

Fishy Business in Washington

A case study in nonsensical regulation.

FEBRUARY 22, 2011

President Obama has trumpeted his intention to rationalize economic regulations, and he even derided overzealous oversight of salmon in his State of the Union address. While he's on the subject of fish, Mr. Obama might want to school himself on the campaign against the Vietnamese pangasius.

The U.S. Department of Agriculture is seeking public comment on its proposal to classify the pangasius as a "catfish." A lot rides on that name. The 2008 farm bill specifies new safety inspection on imported catfish so onerous it would amount to a ban for at least several years while foreign fishermen struggle to comply. Pangasius is the target because it has a similar taste and texture to American catfish but is cheaper—the main reason American catfish farmers have tried for years to ban the imports.

The problem is that the pangasius is an entirely different species of fish. In an earlier bout of protectionism, Congress even passed a law making it illegal to call pangasius "catfish" for marketing purposes. Since that hasn't deterred American consumers from buying pangasius, Washington is willing to call the Vietnamese fish a catfish again if that makes it easier to ban.

It would be funny if it weren't so costly and probably illegal. On health-and-safety grounds, both the 2008 law and USDA's moves to enforce it make little sense. Vietnamese pangasius, like all fish imports, already is regulated by the Food and Drug Administration. There have been no reported safety problems with the Vietnamese imports. In contrast, USDA has no experience regulating fish despite its history overseeing meat, and catfish will be the only fish species under its regulatory purview.

This explains why the Government Accountability Office last week included USDA regulation of catfish in its biennial report on federal programs at "high risk" for "fraud, waste, abuse and mismanagement." The GAO quotes a USDA estimate that it will cost \$30 million over two years to ramp up a special inspection regime for this single fish while FDA remains responsible for other seafood. It's not clear from the language of the 2008 farm bill that the FDA would not still be responsible for catfish after the USDA takes over, raising the prospect that catfish could be regulated twice.

As for the illegality, stricter regulation is unlikely to pass muster at the World Trade Organization. Trade expert James Bacchus, in an opinion commissioned by fish importers, argues that the U.S. would likely lose if Vietnam sued precisely because FDA regulation already is effective. Trade judges would conclude the only reason to change the regulation was protectionism, and they'd be right. A former Democratic Representative from Florida, Mr. Bacchus was the chief judge of the WTO's appellate panel for eight years.

No wonder this pangasius stir has American exporters worried about retaliation. Senator Max Baucus (D., Mont.) is on record worrying that the Vietnamese could block imports of U.S. beef in response, and producers of soy products also have reason to be nervous. All this to protect American catfish farmers from competition and force American consumers to pay more for fish.

The Administration still has a chance to short-circuit this foolishness, if USDA exercises its discretion to rule that pangasius is not a "catfish." Barring that, Congress and Mr. Obama could revamp the questionable section of the 2008 farm bill. For anyone looking to cut waste and rationalize regulation, this should be shooting fish in a barrel.