests.