

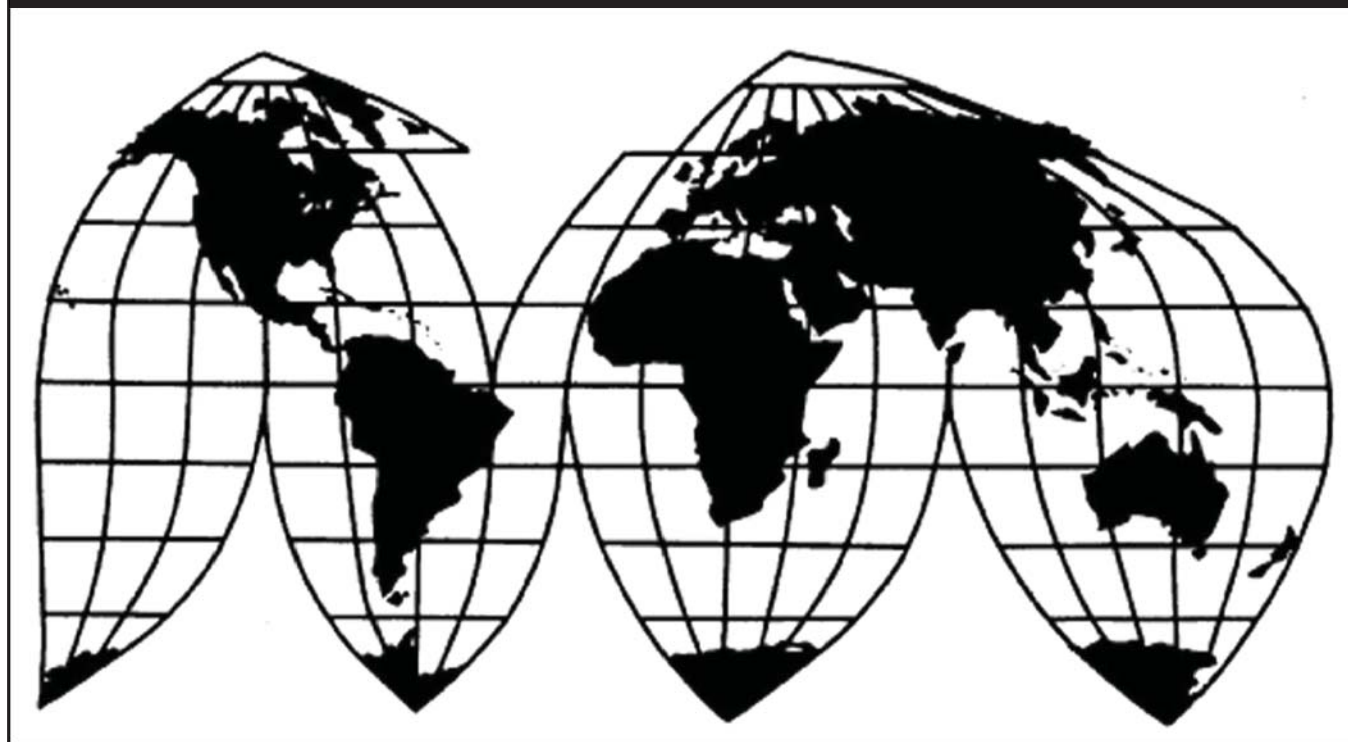
Frozen Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam

Investigation Nos. 701-TA-491-493, 495, and 497 (Final)

Publication 4429

October 2013

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-491-493, 495, and 497 (Final)

FROZEN WARMWATER SHRIMP FROM CHINA, ECUADOR, INDIA, MALAYSIA, AND VIETNAM

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from China, Ecuador, India, Malaysia, and Vietnam of frozen warmwater shrimp, provided for in subheadings 0306.17.00, 1605.21.10, and 1605.29.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of China, Ecuador, India, Malaysia, and Vietnam.²

BACKGROUND

The Commission instituted these investigations effective December 28, 2012, following receipt of a petition filed with the Commission and Commerce by the Coalition of Gulf Shrimp Industries, Biloxi, MS. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of frozen warmwater shrimp from countries under investigation were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)).³ Notice of the scheduling of the final phase of the Commission's investigations 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.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Irving A. Williamson and Commissioner Shara L. Aranoff dissenting.

³ In its preliminary determinations, Commerce found that imports of frozen warmwater shrimp from Ecuador and Indonesia were not being and not likely to be subsidized by the Governments of Ecuador or Indonesia (78 FR 33342-33351, June 4, 2013). However, in its final determinations, Commerce found imports of frozen warmwater shrimp from Ecuador were being subsidized, but that imports of frozen warmwater shrimp from Thailand in addition to those from Indonesia were not being and not likely to be subsidized by the Governments of Indonesia and Thailand. Following final negative determinations by Commerce with respect to frozen warmwater shrimp from Indonesia and Thailand (78 FR 50379-50394, August 19, 2013), the Commission terminated investigation Nos. 701-TA-494 and 496 (78 FR 54912, September 6, 2013).

International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 13, 2013 (78 FR 35643). The hearing was held in Washington, DC, on August 13, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

Based on the record in the final phase of these investigations, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of frozen warmwater shrimp (“frozen shrimp”) from China, Ecuador, India, Malaysia, and Vietnam found by the U.S. Department of Commerce (“Commerce”) to be subsidized.¹

I. Background

Parties to the Investigation. The petitions in these investigations were filed on December 28, 2012 by the Coalition of Gulf Shrimp Industries (“CGSI” or “Petitioner”), a trade association whose members are processors of frozen shrimp in the United States. Representatives of Petitioner appeared at the hearing accompanied by counsel, and Petitioner submitted prehearing and posthearing briefs. A second domestic producer group, the Ad Hoc Shrimp Industry Committee (“AHSIC”), consists of several hundred businesses operating within the U.S. domestic shrimp industry, the great majority of which are shrimp fishermen. AHSIC takes no position on the petitions but filed prehearing and posthearing briefs to submit comments regarding the analysis and appropriate definitions of the domestic like product and domestic industry.²

Several respondent groups participated in the final phase of these investigations. Four respondent groups, representing interested parties from three of the five subject countries, submitted prehearing and posthearing briefs and participated in the hearing. These Respondents consist of (1) Zhanjiang Guolian Aquatic Products Co., Inc. (“Guolian”), a producer and exporter of subject shrimp from China (“Chinese Respondent”); (2) Seafood Exports Association of India (“SEAI”), an association of foreign manufacturers and exporters of subject merchandise from India (“Indian Respondent”); (3) Vietnamese Association of Seafood Exporters and Producers (“VASEP”), an association of foreign manufacturers and exporters of subject shrimp from Vietnam (“Vietnamese Respondent”);³ (4) a group of seven U.S. importers of subject merchandise (Eastern Fish Company, Mazzetta Company, Ore-Cal Corporation, Seafood Exchange of Florida, Sea Port Products Corporation, Stavis Seafoods, and Tri-Union Frozen Products) (collectively, “Importers”). Another respondent group consisting of manufacturers and exporters of subject shrimp from Malaysia (Aquatech Venture Sdn Bhd, HK Food (M) Sdn Bhd, Kian Huat Fishery Sdn Bhd, Ocean Famous Sdn Bhd, Ocean Pioneer Food Sdn Bhd, Sanjune Sdn Bhd, Sunlight Seafood Sdn BHD, and TM Foods Sdn BHD) (collectively, “Malaysian Respondents”) submitted a posthearing brief.

¹ Chairman Williamson and Commissioner Aranoff determine that an industry in the United States is materially injured by reason of imports of frozen warmwater shrimp from China, Ecuador, India, Malaysia, and Vietnam that are subsidized. Chairman Williamson joins sections I-V.B of these Views. See Dissenting Views of Chairman Irving A. Williamson. See also Dissenting Views of Commissioner Shara L. Aranoff.

² AHSIC’s Posthearing Brief at 1.

³ SEAI and VASEP jointly submitted a prehearing and posthearing brief; VASEP also submitted a separate posthearing brief.

Data Coverage. In these investigations, U.S. industry data are based on the questionnaire responses of 40 U.S. processors of frozen shrimp, accounting for *** percent of U.S. production of frozen shrimp in 2012.⁴ U.S. import data are based on official Commerce import statistics and on questionnaire responses from 31 U.S. importers, accounting for 40.7 percent of total subject imports.⁵ The Commission received responses to its questionnaires from 70 foreign producers of subject merchandise.⁶

II. Domestic Like Product

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁷ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole 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.”⁸ In turn, 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.”⁹

The decision regarding the appropriate domestic like product in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹⁰ No single factor is

⁴ Confidential Staff Report, Memorandum INV-LL-071 (Sept. 6, 2013) (“CR”) at III-1 and Public Staff Report (“PR”) at III-1. U.S. production is based on live (head-on shell-on) weight. The Commission received questionnaire responses from 48 U.S. processors, 40 of which provided usable quantitative data.

⁵ CR/PR at IV-1. The U.S. importers also account for 78.1 percent of subject imports from China, 36.9 percent of subject imports from Ecuador, 31.1 percent of subject imports from India, 33.6 percent of subject imports from Malaysia, and 45.3 percent of subject imports from Vietnam between 2010 and 2012. *Id.*

⁶ CR/PR at VII-3. The foreign producer questionnaires are from five producers/exporters in China, accounting for approximately *** of subject imports from China as reported in official Commerce statistics in 2012; nine producers/exporters in Ecuador, accounting for approximately 60.8 percent of subject imports from Ecuador in 2012; 28 producers/exporters in India, accounting for approximately 79.0 percent of subject imports from India in 2012; two producers/exporters in Malaysia, accounting for approximately *** of subject imports from Malaysia in 2012; and 26 producers/exporters in Vietnam, accounting for approximately 89.0 percent of subject imports from Vietnam in 2012. CR at VII-3-4, VII- 7, and VII-9; PR at VII-3 and VII-5.

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(4)(A).

⁹ 19 U.S.C. § 1677(10).

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* (Continued...)

dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹¹ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹² Although the Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,¹³ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁴

(...Continued)

States, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors, including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See *Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). In a semi-finished products analysis, the Commission examines the following: (1) the significance and extent of the processes used to transform the upstream into the downstream articles; (2) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) whether there are perceived to be separate markets for the upstream and downstream articles; and (5) differences in the costs or value of the vertically differentiated articles. See, e.g., *Glycine from India, Japan, and Korea*, Inv. Nos. 731-TA-1111-1113 (Preliminary), USITC Pub. No. 3921 at 7 (May 2007); *Artists' Canvas from China*, Inv. No. 731-TA-1091 (Final), USITC Pub. No. 3853 at 6 (May 2006); *Live Swine from Canada*, Inv. No. 731-TA-1076 (Final), USITC Pub. 3766 at 8 n.40 (Apr. 2005); *Certain Frozen Fish Fillets from Vietnam*, Inv. No. 731-TA-1012 (Preliminary), USITC Pub. No. 3533 at 7 (Aug. 2002).

¹¹ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹² *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

¹³ See, e.g., *USEC, Inc. v. United States*, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd*, 865 F.3d 240 (Fed. Cir.), *cert. denied*, 492 U.S. 919 (1989).

¹⁴ *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Cleo*, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); *Torrington*, 747 F. Supp. at 748-52 (affirming the Commission's determination defining six like products in investigations in which Commerce found five classes or kinds).

B. Product Description

Commerce defined the scope of the imported merchandise under investigation as follows:

[c]ertain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the nonshrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered

shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.¹⁵

The scope of investigation is identical to the scope in the preliminary phase of these investigations¹⁶ and virtually identical to that in the prior investigations and reviews regarding frozen warmwater shrimp.¹⁷

At the request of Petitioner, Commerce clarified in its final scope ruling that the scope language in these investigations refers simply to “frozen shrimp” without reference or limitation to any specific method of freezing or any stage of processing at which the freezing must occur.¹⁸ Commerce stated that “the plain language of the scope indicates that these investigations cover frozen shrimp, including frozen shrimp that may have undergone some processing in the form of head, shell, tail, and/or vein removal. Thus, we determine that the scope language itself did not provide a basis for finding brine-frozen shrimp to be outside the scope.”¹⁹

As noted above, the Commission has previously conducted antidumping duty investigations and reviews of frozen shrimp. In the 2004 antidumping duty investigations on warmwater shrimp, the Commission determined, as proposed by the domestic producers in

¹⁵ *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 Fed. Reg. 50391, 50392 (Appendix I)(Dep’t of Commerce Aug. 19, 2013) (footnotes omitted). Commerce’s scope of investigation in the China CVD determination is identical to the scope of investigations in the CVD determinations regarding Ecuador (78 Fed. Reg. 50389), India (78 Fed. Reg. 50385), Malaysia (78 Fed. Reg. 50381), and Vietnam (78 Fed. Reg. 50387).

¹⁶ CR at I-9, n.16, PR at I-8, n.16.

¹⁷ Specifically, the scope in these investigations is substantively the same as that in the most recent five-year reviews, with the exception that one scope exclusion in the five-year reviews (for a product called Lee Kum Kee shrimp sauce) is not repeated in the current scope definition. *See Certain Frozen Warmwater Shrimp and Prawns from Brazil, China, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Pub. 4221 at 5 (March 2011) (“2011 Review Determinations”). “Dusted shrimp,” which is included in the scope in these investigations and also was included in the scope of the five-year reviews, was not within the scope of the Commission’s original antidumping duty investigations. Further, canned shrimp was within the scope in the original antidumping duty investigations, but the Commission defined it as a separate domestic like product and made negative or negligible import determinations for canned shrimp from all countries subject to the original investigations. *See Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. 3748 at 4-5 and 8-11 (Jan. 2005) (“Antidumping Duty Final Determination”).

¹⁸ *Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp*, at 6 (Aug. 12, 2013) (“Final Scope Ruling”).

¹⁹ *Final Scope Ruling* at 6. Commerce added that “the best reading of the scope language as presented to the Department in the petitions and on which the Department initiated these investigations is that it includes brine-frozen shrimp because they are frozen shrimp.” *Id.* at 7. Commerce also noted that “the products that are the subject of the CVD petitions are the same as those covered by the antidumping duty orders.” *Id.*

those investigations, that the domestic like product should be defined to include fresh warmwater shrimp, an item excluded from the scope. Using the “semifinished products” like product analysis, the Commission found that fresh shrimp should be included in the domestic like product because fresh shrimp was overwhelmingly used as an input in the production of the frozen product, the shrimp was overwhelmingly sold in a processed form, and the initial stages of processing did not significantly change the physical characteristics and uses of the product and appeared to add at most moderate value to the product.²⁰ Consequently, the domestic like product on which the Commission reached affirmative determinations in the antidumping duty investigations and subsequent five-year reviews consisted of both fresh warmwater shrimp and the frozen warmwater shrimp products described in the scope.²¹

C. Arguments of the Parties

Prior to Commerce’s final scope ruling, Petitioner proposed defining the domestic like product as certain frozen warmwater shrimp produced in the United States and not including fresh shrimp and brine-frozen shrimp in the domestic like product.²² Petitioner did not address the domestic like product issue after Commerce’s final ruling on the scope clarification. Domestic interested party AHSIC, comprised primarily of shrimp fishermen, contends that the Commission should define the domestic like product to encompass both fresh warmwater shrimp and those frozen articles described in the scope definition.²³ It maintains that the record of these reviews does not provide any basis to “diverge from the Commission’s established definition of the domestic like product and domestic industry in these investigations.”²⁴ Respondents also argue that the domestic like product should include fresh warmwater shrimp as it has in the prior investigations and reviews.²⁵

²⁰ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Preliminary), USITC Pub. 3672 at 14-15 (Feb. 2004) (“2004 Preliminary Determinations”); *Antidumping Duty Final Determination*, USITC Pub. 3748 at 6 (Jan. 2005).

²¹ See generally *2011 Review Determinations*, USITC Pub. 4221 at 6.

²² Petitioner’s Prehearing Brief at 4-5, and Exhibit 2; Hearing Tr. at 43-44, and 98. Petitioner had made similar arguments in the preliminary phase of these investigations, acknowledging that its request was not based on a change in the facts traditionally examined in the domestic like product analysis. Conference Tr. at 66. Despite the fact that the scope was virtually identical to prior investigations and reviews, Petitioner indicated that it “never intended to include onboard brine-frozen shrimp within the scope of investigation” and that it had requested a clarification of the scope by Commerce. Petitioner’s Prehearing Brief at 4-5.

²³ AHSIC’s Posthearing Brief at 1-15.

²⁴ AHSIC’s Posthearing Brief at 2.

²⁵ Importers’ Prehearing Brief at 4; VASEP/SEAI’s Prehearing Brief at 4-6.

D. Domestic Like Product Analysis

We find a single domestic like product, encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope of the investigations. As previously discussed, Commerce has clarified that the scope of the investigations includes onboard brine-frozen shrimp in addition to frozen further processed shrimp,²⁶ consistent with the Commission's view in defining the domestic like product in the preliminary determinations.

In the preliminary determinations, the Commission also considered whether to include fresh warmwater shrimp in the definition of the domestic like product, as it did in prior Commission proceedings concerning this product.²⁷ Because fresh and processed frozen shrimp are products at different stages of the same production process, the Commission concluded that use of the "semifinished product" like product analysis was appropriate. The Commission found that the vast majority of fresh warmwater shrimp is dedicated for further processing into frozen shrimp; the initial stages of processing do not significantly change the physical characteristics and uses of the product and appear to add at most moderate value to the product; the basic processing needed to transform fresh shrimp to processed shrimp – freezing and deheading – can be and is performed directly on the vessel; and there are separate markets for harvested (whether fresh or brine-frozen) shrimp and processed warmwater shrimp in the sense that vessels sell their catch to a dock house or processor, while processors sell shrimp to end users and distributors. However, fresh shrimp and shrimp frozen on the vessel are both sold at the dock.²⁸

The record in the final phase of these investigations does not indicate that there have been any changes in the product characteristics of either fresh or frozen warmwater shrimp since the preliminary phase of the investigations to warrant defining the domestic like product differently.²⁹ Therefore, for the same reasons discussed in the preliminary determinations, we include fresh shrimp in the definition of the domestic like product, whether frozen on board a vessel or further processed suitable for commercial use or sale. In light of these factors, we define a single domestic like product encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope definition.

²⁶ *Final Scope Ruling* at 6. Offshore shrimping vessels brine-freeze shrimp on board the boat to temporarily preserve the shrimp while the boats are fishing. This permits the boats to make longer offshore trips, perhaps lasting as long as several weeks. Inshore shrimp boats place shrimp on ice or in ice slush in vats during their shorter voyages, so the shrimp arriving at the dock is fresh, i.e., never frozen. *Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701-TA-491-497 (Preliminary), USITC Pub. 4380 at 8 (Feb. 2013) ("*Preliminary CVD Determinations*").

²⁷ *Preliminary CVD Determinations*, USITC Pub. 4380 at 8-11.

²⁸ *Preliminary CVD Determinations*, USITC Pub. 4380 at 10. Some of the shrimp sold at the dock is in fresh form (not in scope) and some has already been brine-frozen (included in the scope). *See, e.g., id.* at 9.

²⁹ CR at I-10-19; PR at I-8-14. Moreover, the domestic like product arguments Petitioner asserted in its prehearing brief were premised on an analysis of the scope that Commerce concluded were incorrect.

III. Domestic Industry

The domestic industry is defined as the domestic “producers as a whole 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.”³⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic producers of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³¹

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 771(4)(B) of the Tariff Act. This provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.³² Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation.³³

³⁰ 19 U.S.C. § 1677(4)(A).

³¹ In the prior antidumping duty investigations and reviews, the Commission found that processing activities such as deheading, grading, machine peeling, deveining, and cooking were all sufficient activities to constitute domestic production because these operations typically each required specialized equipment and added more value to the process than any preceding stage. By contrast, the Commission found that marinating and skewering do not constitute domestic production because they involved no specialized equipment and added relatively modest value to the processed shrimp product. Finally, the Commission found that breading could not constitute domestic production activity because breaded shrimp was not part of the domestic like product in the prior antidumping duty investigations and reviews. *Antidumping Duty Final Determinations*, USITC Pub. 3748 at 12-13; *2011 Review Determinations*, USITC Pub. 4221 at 8-9. In the preliminary determinations, the Commission found that the record did not indicate any change in the nature of shrimp processing since the time of the antidumping duty investigations and reviews, and thus made the same findings as it did in the prior proceedings concerning what shrimp processing activities constitute domestic production. *Preliminary CVD Determinations*, USITC Pub. 4380 at 11, n.45. The record in the final phase investigations provides no indication of a change in the nature of these processing activities. CR at I-15-I-17; PR at I-12-I-13. Moreover, the parties have not addressed the issue. Thus, we make the same findings that we did in the preliminary determinations concerning the shrimp processing activities that constitute domestic production. Based on these findings, we find that each processor that submitted a response to the domestic producers’ questionnaire engages in sufficient production-related activities to be considered a domestic producer.

³² See *Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993); *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d mem.*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987).

³³ The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following:

(1) the percentage of domestic production attributable to the importing producer;
(Continued...)

One U.S. processor, Tampa Bay Fisheries, imported frozen shrimp directly from subject countries during the period of investigation.³⁴ As such, it is a related party as defined by the statute.³⁵ We find that appropriate circumstances exist to exclude Tampa Bay Fisheries from the domestic industry.³⁶

Tampa Bay Fisheries accounted for only *** of the domestic industry's production in 2012, a decline from *** in 2011 and *** in 2010.³⁷ Its imports of subject merchandise were relatively *** as a share of its domestic production during the period of investigation. Tampa Bay Fisheries' domestic production *** in 2012.³⁸ Its imports of subject merchandise, which were primarily from ***, *** in 2012.³⁹ Its annual ratios of subject imports to production *** in 2012.⁴⁰

Tampa Bay Fisheries stated at the staff conference that the domestic suppliers cannot provide the amount of shrimp that it needs nor generally supply the peeled shrimp which its

(...Continued)

(2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and

(3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v United States*, 790 F. Supp. at 1168.

³⁴ CR at III-9 and Table III-9; PR at III-8 and Table III-9.

³⁵ Fifteen other U.S. processors did not import subject merchandise directly, but did purchase such merchandise. CR/PR at Table III-9. The Commission has previously concluded that a purchaser may be treated as a related party if it controls large volumes of subject imports. The Commission has found such control to exist when the domestic producer was responsible for a predominant proportion of an importer's purchases and these purchases were substantial. *See, e.g., Foundry Coke from China*, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 at 8-9 (Sept. 2001). Most of the processors that purchased subject merchandise did so in small amounts. Although in the U.S. market total annual imports from subject sources were at least 415 million pounds during each year of the period of review, CR/PR at Table IV-3, only two of these 15 processors purchased as many as one million pounds of imports in a calendar year. *** purchased *** in 2011 and 2012. CR/PR at Table III-9. *** purchased *** in 2010, but only *** in 2011 and *** in 2012. CR/PR at Table III-9. U.S. processors generally reported purchasing frozen shrimp to supplement their inventory, given the seasonality of the shrimp harvest, or due to customer requests or the BP Oil Spill. CR/PR at Table III-9, Note; Hearing Tr. at 139. The record consequently indicates that *** and the other 13 processors do not control large volumes of subject imports. Accordingly, we find that none of the processors that purchased subject merchandise warrants treatment as a related party.

³⁶ No party has addressed the related parties issue.

³⁷ CR/PR at Table III-2 and calculated from Tables III-4 and III-9.

³⁸ CR/PR at Table III-9.

³⁹ CR/PR at Tables III-9 and IV-1. Tampa Bay Fisheries also purchased substantial volumes of subject imports throughout the period: *** in interim 2013. CR/PR at Table III-9. Its purchases in full year 2012 represented about *** of total subject imports in that year. CR/PR at Tables III-9 and IV-3. Tampa Bay Fisheries also is related to U.S. importer Red Chamber, which accounted for about *** of total subject imports in 2012. CR/PR at Tables IV-1 and IV-2.

⁴⁰ CR/PR at Table III-9.

customers require.⁴¹ Tampa Bay Fisheries *** the petitions.⁴² Relative to the overall operating income margin for reporting domestic processors during the period of investigation, Tampa Bay Fisheries' operating margin was ***.⁴³ ⁴⁴ Based on this record, and particularly the firm's *** U.S. production and *** ratio of subject imports to production, which indicate its principal interest lies in importation, we find that appropriate circumstances exist to exclude Tampa Bay Fisheries from the domestic industry as a related party.

Accordingly, in light of the definition of the domestic like product and the foregoing analysis, we define a single domestic industry encompassing all warmwater shrimp fishermen and processors of warmwater shrimp, except for Tampa Bay Fisheries.⁴⁵

IV. Negligible Imports

Section 771(24) of the Tariff Act, which defines "negligibility," provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or self-initiation, as the case may be, shall be deemed negligible.⁴⁶ The statute further provides that subject imports from a single country which comprise less than 3 percent of total such imports of the product may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries collectively accounts for more than 7 percent of the volume of all such merchandise imported into the United States.⁴⁷ In the case of countervailing duty investigations involving developing countries (as designated by the United States Trade Representative), the statute indicates that the negligibility limits are 4 percent and 9 percent, rather than 3 percent and 7 percent. Ecuador and Malaysia have been designated as

⁴¹ CR/PR at Table III-9, Note, and Conf. Tr. at 115-116. Tampa Bay Fisheries did not report its reasons for importing or purchasing subject imports in its questionnaire response.

⁴² CR/PR at Table III-2.

⁴³ CR/PR at Table Appendix G-1.

⁴⁴ Commissioner Pinkert does not rely upon the related producer's financial performance in determining whether there are appropriate circumstances to exclude it from the domestic industry. In his view, the present record is not sufficient to link the producer's profitability on its U.S. operations to any specific benefit it derives from its related party status.

⁴⁵ While there is limited U.S. farm production and no U.S. shrimp farming entities responded to the Commission's questionnaire, U.S. shrimp farm producers would also be included in the domestic industry. Farm-raised shrimp production accounted for about *** of domestic production in 2012. CR at I-12, n.25; PR at I-9, n.25. U.S. shrimp aquaculture is constrained by the cost of coastal land and environmental and water quality regulations, among other factors. *Id.* and Hearing Tr. at 174.

⁴⁶ 19 U.S.C. § 1677(24)(A)(i).

⁴⁷ 19 U.S.C. § 1677(24)(A)(ii).

developing countries, and India has been designated as a least developed country by the U.S. Trade Representative and thus are subject to the 4 percent and 9 percent negligibility limits.⁴⁸

Based on official import statistics, market shares for subject imports exceed the requisite 3 percent or 4 percent statutory negligibility threshold.⁴⁹ For the 12-month period from December 2011 to November 2012, imports from China and Vietnam (governed by the 3 percent standard) accounted for 3.2 percent and 8.3 percent, respectively, of total imports of frozen shrimp, as measured by quantity.⁵⁰ For the 12-month period from December 2011 to November 2012, imports from Ecuador, India, and Malaysia (governed by the 4 percent standard) accounted for 15.7 percent, 13.2 percent, and 4.4 percent, respectively, of total imports of frozen shrimp, as measured by quantity.^{51 52}

The Chinese Respondent raises a number of arguments regarding the appropriate data that the Commission should use to calculate the negligibility levels.⁵³ It contends that use of the official Commerce statistics for the most recent 12-month period that precedes the filing of the petition to calculate negligibility levels for imports from China would not be accurate because such data include imports of nonsubject merchandise.⁵⁴ While the official import statistics include certain “basket” classifications which may include nonsubject merchandise, the arguments raised by the Chinese Respondent, with one exception, rely on data that we believe are less reliable than the official import statistics.⁵⁵ The one argument that warrants

⁴⁸ 15 C.F.R. § 2013.1 (regarding negligible import standards for definition of “Developing Country” under 19 U.S.C. § 1677(36)(A) and definition of “Least Developed Country” under 19 U.S.C. § 1677(36)(B)).

⁴⁹ CR/PR at Table IV-4.

⁵⁰ CR/PR at Table IV-4.

⁵¹ CR/PR at Table IV-4.

⁵² The Malaysian Respondents contend that subject imports from Malaysia should be considered negligible because such imports have been at or near the negligibility level during the period of investigation. Whether imports from a particular subject country are “near” the negligibility standard during a three-year period of investigation is not the statutory standard. Instead, the statutory standard concerns whether imports are below a specific threshold during a specific 12-month period. 19 U.S.C. § 1677(24)(A)(i). The Malaysian Respondents do not dispute the data indicating that for the most recent 12-month period preceding the filing of the petition, subject imports from Malaysia exceed 4 percent of total imports. Malaysian Respondents’ Posthearing Brief at 2-4.

⁵³ Similar to the Malaysian Respondents, the Chinese Respondent also suggests calculating the negligibility levels for 12-month periods that are not consistent with the 12-month timeframe set forth in the statute. Because these arguments are contrary to the statute, we do not discuss them further. See Chinese Respondent’s Posthearing Brief at 7.

⁵⁴ Chinese Respondent’s Posthearing Brief at 2-6.

⁵⁵ The Chinese Respondent also proposes use of foreign producer questionnaire responses plus Customs Net Import File (“CNIF”) data for certain nonresponding exporters to calculate the Chinese negligibility level. Chinese Respondent’s Posthearing Brief at 7 and 8. This approach is not only contrary to the Chinese Respondent’s argument that CNIF data are not correct but also would combine questionnaire data from responding exporters with CNIF data for a “cherry-picked” nonresponding exporter but not for other nonresponding exporters. Given that questionnaire coverage is incomplete, (Continued...)

further consideration is premised on the fact that data from ***.⁵⁶ When the data for *** for the December 2011-November 2012 period.⁵⁷ Thus, in addition to the unadjusted official Commerce statistics, we have considered the negligibility levels for China with the adjustment made to *** subject merchandise to the United States.

We therefore conclude that subject imports from all five countries are not negligible.

V. Cumulation

For purposes of evaluating the volume and price effects for a determination of material injury by reason of subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.⁵⁸ In assessing whether subject imports compete with each other and with the domestic like product, the Commission generally has considered four factors:

- (1) the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁵⁹

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for

(...Continued)

we find Commerce statistics to be more reliable than Commission questionnaire responses for calculating negligibility. CR at IV-8, n.8; PR at .

⁵⁶ Chinese Respondent's Posthearing Brief at 5.

⁵⁷ CR at IV-8, n.8; PR at IV-7, n.8.

⁵⁸ 19 U.S.C. § 1677(7)(G)(i).

⁵⁹ See *Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

determining whether the subject imports compete with each other and with the domestic like product.⁶⁰ Only a “reasonable overlap” of competition is required.⁶¹

Petitioner contends that each of the four reasonable overlap factors supports cumulation of imports from the five countries in these investigations.⁶² Respondents do not address the issue of cumulation for purposes of the present material injury analysis.

The threshold requirement for cumulation is satisfied because Petitioner filed the countervailing duty petitions with respect to all subject countries on the same day, December 28, 2012. In addition, none of the statutory exceptions to cumulation applies. As discussed below, we find a reasonable overlap of competition between subject imports from all five countries and between subject imports from each source and the domestic like product.

Fungibility. The record in these investigations indicates that there is a moderate degree of substitutability between U.S.-produced frozen shrimp and that imported from subject countries.⁶³ Most purchasers also reported that the U.S. product and subject imports “always” or “usually” meet minimum quality specifications,⁶⁴ and most purchasers reported that the U.S. product and shrimp from subject sources were comparable in product and shipment consistency, minimum quantity requirements, freshness, taste/ flavor profile, and their ability to meet purchasers’ quality standards.⁶⁵

Channels of Distribution. Both the domestic like product and the subject imports are sold to distributors, end users, and/or retail/institutional customers such as grocers and restaurants. The majority of both domestically produced product and subject imports in 2012

⁶⁰ See, e.g., *Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁶¹ The Statement of Administrative Action (SAA) to the Uruguay Round Agreements Act (URAA), expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” H.R. Rep. No. 103-316, Vol. I at 848 (1994) (*citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. at 902; see *Goss Graphic Sys., Inc. v. United States*, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); *Wieland Werke, AG*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”)).

⁶² Petitioners’ Posthearing Brief at 2.

⁶³ CR at II-19; PR at II-13. Most responding domestic processors reported that subject imports from all subject countries are “always” or “frequently” used interchangeably with each other and with the domestic like product. CR/PR at Table II-13. While most responding importers reported that subject imports are “sometimes” used interchangeably with each other and with the domestic like product, there also were a number of importers reporting that the subject imports and U.S. product were “never” interchangeable. *Id.* Importers reported that factors limiting interchangeability include differences in customer preferences, wild-caught and farm-raised shrimp, quality, geography, and species. Importers’ Prehearing Brief at 20-23. While most purchasers reported that subject imports are “always,” “frequently,” or “sometimes” used interchangeably with each other and with the domestic like product, there also were a number of purchasers reporting that the subject imports and U.S. product were “never” interchangeable. CR/PR at Table II-13.

⁶⁴ CR/PR at Table II-14.

⁶⁵ CR/PR at Table II-12.

was sold to distributors, although the share to distributors and retail/institutional customers has differed among the subject countries and has fluctuated annually.⁶⁶

Geographic Overlap. Both U.S. producers and importers reported selling frozen shrimp to all regions in the contiguous United States.⁶⁷ Thus, frozen shrimp from all sources served a nationwide market during the period of investigation.

Simultaneous Presence in Market. Subject imports from all five countries entered the United States in every month of the period of investigation.⁶⁸

Conclusion. For the foregoing reasons, we cumulate subject imports from China, Ecuador, India, Malaysia, and Vietnam for purposes of our analysis of whether there is material injury by reason of subject imports.

VI. Material Injury by Reason of Subject Imports

Based on the record in the final phase of these investigations, we find that an industry in the United States is not materially injured by reason of imports of frozen shrimp from China, Ecuador, India, Malaysia, and Vietnam that Commerce has found to be subsidized.

A. Legal Standards

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁶⁹ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁷⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁷¹ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷² No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷³

⁶⁶ CR/PR at Table II-1.

⁶⁷ CR at II-4 and Table II-2; PR-II-2 and Table II-2.

⁶⁸ CR at IV-9; PR at IV-8.

⁶⁹ 19 U.S.C. §§ 1671d(b), 1673d(b).

⁷⁰ 19 U.S.C. § 1677(7)(B). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁷¹ 19 U.S.C. § 1677(7)(A).

⁷² 19 U.S.C. § 1677(7)(C)(iii).

⁷³ 19 U.S.C. § 1677(7)(C)(iii).

Although the statute requires the Commission to determine whether the domestic industry is “materially injured or threatened with material injury by reason of” unfairly traded imports,⁷⁴ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁷⁵ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁷⁶

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁷⁷ In performing its examination, however, the Commission need not isolate

⁷⁴ 19 U.S.C. §§ 1671d(a), 1673d(a).

⁷⁵ *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *aff’g*, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

⁷⁶ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁷⁷ SAA at 851-52 (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord *Mittal Steel*, 542 F.3d at 877.

the injury caused by other factors from injury caused by unfairly traded imports.⁷⁸ Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.⁷⁹ It is clear that the existence of injury caused by other factors does not compel a negative determination.⁸⁰

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”^{81 82} Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁸³

⁷⁸ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n*, 266 F.3d at 1345 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); *see also Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e.*, it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), *citing Gerald Metals*, 132 F.3d at 722 (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁷⁹ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁸⁰ *See Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

⁸¹ *Mittal Steel*, 542 F.3d at 877-78; *see also id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.”) *citing United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁸² Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in *Bratsk*, 444 F.3d 1369, and *Mittal Steel*, held that the Commission is *required*, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of non-subject imports, albeit without reliance upon presumptions or rigid formulas. *Mittal Steel* explains as follows:

What *Bratsk* held is that “where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of

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The Federal Circuit's decisions in *Gerald Metals*, *Bratsk*, and *Mittal Steel* all involved cases where the relevant "other factor" was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit's guidance in *Bratsk* as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.⁸⁴ The additional "replacement/benefit" test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago* determination that underlies the *Mittal Steel* litigation.

Mittal Steel clarifies that the Commission's interpretation of *Bratsk* was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have "evidence in the record" to "show that the harm occurred 'by reason of' the LTFV imports," and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.⁸⁵ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to *Bratsk*.

The progression of *Gerald Metals*, *Bratsk*, and *Mittal Steel* clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.⁸⁶

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial

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investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, *Bratsk* requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor. 542 F.3d at 878.

⁸³ *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also *Mittal Steel*, 542 F.3d at 879 ("Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was 'by reason' of subject imports.").

⁸⁴ *Mittal Steel*, 542 F.3d at 875-79.

⁸⁵ *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission's alternative interpretation of *Bratsk* as a reminder to conduct a non-attribution analysis).

⁸⁶ To that end, after the Federal Circuit issued its decision in *Bratsk*, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

evidence standard.⁸⁷ Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.⁸⁸

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is material injury by reason of subject imports.

1. Demand Considerations

Frozen shrimp continues to be used principally in meal preparations. Demand for the product comes primarily from retail sellers of both prepared and unprepared warmwater shrimp, such as grocers and restaurants.^{89 90} During the period of investigation, U.S. consumption of shrimp per capita was consistent from year to year, at about 4.0 pounds.⁹¹ There is some seasonality in U.S. demand for shrimp, which typically is higher around the Easter, Christmas and New Year's holidays.⁹²

Apparent U.S. consumption of frozen shrimp fluctuated within a relatively narrow range during the period of investigation. Apparent U.S. consumption was 1.25 billion pounds in 2010, increased to 1.30 billion pounds in 2011, and declined to *** in 2012.⁹³ These levels of apparent U.S. consumption are consistent with historical levels in prior investigations and

⁸⁷ We provide in our respective discussions of volume, price effects, and impact a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

⁸⁸ *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp.*, 458 F.3d at 1350, citing *U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

⁸⁹ CR at II-15; PR at II-11. Petitioner reports that the food service industry purchases the majority of frozen shrimp in the United States and that larger shrimp are used as a "center-of-the-plate item," accounting for the largest portion of the cost of the meal. CR at II-15 and II-16; PR at II-11. In the prior antidumping duty investigations, it was estimated that 80 percent of shrimp in the U.S. market is bought by restaurants. CR at I-13; PR at I-10. In recent years, larger restaurant chains and U.S. seafood processors (*i.e.*, breaders, skewers, and marinaters) have demanded frozen shrimp in larger quantities, with year-round availability, standardized sizes, and lower prices. CR at II-15; PR at II-11.

⁹⁰ The market tendency is for large shrimp (less than 36 per pound, heads-off, shell-on basis) to be sold raw and frozen to restaurants, hotels, and other food institutions; for small to medium shrimp (36-60 per pound) to be breaded, canned or sold at retail (*e.g.*, supermarkets); and for extra small (61 to 70 per pound) and tiny shrimp (more than 70 per pound) to be used by canners, dryers, and producers of specialty products. CR at I-13; PR at I-10.

⁹¹ CR at I-13; PR at I-10.

⁹² CR at II-15; PR at II-11.

⁹³ CR/PR at Table IV-6. Apparent U.S. consumption was *** during January-March 2012. *Id.* Because NOAA Fisheries Service data on domestic shipments (wild catch landings from the Gulf region) are not yet available for March 2013, apparent U.S. consumption and market share for interim 2013 were not available. See CR/PR at Tables IV-5 and IV-6. By contrast, interim period data collected in the Commission questionnaires are reported on a January-March basis for both 2012 and 2013.

reviews.^{94 95} Domestic processors' perceptions of whether U.S. demand changed during the period of investigation differed from those of U.S. importers and purchasers.⁹⁶ Firms attributed a decrease in demand to the recession, more price sensitive customers, imports, the BP Oil Spill, increased prices, reduced quality, and availability. Firms that reported an increase in demand stated that this trend was driven by the reported health benefits of eating seafood/shrimp (a low-fat food), more eating out, the popularity of shrimp, promotion of seafood, price increases for competing meats, stable supply, high quality, consistent specifications, improving economy, increasing market share, and increased offers of U.S. product and shortage of large sized imports.⁹⁷

2. Supply Considerations

Domestically produced shrimp is overwhelmingly wild caught (ocean harvested).⁹⁸ Harvesting takes place in the waters of the Gulf of Mexico and off the Atlantic Coast from the Carolinas to Florida.⁹⁹ In the United States, the main fishing season is from May to December, with different times of the year being better for different species and sizes of shrimp.¹⁰⁰ During the off season (roughly January through April), some fishermen make repairs and upgrades, and U.S. processors make sales from inventory. Historically, prices have been higher when the supply of both fresh and frozen shrimp is lower, such as in the off season.¹⁰¹ Phenomena that affect the waters in which shrimp is harvested and in the coastal areas where fishing boats are docked and processing plants are located will also affect the supply of the domestic like product. Processors reported that hurricanes and other weather-related problems, pollution-caused diseases, and "black gill" disease affected the shrimp harvest and consequently the supply of frozen shrimp.¹⁰² Additionally, areas in the Gulf were closed to fishing for various periods of time in 2010 because of the BP Oil Spill; most U.S. processors said the BP Oil Spill

⁹⁴ See *2011 Review Determinations*, USITC Pub. 4221 at Table I-15; *Antidumping Duty Final Determinations*, USITC Pub. 3748 at Table IV-4; VASEP/SEAI's Prehearing Brief at Exhibit 8.

⁹⁵ Petitioner requests that the Commission include 2009 in its period of investigation due to supply disruption caused by the April 20, 2010 "Deepwater Horizon" incident in the Gulf of Mexico ("BP Oil Spill") and the substantial decrease in landings that it caused. Petitioner's Posthearing Brief at 5; Petitioner's Prehearing Brief at 10-14. As discussed below, while we have looked at the 2010 data in light of the BP Oil Spill, we also note that landings historically have fluctuated from year to year and in some prior years have been at levels somewhat comparable to 2010. See *2011 Antidumping Review Determinations*, USITC Pub. 4221 at Table I-15; *Antidumping Duty Final Determinations*, USITC Pub. 3748 at Table IV-4.

⁹⁶ Most processors reported decreases in demand while most importers and purchasers reported increases or no change in demand. CR/PR at Table II-5; Petitioner's Prehearing Brief at 14-15; Importers' Prehearing Brief at 9; see also VASEP/SEAI's Prehearing Brief at 7.

⁹⁷ CR at II-16 and II-17; PR at II-12.

⁹⁸ CR at I-12 and II-1; PR at I-9 and II-1.

⁹⁹ CR at II-5; PR at II-4.

¹⁰⁰ CR at II-6; PR at II-5.

¹⁰¹ CR at II-6 and II-7; PR at II-5.

¹⁰² CR at II-9 and II-10; PR at II-7.

both reduced supply and undermined demand, while British Petroleum (“BP”)’s willingness to pay for losses and its hiring of boats for the clean-up effort reduced the number of boats engaged in shrimping.¹⁰³

Respondents argue that the supply of U.S. shrimp is finite and the processors’ livelihood is dependent on biological factors (*e.g.*, how many shrimp can be harvested from the Gulf and southern Atlantic coast).¹⁰⁴ During the period of investigation, the domestic industry supplied between 9.6 percent and *** of apparent U.S. consumption on an annual basis.¹⁰⁵ That is substantially less than the share supplied by either subject or nonsubject imports.¹⁰⁶

Shrimp imported from subject sources is primarily farm raised; shrimp of many different species can be farmed, and shrimp farms generally are designed principally to produce shrimp for export.¹⁰⁷ Most importers describe the subject imports as having no business cycles or seasonality because farming permits year-round availability.¹⁰⁸ However, farmed shrimp are more prone than wild shrimp to exposure to diseases that may dramatically impact harvest levels because shrimp populations in ponds are much denser.¹⁰⁹ A disease called Early Mortality Syndrome (“EMS”) is currently affecting farm-raised shrimp in three subject countries (China, Malaysia and Vietnam) and nonsubject country Thailand.¹¹⁰ While the specific cause of EMS was identified in the spring of 2013, there still is no test that can reliably identify infected

¹⁰³ CR at II-9; PR at II-7. In June 2010, as much as 37 percent of the Gulf of Mexico was closed to fishing due to the BP Oil Spill, and portions of state waters closed to fishing ranged from 2 percent (Florida) to 95 percent (Mississippi). The spill lasted for nearly three months during the prime fishing season, and a small area close to the well that caused the spill remained closed for much longer. Petitioner’s Prehearing Brief at 11 and Exhibit 4 (“The Deepwater Horizon Oil Spill and the Gulf of Mexico Fishing Industry,” Congressional Research Service at 1 (Feb. 17, 2011)); *see also 2011 Review Determinations*, USITC Pub. 4221 at II-5, n.10. During this period, a large percentage of the Gulf shrimping fleet received payments from BP either for assistance in the Gulf clean-up or as compensation for damages. Because boats used in the clean-up effort were not shrimping, supply was lower. CR at II-9; PR at II-7.

¹⁰⁴ Importers’ Prehearing Brief at 8; *see also* VASEP/SEAI’s Prehearing Brief at 13-15. As the Commission previously has noted, “there is no short supply provision in the statute” and “the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports.” *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 108, n.310 (Dec. 2003); *see also Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 22-23 (Feb. 2009); *Sodium Hexametaphosphate from China*, Inv. No. 731-TA-1110 (Final), USITC Pub. 3984 at 27 n.109 (Mar. 2008).

¹⁰⁵ CR/PR at Table IV-6.

¹⁰⁶ CR/PR at Table IV-6.

¹⁰⁷ CR at II-11; PR at II-8. Imports of shrimp from nonsubject sources are available both as farmed and wild-caught; Mexico, the third largest nonsubject source of imports, provides wild-caught shrimp with the same seasonal supply period as U.S. product. *Id.* at II-13; PR at II-9.

¹⁰⁸ CR at I-11 and II-7; PR at I-9 and II-5.

¹⁰⁹ CR at I-11; PR at I-9.

¹¹⁰ CR at I-11; PR at I-9. Some farms in China and Thailand reportedly have lost 60 to 80 percent of their stock to the disease. *Id.*

broodstock. Opinions consequently differ as to how quickly the disease will be contained and when production levels in these countries will recover.¹¹¹ ***¹¹²

Subject imports supplied a large share of apparent U.S. consumption during the period of investigation, ranging from 33.2 percent to *** of the U.S. market on an annual basis.¹¹³ Imports from three of the subject countries (China, India, and Vietnam) were subject to antidumping duty orders during the period of investigation.¹¹⁴

Nonsubject sources supplied the majority of the U.S. market, but their share declined from 57.2 percent in 2010 to 53.8 percent in 2011 and *** in 2012.¹¹⁵ The largest sources of nonsubject imports during the period of investigation were Thailand, Indonesia, and Mexico. Other major nonsubject sources included Honduras, Peru, Guyana, Bangladesh, Singapore, and Venezuela.¹¹⁶

3. Substitutability

The parties have expressed divergent views on the substitutability of the domestic like product and the subject imports, with Petitioner arguing that the products are at least moderately substitutable¹¹⁷ and Respondents arguing that any competition between the domestic like product and the subject imports is attenuated.¹¹⁸ As indicated in the discussion of

¹¹¹ CR at I-11; PR at I-9. According to Petitioner, the industries in the affected countries have learned to control the diseases after major research this year and are expected to recover by the end of this year or in 2014. Petitioner's Prehearing Brief at 18-19; Hearing Tr. at 43-44. Respondents argue that while the disease was recently identified, a reliable cure has not been developed and it likely will take longer to recover. Importers' Prehearing Brief at 5-7; Hearing Tr. at 189.

¹¹² CR at I-12; PR at I-9.

¹¹³ CR/PR at Table IV-6.

¹¹⁴ The antidumping duty orders covering shrimp from Ecuador were revoked with respect to all producers on August 15, 2007. 72 Fed. Reg. 48257 (Aug. 23, 2007). The order on subject imports from India was revoked with respect to producer Devi effective February 1, 2009. 75 Fed. Reg. 41813 (July 19, 2010). The United States also maintains antidumping duty orders on imports of frozen shrimp from Brazil and Thailand, CR at I-6 and I-7; PR at I-4 and I-5, but imports from Brazil and Thailand are not subject to these countervailing duty investigations.

¹¹⁵ CR/PR at Table IV-6.

¹¹⁶ CR at II-13 and II-14; PR at II-8

¹¹⁷ Petitioner's Posthearing Brief at 3-4; Petitioner's Prehearing Brief at 19-24. Petitioner contends that imported and domestic product compete across the market, at the same major purchasers, in retail, food service, and distribution, and across product forms, sizes, and types, and that purchasing decisions come down to price. According to Petitioner, domestic producers produce a full range of value-added shrimp, prices for different species fluctuate within a narrow band, and no consistent premium is paid for a particular type of shrimp. Petitioner also refutes claims that the domestic industry cannot serve large national accounts under long-term contracts.

¹¹⁸ Importers' Prehearing Brief at 10-15; VASEP/SEAI's Prehearing Brief at 15-16; VASEP/SEAI's Posthearing Brief at 1-2 and 10-13. Respondents argue that domestic wild-caught shrimp and imported farm-raised shrimp are interchangeable only in the broadest sense, *i.e.*, both forms can be cooked and eaten with little difference in taste noted by the average consumer, and that domestic wild-caught (Continued...)

cumulation, U.S. processors and importers provided different general assessments of interchangeability, with U.S. processors overwhelmingly reporting that the domestic like product and imports from each subject country were “always” or “frequently” interchangeable, and most responding importers reporting that the domestic like product and imports from each subject country were “sometimes” interchangeable.¹¹⁹ Most purchasers reported that subject imports are “always,” “frequently,” or “sometimes” used interchangeably with each other and with the domestic like product.¹²⁰ Most purchasers also reported that the U.S. product and subject imports “always” or “usually” meet minimum quality specifications,¹²¹ and most purchasers reported that the U.S. product and shrimp from subject sources were comparable in product and shipment consistency, minimum quantity requirements, freshness, taste/flavor profile, and their ability to meet purchasers’ quality standards.¹²²

When asked whether differences other than price are ever significant to purchasers in choosing between shrimp from subject countries and shrimp from the United States, a plurality of responding domestic processors reported “never.”¹²³ Responding importers were divided on the question, with a plurality reporting that differences other than price are “always” significant comparing the U.S. product to subject imports, but only “sometimes” between subject sources.¹²⁴ Responding purchasers also were divided on the question, with a plurality reporting that differences other than price are “always,” “frequently,” or “sometimes” significant comparing the U.S. product to subject imports, but only “sometimes” between subject sources.¹²⁵

One distinction between the domestic like product and the subject imports is that the domestic like product is overwhelmingly wild-caught, while the subject imports are predominantly farm-raised.¹²⁶ However, the record does not indicate that this distinction,

(...Continued)

shrimp is not a substitute for the vast majority of buyers. Thus, they argue that competition between domestic and imported shrimp is attenuated for a wide variety of reasons, including differences between wild-caught and farm-raised shrimp; species of shrimp; size, flavor and texture of shrimp; degree of processing; country of origin; year-round vs. seasonal availability; contract vs. spot sales; ability to supply large volumes; individually quick frozen (IQF) vs. block-frozen forms; and other factors. According to Respondents, significant purchasers buy both or, to put it another way, they have no preference for either because they seek to satisfy as many customers as they can in order to maximize their revenues and profits.

¹¹⁹ CR/PR at Table II-13.

¹²⁰ CR/PR at Table II-13.

¹²¹ CR/PR at Table II-14.

¹²² CR/PR at Table II-12.

¹²³ CR/PR at Table II-15.

¹²⁴ CR/PR at Table II-15.

¹²⁵ CR/PR at Table II-15.

¹²⁶ Commissioner Pearson does not join the conclusions of this and the following two paragraphs. Consistent with his dissenting views in the preliminary phase of these investigations and his negative determinations in the sunset reviews of the antidumping orders, he finds that this record indicates a significant attenuation of competition between the domestic like product and subject imports. USITC 4221 at 37, USTIC 4380 at 31.

(Continued...)

taken alone, significantly limits substitutability between the domestic like product and the subject imports.¹²⁷ The record in these investigations also does not indicate clear distinctions in the markets or customers served by the domestic like product and the subject imports. Both the domestic like product and the subject imports are available in every region of the country and through the same channels of distribution.¹²⁸

The record indicates that the domestic industry supplies all major product forms. Although a large proportion of domestic production is block-frozen product, the domestic industry has the capacity to produce appreciable quantities of IQF product.¹²⁹ The domestic

(...Continued)

The domestic product is overwhelmingly comprised of wild-caught product, while subject imports are predominantly farm-raised. CR at III-1 and II-11, PR at III-1 and II-8. Domestic landings have been relatively stable for an extended period of time, but there is inevitably a degree of unpredictability in the volume, size, and composition of the catch in any given year. Ecuador Respondent's postconference brief at Exh. 1 and USITC 4221 at Table I-15. The supply of farm-raised shrimp, including both subject and nonsubject imports, is larger, more flexible, and more predictable, and thus naturally more attractive to purchasers concerned about access to high and consistent volumes of shrimp. CR/PR at Table II-1 (domestic product rated inferior on availability and reliability of supply). The record also suggests that subject imports include a larger variety of products and shrimp types than offered by the domestic like product, and significantly larger volumes of products that are sought by high-volume purchasers, such as individually quick-frozen shrimp. Joint Respondents posthearing brief at A7-A8, A26-28. As noted above, importers and processors generally report the domestic like product as less likely to be interchangeable with subject imports or nonsubject imports. Responding importers and purchasers are also much more likely to find non-price differences significant. CR/PR at Tables II-13 and II-15. The record also suggests that subject imports are more likely to be sold outside the Gulf Coast and South Atlantic region of the US, as well as less likely to be sold by contract. CR/PR at Tables II-2 and V-1. And the record also suggests that many purchasers that buy both the domestic like product and subject imports do not consider the products interchangeable. Joint Respondents posthearing brief at A3-A5, A32-33, A39-40.

While there is some overlap in the channels of distribution, CR/PR at Table II-1, the record suggests that the primary market for subject imports is not the same as the primary market for the domestic like product. Subject imports appeal primarily to a market that needs a large, predictable volume of relatively uniform and relatively highly-processed product. The domestic like product appeals primarily to those who appreciate the characteristics of the wild-caught product. For these reasons Commissioner Pearson finds a significant attenuation of competition between the domestic like product and subject imports.

¹²⁷ In the 2011 antidumping duty reviews, the record showed that a majority of reporting purchasers purchased wild-caught and farm-raised shrimp for the same end uses, and three times as many purchasers indicated that the two types of shrimp were purchased for the same end uses as reported that they were not. USITC Pub. 4221 at Table II-17.

¹²⁸ CR/PR at Tables II-1 and II-2. The majority of both domestically produced product and subject imports in 2012 was sold to distributors, although the share to distributors and retail/institutional customers has differed among the subject countries and has fluctuated annually. *Id.* at Table II-1.

¹²⁹ CR/PR at Table III-6.

industry also offers products in all possible size ranges. Similarly, the record does not indicate any major product form that the subject imports do not supply.¹³⁰

We find that differences in product mix and availability among the subject imports and the domestic like product limit to some extent the substitutability of warmwater shrimp from different sources. Nevertheless, we do not perceive significant differences in availability or product range among the domestically produced and subject products. We find that the record in these investigations supports finding that the products are at least moderate substitutes and that they compete for sales in the U.S. market.¹³¹

4. Other Conditions

Most U.S. processors and importers of Chinese product reported selling frozen shrimp in the spot market, while most importers of frozen shrimp from the other four subject countries reported selling frozen shrimp under short-term contracts.¹³² Both U.S. processors and importers entered into short-term contracts of three to six months duration with both price and quantity fixed.¹³³

U.S. processors reported that fuel is the most important cost for fishermen.¹³⁴ High fuel costs can serve as a disincentive to fishermen to take their boats out to harvest shrimp.¹³⁵ Diesel prices in the Gulf Coast region increased irregularly from about \$3 to \$4 per gallon from January 2010 to May 2011, and then remained at about the \$4 level through June 2013.¹³⁶

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Tariff Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹³⁷

The volume of cumulated subject imports rose from 415.2 million pounds in 2010 to 462.3 million pounds in 2011 and 484.8 million pounds in 2012. The volume was slightly higher

¹³⁰ See, e.g., CR/PR at Tables III-6 and VII-7.

¹³¹ CR at II-19; PR at II-13.

¹³² CR/PR at Table V-2. For responding U.S. processors and importers of Chinese product, 86.9 percent and 74.0 percent, respectively, reported selling frozen shrimp in the spot market. *Id.* Responding importers reported selling frozen shrimp from the other four subject countries under short-term contracts as a share of their sales ranging from 49.7 percent to 66.2 percent. *Id.*

¹³³ CR/PR at V-3. Two importers that use long-term contracts reported providing such contracts for two years or less. *Id.*

¹³⁴ CR/PR at V-1; Conf. Tr. at 39 (“Fishermen in turn need to be able to cover their cost of production, the most significant of which is fuel.”).

¹³⁵ CR/PR at II-5, and V-1; Hearing Tr. at 36, 65 and 71 (“A fishermen has no incentive to do so {go out every day to catch the shrimp} if the price he gets at the dock cannot cover the cost of fuel, maintenance, labor, food, and other costs, and eventually the shrimper has to make the only rational business decision he can: tie up the boat.”).

¹³⁶ CR/PR at Figure V-1.

¹³⁷ 19 U.S.C. § 1677(7)(C)(i).

in interim 2013 than in interim 2012.¹³⁸ Subject import market share rose from 33.2 percent in 2010 to 35.7 percent in 2011 and *** in 2012.¹³⁹ We recognize that the volume and market share of subject imports increased as apparent U.S. consumption declined.¹⁴⁰ However, such increases in subject imports were at the expense of nonsubject imports¹⁴¹ and not the domestic industry. The domestic industry also experienced gains in shipments and market share in a declining U.S. market during the period of investigation.¹⁴²

We find that, while the cumulated volume of subject imports is significant both in absolute terms and relative to consumption and production in the United States, the increases in that volume and market share are not significant, particularly in light of the increases in the domestic industry's market share during the period of investigation.

D. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Tariff Act provides that evaluating the price effects of the subject imports, the Commission shall consider whether

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

¹³⁸ CR/PR at Table IV-3. Subject imports totaled 99.2 million pounds in January-March 2012 and 107.8 million pounds in January-March 2013. CR/PR at Table IV-3. We note that official Commerce import data are available for the January-March interim periods. However, because the NOAA Fisheries Service data used for U.S. shipments in the calculation of U.S. market share are not available for March 2013, data are not available to calculate the U.S. market shares for interim 2013.

¹³⁹ CR/PR at Table IV-6. The ratio of subject imports to converted U.S. shipment fluctuated annually and increased slightly between 2010 and 2012. It was 346.0 percent in 2010, 338.5 percent in 2011 and *** percent in 2012. CR/PR at Table IV-7. (Converted U.S. shipments are U.S. production converted to pounds of headless shell-on weight using a conversion factor of 0.629. *Id.* at n.3.)

¹⁴⁰ Apparent U.S. consumption fluctuated annually and declined overall from 1.25 billion pounds in 2010 to *** in 2012. CR/PR at Table IV-5.

¹⁴¹ Nonsubject imports' market share, as measured by quantity, declined from 57.2 percent in 2010 to 53.8 percent in 2011 and *** in 2012. CR/PR at Table IV-6. The volume of nonsubject imports was 714.1 million pounds in 2010, 696.4 million pounds in 2011, 596.8 million pounds in 2012, 146.5 million pound in interim 2012, and 117.3 million pounds in interim 2103. CR/PR at Table IV-5. Shrimp output in subject countries (China, Malaysia, and Vietnam) as well as nonsubject countries (Thailand) has been adversely affected by EMS. U.S. imports from nonsubject country Thailand, the single largest source of frozen shrimp, decreased by 34.1 percent from 2010 to 2012 and was 23.2 percent lower in interim 2013 compared with interim 2012. CR at IV-4, n.5; PR at IV-3, n.5. Thus, although subject imports increased during the period of investigation, it is apparent that they did not increase to the extent necessary to offset the substantial decline in nonsubject imports, particularly from Thailand, following the devastating outbreak of EMS.

¹⁴² The domestic industry's market share, as measured by quantity, increased from 9.6 percent in 2010 to 10.5 percent in 2011 and *** in 2012. CR/PR at Table IV-6. Converted U.S. shipments increased from 120.0 million pounds in 2010 to 136.6 million pounds in 2011, and then declined slightly to *** million pounds in 2012. CR/PR at Table IV-5.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁴³

The record indicates that subject imports and domestically produced frozen shrimp are at least moderately substitutable and that price is at least a moderately important factor in purchasing decisions.¹⁴⁴

The Commission collected quarterly pricing data on seven frozen shrimp products.¹⁴⁵ Thirty-four U.S. producers and 27 importers of product from subject countries provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for *** percent of U.S. producers' shipments of frozen shrimp and 8.0 percent of U.S. shipments of imports from China, 14.2 percent of U.S. shipments of imports from Ecuador, 41.8 percent of U.S. shipments of imports from India, 15.4 percent of U.S. shipments of imports from Malaysia, and 34.5 percent of U.S. shipments of imports from Vietnam during the period of investigation.¹⁴⁶

The pricing data show that the subject imports undersold the domestic like product in 168 instances, or 50.5 percent of total comparisons, and oversold the domestic like product in 165 instances.¹⁴⁷ The margins of underselling ranged from 0.0 percent to 56.0 percent, and the average margin of underselling was 18.8 percent.^{148 149} The margins of overselling ranged from

¹⁴³ 19 U.S.C. § 1677(7)(C)(ii).

¹⁴⁴ CR at II-19 – II-23; PR at II-13 – II-16. Purchasers reported that price played a major role in purchasing decisions – of 29 responding purchasers, 20 reported price as a very important purchasing consideration. CR/PR at Table II-10. Moreover, purchasers most commonly listed price as the number two factor in purchasing decisions. *Id.* at Table II-9. Although a large majority of purchasers named quality as the number one factor in purchasing decisions, the domestic like product was at least as likely as the subject imports to satisfy purchasers' quality requirements. *Id.* at Table II-12.

¹⁴⁵ Three of these are block-frozen products, each of different sizes (21-25 count, 41-50 count, and 71-90 count). The other four products are IQF products (16-20 count, 21-25 count, 26-30 count and 31-40 count). There also were differences for each product regarding the extent of processing (*e.g.*, headless, shell-on product; peeled and deveined, tail off; cooked). CR at V-6; PR at V-2-3.

¹⁴⁶ CR at V-6 and V-7; PR at V-5.

¹⁴⁷ CR/PR at Table V-11.

¹⁴⁸ CR/PR at Table V-11.

¹⁴⁹ Petitioner urged the Commission not to give controlling weight to underselling data for Product 1, because it includes prices for products that are in both deveined and undeveined forms, which may affect comparability. Petitioner's Posthearing Brief at 7. We note that this product was included in the preliminary phase of these investigations (and in the prior antidumping duty reviews) at the request of petitioner. In the preliminary determination, we explicitly invited the parties in their comments on our draft questionnaires to suggest alternative pricing products in order to improve coverage and accuracy. *Preliminary CVD Determinations*, USITC Pub. 4380 at 25. In its comments on the draft final phase questionnaires, Petitioner did not request any change to Product 1. Petitioner's Comments on Draft Questionnaires at 6-7 (dated May 20, 2013). Petitioner requested that the Commission replace Product 3 from the preliminary investigation with two products (Products 4 and 5 in (Continued...))

0.1 percent to 130.8 percent, and the average margin of overselling was 34.0 percent.¹⁵⁰ Thus, the record does not demonstrate significant price underselling by subject imports but rather shows a pattern of mixed underselling and overselling between the subject imports and the domestic like product.¹⁵¹

Prices for the domestic like product and the subject imports fluctuated generally within a narrow range throughout the 13 quarters for which data were collected. There were price increases between the beginning and the end of the period for the majority of products from all domestic and subject sources except Vietnam.¹⁵² Thus, we do not find evidence of significant price depression. We recognize that the domestic industry's ratio of cost of goods sold ("COGS") to net sales was high and increased slightly each year over the period of investigation.¹⁵³ ¹⁵⁴ We note that the COGS for 2012 includes substantially higher other factory

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the final investigation) but did not discuss, let alone raise concerns about, Product 1; the Commission made the changes requested by Petitioner. We find no basis to exclude Product 1 from our underselling analysis or minimize the weight we give to pricing comparisons including that product.

¹⁵⁰ CR/PR at Table V-11.

¹⁵¹ Petitioners also urge the Commission to consider alternative sources of pricing information. They emphasize two public sources of such information: prices of frozen seafood in New York reported by Commerce on a weekly basis and price data available from the Urner Barry market news service, which are updated twice a week. Petitioner's Prehearing Brief at 35-41 and Exhibits 17 (Sample NOAA New York Frozen Seafood Prices Weekly Report), 18 (Compilation of New York Frozen Seafood Weekly Reporting Pricing Data into Quarterly Average Prices), and 19 (Urner Barry Pricing Data); Petitioner's Posthearing Brief at 7-8. The Urner-Barry pricing data, however, are regional (*i.e.*, U.S. product prices are compared with farm-raised Asian product prices) and are not limited to the specific subject countries. We find the pricing data compiled from the Commission's questionnaire responses to be the more specific, comparable, and reliable data for purposes of our analysis.

¹⁵² CR at V-7; PR at V-5. Prices for five of seven domestic products (products 2, 3, 4, 5, and 6) increased from January 2010 to March 2013. CR/PR at Table V-10. Prices for product 1 fluctuated widely, with declines for the domestically produced product and for subject imports from three countries, but increases in prices for the other two countries. For product 2, domestic prices fluctuated and increased overall, as did prices for subject imports, except for those from Vietnam and the few available comparisons for Chinese product. For products 3 and 5, prices for the domestically produced product and prices for all subject imports fluctuated but increased overall. For products 4 and 6, prices for the domestically produced product and prices for all subject imports, except those from Vietnam, fluctuated but increased overall. Finally, for product 7, prices for the domestically produced product fluctuated but declined slightly overall, while prices for all subject imports also fluctuated but increased overall. CR at Tables V-3 to V-10 and Figures V-2 to V-8.

¹⁵³ The ratio of COGS to net sales increased from *** percent in 2010 to *** percent in 2011 and *** percent in 2012. The ratio of COGS to net sales was *** percent in interim 2012 and *** percent in interim 2013. Supplemental Summary Table, EDIS Document Number 518620 ("Suppl. Summary") at Table C-2.

¹⁵⁴ Commissioner Pearson notes that the record over the POI indicates substantial investment in new or expanded facilities for the processing of shrimp. It is likely that the owners of each of those facilities wish to operate their plants at relatively high levels of capacity utilization, yet the total quantity (Continued...)

costs for one processor *** that are associated with a factory relocation and machinery/equipment upgrades; this was a one-time event. As discussed in the impact section below, if the financial results of *** with the high other factory costs are not included, the industry's COGS/sales ratio for 2012 is only slightly higher at *** than the level in 2011 (92.0 percent).¹⁵⁵ The mixed evidence for price underselling mitigates against finding that the small increase in COGS/sales ratio indicates that subject imports have had significant price suppressing effects.¹⁵⁶ Moreover, prices for both domestic product and subject imports increased overall.¹⁵⁷

Accordingly, based on the record in the final phase of these investigations, we find evidence of mixed price underselling, and also find that the volume of subject imports has not depressed prices or prevented price increases, which otherwise would have occurred, to a significant degree.

E. Impact of the Subject Imports

Section 771(7)(C)(iii) of the Tariff Act provides that examining the impact of subject imports, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁵⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."

(...Continued)

of wild-caught shrimp being harvested has not increased along with processing capacity. In this situation, market pressures may lead shrimp processors to bid actively against each other to acquire shrimp at the dock, thus leading to an upward movement in the processors' raw material costs. This phenomenon may explain the slight increase in the COGS/sales ratio in 2012.

¹⁵⁵ CR at VI-9 and VI-10; PR at VI-6.

¹⁵⁶ Suppl. Summary at Table C-2. Unit net sales values were \$*** in 2010, \$*** in 2011, \$*** in 2012, \$*** in interim 2012, and \$*** in interim 2013. Unit COGS values were \$*** in 2010, \$*** in 2011, \$*** in 2012, \$*** in interim 2012, and \$*** in interim 2013. *Id.* Unit SG&A expenses were \$*** in interim 2013. Calculated from CR at Appendix G.

¹⁵⁷ In addition, there were no confirmed lost sales or revenues during the final phase of these investigations. CR at V-33 – V-35; PR at V-25.

¹⁵⁸ 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 ("In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

As was true in the prior investigations and reviews on frozen shrimp, the domestic industry has two primary segments – fishermen and processors.¹⁵⁹ We will examine the data pertaining to industry performance separately for each segment, as the Commission has done in the past.¹⁶⁰

Public data indicate that fishermen’s wild-catch landings fluctuated during the period of investigation. Landings increased from 199.0 million pounds in 2010 to 234.2 million pounds in 2011, and then declined slightly to *** in 2012.¹⁶¹ We recognize that wild-catch landings were considerably lower in 2010, when the BP Oil Spill limited shrimp fishing, than in 2011 or 2012. However, landings historically have fluctuated from year to year, and annual fluctuations that occurred during the five-year period examined in the 2011 antidumping reviews were comparable to those during the current period of investigation.¹⁶²

The responding fishermen reported an overall increase in warmwater shrimp harvested although with fluctuations between years; they reported harvesting 9.2 million pounds of warmwater shrimp in 2010, 10.6 million pounds in 2011, 9.6 million pounds in 2012, 1.1 million pounds in interim 2012, and 644,208 pounds in interim 2013.¹⁶³ The responding fishermen reported that the number of production and related workers (PRWs) decreased from 2010 to 2012.¹⁶⁴ Hours worked and boat days at sea decreased each year, and were lower in interim 2013 than in interim 2012.¹⁶⁵

The financial results of responding fishermen fluctuated annually, but were positive throughout the period of investigation. Sales volume and value fluctuated between years, and increased overall from 2010 to 2012.¹⁶⁶ Operating income before salaries and other items reached its highest level in 2011, on both an absolute basis and as a share of net sales, and then declined to its lowest level in 2012. Fishermen reported operating income as a ratio to net sales of 3.2 percent in 2010, 4.3 percent in 2011, and 1.6 percent in 2012.¹⁶⁷ The responding

¹⁵⁹ Shrimp aquaculture in the United States peaked in 2003 at about 4.5 percent of production. CR at I-12, n.25; PR at I-9, n.25. During the period of investigation, farmed shrimp production accounted for 1.0 percent to *** of domestic production. Calculated from CR/PR at Table IV-5.

¹⁶⁰ The Commission received timely usable questionnaire responses from 133 fishermen -- a relatively small share of the shrimp fleet -- which may limit the representativeness of the data. For these reasons, we place less weight on data regarding the fishermen segment of the domestic industry. See CR/PR at Appendices D and F.

¹⁶¹ CR/PR at Table IV-5.

¹⁶² For instance, in the prior antidumping duty reviews, landings during the 2005 to 2009 review period ranged from a low of 211.3 million pound to a high of 294.8 million pounds. *2011 Antidumping Review Determinations*, USITC Pub. 4221 at Table I-15.

¹⁶³ CR/PR at Table D-3. The responding fishermen’s U.S. shipments were 9.5 million pounds in 2010, 10.9 million pounds in 2011, 9.7 million pounds in 2012, 1.1 million pounds in interim 2012, and 686,019 pounds in interim 2013. *Id.* at Table D-2.

¹⁶⁴ CR/PR at Table D-3.

¹⁶⁵ CR/PR at Table D-3.

¹⁶⁶ INV-LL-054 (July 31, 2013) at Table D-4.

¹⁶⁷ INV-LL-054 at Table D-4. For purposes of this discussion, operating income refers to net sales value minus operating expenses and officer/partner salaries.

fishermen's ratio of operating expenses to net sales was relatively high and increased overall from 96.8 percent in 2010 to 98.4 percent in 2012.¹⁶⁸ We observe that, because of non-operating income received from sources such as BP Oil Spill compensation, and to a lesser extent distributions pursuant to the Continued Dumping and Subsidies Offset Act of 2000 (CDSOA), responding fishermen reported net income that was notably higher than their operating income on both an absolute basis and as a share of net sales for every year in the period of investigation.¹⁶⁹

Processors' production exhibited the same trends as wild-catch landings. Production increased from *** in 2011, and then decreased slightly to *** in 2012.¹⁷⁰ Production was lower in interim 2013, at ***.¹⁷¹ Processors' capacity rose during each year of the period of investigation, increasing from *** in 2012; capacity was *** in interim 2013.¹⁷² Capacity utilization increased from *** in 2011, then decreased to *** in 2012.¹⁷³

Processors' U.S. shipments showed the same trends as production, increasing from *** in 2011, then decreasing to *** in 2012.¹⁷⁴ U.S. shipments of *** of shipments in interim 2012.¹⁷⁵ Ending inventory quantities fluctuated annually and increased overall from *** in 2012; ending inventory quantities were *** in interim 2013.¹⁷⁶

The number of production and related workers, hourly wages, and labor productivity fluctuated annually and increased overall from 2010 to 2012.¹⁷⁷ Hours worked and total wages paid increased each year of the period.¹⁷⁸

The processors' total net sales values fluctuated between years but increased overall; total net sales values were *** in 2012.¹⁷⁹ The processors' COGS also fluctuated between years

¹⁶⁸ Calculated from INV-LL-054 at Table D-4. For purposes of this discussion, operating expenses include officer/partner salaries.

¹⁶⁹ INV-LL-054 at Table D-4. The responding fishermen's net income as a share of net sales was 12.6 percent in 2010, 9.1 percent in 2011, and 11.4 percent in 2012. *Id.*

¹⁷⁰ Suppl. Summary at Table C-2.

¹⁷¹ Suppl. Summary at Table C-2. We note that the January-March interim period is the off-season for wild-caught shrimping and for U.S. processors. Thus, for certain indicators such as production, shipments, capacity utilization and employment, interim data are of less value in our analysis.

¹⁷² Suppl. Summary at Table C-2.

¹⁷³ Suppl. Summary at Table C-2. The *** rate in interim 2012.

¹⁷⁴ Suppl. Summary at Table C-2.

¹⁷⁵ Suppl. Summary at Table C-2. Export shipments were very small in relation to domestic shipments and declined overall from 2010 to 2012. *Id.*

¹⁷⁶ Suppl. Summary at Table C-2.

¹⁷⁷ The number of PRWs increased from *** in 2011, then declined slightly to *** in 2012; the number of PRWs was *** in interim 2013. Suppl. Summary at Table C-2. Labor productivity increased from *** per hour worked in 2011 and then declined to *** per hour worked in 2012; labor productivity was *** per hour worked in interim 2013. *Id.* Hourly wages rose from *** in 2011 and then declined to *** in 2012; hourly wages were *** in interim 2013. *Id.*

¹⁷⁸ Wages paid increased from *** in 2012; wages paid was *** in interim 2013. Suppl. Summary at Table C-2. Hours worked totaled increased from *** hours in 2012; hours worked totaled was *** in interim 2013. *Id.*

but increased modestly each year as a share of net sales; as a share of net sales, it was *** in 2012.¹⁸⁰ The COGS for 2012 includes substantially higher other factory costs for a one-time event (*i.e.*, a factory relocation) by one processor.¹⁸¹ Processors' operating income margin decreased from *** in 2012.¹⁸² Nonetheless, capital expenditures increased each year from 2010 to 2012 but were lower in interim 2013 than in interim 2012.¹⁸³

Although processors' net sales values increased over the period of investigation, we recognize that their performance was marginal and declining; for example, they were able to sustain only a marginal, albeit positive, operating margin in 2010 and 2011, and in 2012 they sustained an operating loss. The decline in operating income margins, particularly from 2011 to 2012, was much larger than the modest increase in the COGS/sales ratio. As elaborated below, the magnitude of the decline in operating margins can be explained by increases in SG&A expenditures that were funded in substantial part by non-operating revenues. As discussed above, we have found the cumulated volume of subject imports and the market share of those imports to have been significant over the period of investigation, but we have not found evidence of significant price underselling or price depression or suppression by the subject imports.¹⁸⁴ In conducting our impact analysis, we must consider whether any injury to the domestic industry is by reason of the subject imports and ensure that we do not attribute injury from other factors to subject imports.

A notable feature of the U.S. processors' financial results is one we have observed with respect to those of the fishermen -- for every year net income was positive and exceeded operating income on both an absolute basis and as a share of net sales. This is due to the amount of "other income" reported, which ranged from a low of \$21.4 million in 2010 to a high of \$95.8 million in 2012.¹⁸⁵ While "other income" includes a variety of items, its most significant component appears to be settlement disbursements related to the BP Oil Spill, with a smaller share accounted for by CDSOA receipts.¹⁸⁶ The parties disagree regarding how the

(...Continued)

¹⁷⁹ Suppl. Summary at Table C-2. Processors' total net sales values were *** in interim 2013. *Id.*

¹⁸⁰ Suppl. Summary at Table C-2. As a share of net sales, COGS was *** in interim 2013. *Id.*

¹⁸¹ As noted above, excluding *** from the industry's financial results would yield a *** COGS to sales ratio in 2012. CR at VI-13, n.35; PR at VI-7, n.35.

¹⁸² Suppl. Summary at Table C-2. Processors' operating income margin was *** in interim 2013. *Id.*

¹⁸³ Capital expenditures increased from *** in 2012. They totaled *** in interim 2013. Suppl. Summary at Table C-2.

¹⁸⁴ Overall prices for domestic and imported product generally increased during the period of investigation. The domestic industry's average unit values also increased each year from *** in 2012. Suppl. Summary at Table C-2.

¹⁸⁵ CR/PR at Table VI-1.

¹⁸⁶ CR at VI-17 and VI-18; PR at VI-8 and VI-9. U.S. processors reported the following amounts for BP Oil Spill compensation: \$14.8 million in 2010, \$22.6 million in 2011, \$70.6 million in 2012, \$22.4 million in interim 2012, and zero in interim 2013. CR at VI-17, n.47; PR at VI-9, n. 47. U.S. processors reported the following amounts for CDSOA receipts: \$5.8 million in 2010, \$17.7 million in 2011, \$17.0 million in 2012, \$716,000 in interim 2012, and \$1.4 million in interim 2013. *Id.*

Commission should consider the settlement disbursements and CDSOA receipts in evaluating the industry's financial results.¹⁸⁷ We agree with the Commission staff's classification, as set forth in the report, of such "other income" as non-recurring items not included in operating income to distinguish it from the primary operations examined.¹⁸⁸

We recognize, however, that a relatively large share of the total increase in 2012 SG&A expenses, from a funding perspective, was acknowledged by domestic producers to be related to the availability of BP Oil Spill compensation.¹⁸⁹ The parties also disagree regarding the treatment the Commission should give these high SG&A expenditures, which are related to the other income that has not been included in operating income.¹⁹⁰ With the exception of 2012, U.S. processors' SG&A expenses as a share of net sales moved within a relatively narrow range.¹⁹¹ The higher SG&A expenses in 2012 relative to 2011 ***.¹⁹² If the processors' 2012 SG&A expenses are adjusted to remove certain company specific increases in large part related to BP Oil Spill compensation, the processors' overall SG&A expense ratio would be *** in 2012.¹⁹³

Based on the foregoing reasons, we conclude that cumulated subject imports have not had a significant adverse impact on the domestic industry. Thus, we conclude that while the domestic industry's financial performance continued at a marginal level and declined at the end of the period of investigation, the domestic industry is not materially injured by reason of the subject imports.

¹⁸⁷ Respondents contend that the compensation paid to the domestic industry because of the BP Oil Spill should be included in the industry's operating income and that this income must be taken into account in discerning the industry's condition. VASEP/SEAI's Posthearing Brief at 1-7; Importers' Posthearing Brief at 1; Importers' Prehearing Brief at 36-47; VASEP/SEAI's Prehearing Brief at 27-31. Petitioner responds that Respondents' arguments that the industry's CDSOA payments or any settlement payments related to the BP Oil Spill should be included in the industry's operating income are contrary to the Commission's consistent prior practice. Petitioner's Posthearing Brief at 11 and Response to Commissioner Aranoff Question 3.

¹⁸⁸ CR at VI-18 and VI-19; PR at VI-9 and VI-10.

¹⁸⁹ CR at VI-13 – VI-15, VI-18, and VI-19; PR at VI-7 - VI-10. While classification as part of SG&A expenses is not incorrect from an accounting perspective, the item's non-recurring nature, as well as its acknowledged connection to the BP Oil Spill compensation, appear to be relevant when evaluating the industry's reported financial results. The same statement would also generally apply to the other non-recurring items which impacted the industry's financial results during the period of investigation. *Id.*

¹⁹⁰ Respondents point to the abnormally high SG&A ratios for certain processors and argue that not recognizing that large portions of the industry's SG&A expenditures were paid from the BP Oil Spill funds risks attributing to subject imports injury caused by the BP Oil Spill. See VASEP/SEAI's Posthearing Brief at 1-7. Petitioner claims that Respondents' suggestions to discount the actual financial results experienced by the domestic industry so as to minimize the injury caused by subject imports are without merit. Petitioner's Posthearing Brief at 10 and Response to Commissioner Johanson Question 1.

¹⁹¹ As a share of net sales, the processors' SG&A expenses were *** in interim 2013. Calculated from Suppl. Summary at Table C-2.

¹⁹² CR at VI-13 – VI-15; PR at VI-7 and VI-8.

¹⁹³ CR at VI-15, n. 41; PR at VI-8, n. 41. Without the adjustment, the processors' SG&A expense ratio and operating loss ratio in 2012 were ***, respectively. Suppl. Summary at Table C-2.

VII. Threat of Material Injury by Reason of Subject Imports

A. Legal Standard

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁹⁴ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.¹⁹⁵ In making our determination, we consider all statutory threat factors that are relevant to these investigations.¹⁹⁶

¹⁹⁴ 19 U.S.C. § 1677(7)(F)(ii).

¹⁹⁵ 19 U.S.C. § 1677(7)(F)(ii).

¹⁹⁶ These factors are as follows:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) 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,

...

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(i). Statutory factor (VII) concerning agricultural products is inapplicable to this investigation.

B. Cumulation for Threat

Under section 771(7)(H) of the Tariff Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation in the material injury context are satisfied.¹⁹⁷

Petitioner urges the Commission to exercise its discretion to cumulate imports from all subject countries in assessing the threat of material injury.¹⁹⁸ Respondents contend that imports from each country should be considered individually for purposes of assessing the threat of material injury.¹⁹⁹

As discussed in section V above, the record indicates that there is a reasonable overlap of competition between and among the domestic like product and subject imports from China, Ecuador, India, Malaysia, and Vietnam, and we do not find any evidence indicating that this overlap will change in the future. We also considered whether subject imports from China, Ecuador, India, Malaysia, and Vietnam exhibited similar volume and price trends during the period of investigation that would justify exercising our discretion to cumulate these imports for our threat analysis. While there are some variations in the trends for the volume of subject imports from the five subject countries, we do not find that differences in these trends are meaningful in this context.²⁰⁰ Moreover, we find that while the price trends of these imports fluctuated and varied depending on the product, they generally increased overall and are sufficiently similar to support cumulation for our threat analysis. Accordingly, based on an evaluation of the relevant criteria as well as our analysis regarding cumulation in the context of assessing present material injury, we exercise our discretion to cumulate subject imports from China, Ecuador, India, Malaysia, and Vietnam for purposes of assessing threat of material injury.

¹⁹⁷ 19 U.S.C. § 1677(7)(H).

¹⁹⁸ Petitioner’s Prehearing Brief at 63.

¹⁹⁹ Hearing Tr. at 284-285; Joint Respondents’ Answers to Commission Questions at A-94. The Malaysian Respondent argues that the import and market share trends for subject imports from Malaysia differ from those of other subject countries and that on that basis, if those imports are not deemed to be negligible, they should not be cumulated with the other subject imports for the threat analysis. Malaysian Respondent’s Posthearing Brief at 10. VASEP also maintains that all of the relevant data show that there are significant differences in trends for Vietnam that support the Commission exercising its discretion and not cumulating imports from Vietnam with those from the other subject countries for assessing the threat of material injury. VASEP’s Posthearing Brief at 1-4. VASEP notes that Vietnam is the largest supplier of black tiger shrimp, which generally are larger and tend to sell for higher prices. *Id.* at 4.

²⁰⁰ Suppl. Summary at Table C-2.

C. Analysis Regarding Statutory Threat Factors²⁰¹

We begin our threat analysis by recognizing that there were many positive trends in the domestic industry's performance during the period of investigation, while its financial performance continued at a marginal level and declined at the end of the period of investigation.²⁰² However, as discussed above, we found that subject imports have not adversely affected the condition of the domestic industry. During the period of investigation, the domestic industry was able to increase its market share in a declining U.S. market and to increase prices overall for its frozen shrimp products.²⁰³ As apparent U.S. consumption declined in the U.S. market from 2011 to 2012, most importers and purchasers reported that demand outside the United States had increased.²⁰⁴ At the same time, most importers (17 of 31) reported import supply constraints, due in large part to EMS, which has affected supply from China, Malaysia, Thailand, and Vietnam in 2012 and 2013, with one importer reporting that Thailand's production has fallen almost 50 percent.²⁰⁵ The evidence does not support finding that the EMS crisis will be resolved in the imminent future.²⁰⁶ Thus, the limitation on supplies of frozen shrimp from countries affected by EMS and the resultant increases already experienced in domestic shipments, market share, and prices likely will continue in the imminent future.

We find that the increase in cumulated subject import volume and market share during the period of investigation does not indicate the likelihood of substantially increased imports that would be at the expense of the domestic industry. As detailed above, we have found that the increased volume of subject imports did not have significant adverse effects on the domestic industry during the period of investigation because the industry's market share and U.S. shipments also increased in a declining U.S. market during the period. Both the subject imports' and the domestic industry's increases in market share were at the expense of the

²⁰¹ In its final affirmative countervailing duty determinations on frozen shrimp, Commerce found the following number of programs to be countervailable: nine subsidy programs regarding China, five subsidy programs regarding Ecuador, seven subsidy programs regarding India, three subsidy programs regarding Malaysia, and 10 subsidy programs regarding Vietnam.

²⁰² Suppl. Summary at Table C-2.

²⁰³ CR/PR at Table V-10 and Suppl. Summary at Table C-2.

²⁰⁴ CR/PR at Table II-5; Hearing Tr. at 203 ("We are also concerned about rapidly growing demand in Asia, particularly in China, which is already hurting our ability to maintain adequate supply. Chinese demand is so strong and still growing, that Chinese buyers are importing unprecedented quantities of shrimp from other countries, like Ecuador and India....The added demand outside the U.S. coupled with declining imports has caused prices in the U.S. market to surge.").

²⁰⁵ CR at II-11; PR at II-8; Hearing Tr. at 200 (Stern) ("importers face their own crisis because of EMS, which has spread rapidly throughout Asia since 2009. Thailand has suffered the most from EMS so far. Thai exports to the United States have fallen substantially, by over 50 percent as compared to two years ago. This has caused a real shortage in our supply.").

²⁰⁶ CR at I-12; PR at I-9.

declining nonsubject imports.²⁰⁷ There is no evidence on the record that these factors will change in the imminent future.²⁰⁸

We also find that excess capacity in China, Ecuador, India, Malaysia, and Vietnam, although significant, does not indicate the likelihood of substantially increased imports of the subject merchandise. Responding subject foreign producers reported excess capacity of 1.26 billion pounds on a cumulated basis in 2012.²⁰⁹ Notwithstanding their substantial excess capacity throughout the period of investigation, and an increase of capacity of 15.6 percent between 2010 and 2012,²¹⁰ the responding subject producers did not increase their exports to the United States to levels sufficient to have significant adverse effects on the domestic industry. Moreover, responding subject producers project a further increase in their capacity of only 1.8 percent through 2014.²¹¹ For these reasons, we do not find that the cumulated excess capacity of subject Chinese, Ecuadoran, Indian, Malaysian, and Vietnamese producers indicates a likelihood of significantly increased imports of subject merchandise.

We recognize that responding Chinese, Ecuadoran, Indian, Malaysian, and Vietnamese producers maintained their focus on the U.S. market during the period of investigation. Exports to the United States as a share of subject producers' total shipments were 38.3 percent in 2010, 37.2 percent in 2011, and 38.4 percent in 2012.²¹² Notwithstanding their focus on the U.S. market, however, responding subject producers did not increase their exports to the United States to levels sufficient to have significant adverse effects on the domestic industry.

We also find it unlikely that subject foreign producers will increase their focus on the U.S. market in the imminent future, given that their increased presence in the U.S. market was at the expense of nonsubject imports and that supply from several subject countries will be constrained because of EMS. In addition, healthy demand growth is projected in export markets other than the United States.²¹³ Indeed, during the period of investigation, other export markets accounted for an increasing majority of the share of shipments by these

²⁰⁷ Suppl. Summary at Table C-2.

²⁰⁸ Petitioner contends that the arranged imports reported for April 2013 to March 2014 indicate that subject imports are poised to increase significantly in the near future. Petitioner's Final Comments at 13-14. We note, however, that U.S. Importers' reported total arranged subject imports for the year period after March 31, 2013 (April 2013-March 2014) was 117.6 million pounds, which is only about 24.2 percent of the volume of subject imports in 2012. CR/PR at Table VII-8.

²⁰⁹ CR/PR at Tables VII-6.

²¹⁰ CR/PR at Table VII-6. Responding subject producers reported excess capacity of 1.07 billion pounds in 2010 and 1.08 billion pounds in 2011 on a cumulated basis. *Id.* Their reported rate of capacity utilization increased from 41.1 percent in 2010 to 44.8 percent in 2011, and then declined to 40.4 percent in 2012. *Id.*

²¹¹ CR/PR at Table VII-6. Responding subject producers also project that their excess capacity will decline from 1.19 billion pounds in full year 2013 to 1.12 billion pounds in 2014, while their rate of capacity utilization will increase from 43.9 percent in 2013 to 47.8 percent in 2014. *Id.*

²¹² CR/PR at Table VII-6.

²¹³ *See, e.g.*, Hearing Tr. at 203.

responding subject producers.²¹⁴ Finally, we also recognize that there are outstanding U.S. antidumping duty orders on shrimp imported from China, India, and Vietnam, which will remain in effect at least for the imminent future and are likely to have a disciplining effect on the volume and prices of imports from these countries during that time.²¹⁵

We further find that inventories of subject imports in the United States and in China, Ecuador, India, Malaysia, and Vietnam do not indicate the likelihood of substantially increased subject imports. U.S. importers' end-of-period inventories of cumulated subject imports increased as a ratio to subject imports from 7.5 percent in 2010 to 9.7 percent in 2011 and 9.9 percent in 2012.²¹⁶ This ratio, however, was lower in interim 2013 (3.6 percent) than in interim 2012 (3.8 percent).²¹⁷ U.S. importers' end-of-period inventories of cumulated subject imports in 2012 were equivalent to only *** of apparent U.S. consumption.²¹⁸

Only two foreign producers reported U.S. inventories, accounting for less than 0.5 percent of subject imports.²¹⁹ Responding subject producers reported that their end-of-period inventories fluctuated from year to year and increased slightly as a share of production but declined slightly as a share of total shipments between 2010 and 2012; both ratios were lower in interim 2013 compared with interim 2012. Inventories as a share of production increased from 15.9 percent in 2010 to 16.6 percent in 2011, and then declined to 16.3 percent in 2012.²²⁰ They were 18.2 percent in interim 2013, down from 20.2 percent in interim 2012.²²¹ Inventories as a share of total shipments increased from 16.5 percent in 2010 to 17.2 percent in 2011, and then declined to 16.3 percent in 2012.²²² They were 16.8 percent in interim 2013, down from 19.3 percent in interim 2012.²²³ The stable level of subject foreign producer end-of-period inventories during the period of investigation, combined with the absence of evidence that subject foreign producers' inventories will increase in the imminent future, does not indicate any imminent surge of subject imports into the U.S. market.^{224 225}

²¹⁴ CR/PR at Table VII-6. Responding subject producers reported exports to other markets as a share of their total shipments were 51.5 percent in 2010, 54.0 percent in 2011, 54.8 percent in 2012, 55.1 percent in interim 2012 and 51.8 percent in interim 2013; reported projections of exports to other markets as a share of total shipments was 56.7 percent in 2013 and 56.4 percent in 2014. *Id.*

²¹⁵ There are no known antidumping or countervailing duty findings or remedies on frozen shrimp (other than the antidumping duty orders in effect in the United States) in third country markets that would tend to increase subject imports. CR at VII-13.

²¹⁶ Calculated from Suppl. Summary at Table C-2.

²¹⁷ Calculated from Suppl. Summary at Table C-2.

²¹⁸ Calculated from Suppl. Summary at Table C-2.

²¹⁹ CR at VII-12; PR at VII-9.

²²⁰ CR/PR at Table VII-6.

²²¹ CR/PR at Table VII-6.

²²² CR/PR at Table VII-6.

²²³ CR/PR at Table VII-6.

²²⁴ Subject foreign producers' end-of-period inventories are projected to be equivalent to 16.1/16.2 percent of production/total shipments in full year 2013 and 14.9/15.0 percent of production/total shipments in 2014. CR/PR at Table VII-6.

We also find that imports of the subject merchandise are not entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices or increase demand for further imports. As detailed above, we have found that, during the period of investigation, subject imports neither depressed nor suppressed domestic like product prices to a significant degree and that the mixed underselling by subject imports was not significant. Because we have found that there is not a likelihood of substantially increased imports, the lack of significant price effects observed during the period of investigation will likely continue in the imminent future. Moreover, the rising prices the domestic industry was able to charge during the period of investigation will likely continue in the imminent future, in light of increasing demand in other export markets, continued import supply constraints due to the EMS crisis, and the disciplining effects the current antidumping duty orders have on subject imports from China, India, and Vietnam.²²⁶

We further find that subject imports have had no significant actual or potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product. In fact, we note that the domestic industry's capital expenditures increased substantially during the period of investigation and domestic producers made numerous investments to modernize and enhance their capacity.²²⁷ Subject import competition has not significantly impeded domestic producers from making necessary investments in their capacity and there is insufficient evidence that it will likely do so in the imminent future.

We conclude that an industry in the United States is not threatened with material injury by reason of subject imports.

VIII. Conclusion

For the reasons stated above, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports of frozen warmwater shrimp from China, Ecuador, India, Malaysia, and Vietnam that are subsidized.

(...Continued)

²²⁵ The potential for product shifting is not an issue in this industry. Only 2 of 42 responding processors stated that they could switch production from frozen shrimp to other products. CR at II-9; PR at II-6.

²²⁶ CR at II-11 and Table II-5; Hearing Tr. at 201 ("With no solution for EMS in sight, world shrimp prices will escalate even further due to the shortages.").

²²⁷ CR at VI-19 and VI-20, Table VI-3 and Appendices E and F; PR at VI-10, Table VI-3 and Appendices E and F.

Dissenting Views of Chairman Irving A. Williamson

Based on the record in these investigations, I determine that an industry in the United States producing frozen warmwater shrimp is materially injured by reason of subject imports from China, Ecuador, India, Malaysia and Vietnam that have been found by the Department of Commerce to be subsidized. I join sections I through VI.B.4 of the Commission's Views and cumulate all subject imports.

Volume of Subject Imports

As discussed in the Conditions of Competition and the Business Cycle section of the Commission's Views, the domestic industry and certain of the subject countries' industries faced supply challenges during the period of investigation. The BP (Gulf) oil spill affected the volume of shrimp available to domestic processors in 2010, and diseases impacted certain subject and nonsubject producers later in the period of investigation.

Despite the challenges faced by certain subject countries, cumulated subject import volume was significant in absolute terms, and increased during the period of investigation. Subject imports totaled 415.2 million pounds in 2010, 462.3 million pounds in 2011, and 484.8 million pounds in 2012.¹ Overall, subject imports volume increased 16.8 percent between 2010 and 2012.² During the interim period, subject import volumes increased, from 99.3 million pounds imported in January-March 2012 to 107.8 million pounds imported in January-March 2013.³

Subject imports also increased *** percentage points from 33.2 percent share of domestic consumption in 2010 to *** percent in 2012.⁴ Similarly, the ratio of subject imports to U.S. shipments rose from 346.0 percent in 2010 to *** percent in 2012.⁵

The increase in subject import volume during the period of investigation is particularly significant in light of conditions prevailing in the U.S. market during this period. Apparent U.S. consumption, on a volume basis, declined by *** percent over the period of investigation.⁶ While the U.S. industry was able to make a small gain in market share, increasing from 9.6 percent in 2010 to *** percent in 2012, the subject imports captured a much larger share, from 33.2 percent in 2010 to *** percent in 2012.⁷ In particular, when EMS struck the shrimp industries in several Asian countries, including subject producers in China, Malaysia, and nonsubject producers in Thailand (the largest producer and source for U.S. imports), the U.S. market experienced a sudden shortage of supply from the affected countries. The domestic industry reasonably expected to take advantage of this supply shortage to regain sales volumes and return to pre-oil spill levels similar to those experienced in 2009. Instead, non-EMS affected subject producers were able to quickly ramp up production and exports to

¹ Supplemental Summary Table, EDIS Document Number 518620 ("Suppl. Summary") at Table C-2.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ CR/PR at Table IV-7.

⁶ CR/PR at Table IV-5.

⁷ CR/PR at Table IV-6.

the U.S. market. Combined data for the five subject countries shows that capacity grew by 15.6 percent and production levels increased by 13.7 percent during the period of investigation, and that they took advantage of declining imports from EMS-affected countries to increase their U.S. market presence in both absolute and relative terms.⁸

For the foregoing reasons, I find the volume of subject imports to be significant, both in absolute terms and relative to consumption and production in the United States.

Price Effects of Subject Imports

Price is one of the leading considerations in purchasing decisions in the frozen warmwater shrimp industry. As the Commission found in its preliminary determinations, domestic and subject imported frozen warmwater shrimp are at least moderate substitutes. As discussed in the Cumulation section of the Commission's Views, domestic processors, importers of subject merchandise, and purchasers reported that domestic frozen shrimp and the subject imports are interchangeable at least to a certain degree, and comparable in nearly all factors addressed. While subject imports were rated more favorably than the domestic product in terms of reliability and availability of supply, responses showed a substantial number of purchasers rating the U.S. product as comparable to subject imports.⁹ Prices are negotiated on a near daily basis, contributing to price sensitivity in the U.S. market. Thus, while the U.S. and subject imported frozen shrimp show some level of differentiation, the market, particularly purchasers, treat subject imports and domestic product as substantially comparable.

The Commission collected pricing data for seven products. Thirty-four U.S. processors and 27 importers of product from subject countries provided usable data, which accounted for *** percent of U.S. shipments of U.S.-produced products, 8.0 percent of shipments of imports from China, 14.2 percent for Ecuador, 41.8 percent for India, 15.4 percent for Malaysia, and 34.5 percent of shipments of imports from Vietnam during January 2010 through March 2013.¹⁰

Results of the pricing data are quite mixed. Prices for the domestic like product and the subject imports fluctuated during the period of review, but increased irregularly for the majority of products for all countries with the exception of Vietnam.¹¹ The subject imports undersold the domestic like product in 168 of 333 quarterly comparisons, or 50.5 percent of the time, with average margins of 18.8 percent.¹² This level of underselling persisted despite certain of the subject imports being covered by antidumping duty orders and overall improvements in price trends during the period. Underselling allowed the subject imports to

⁸ CR/PR at Table VII-10.

⁹ Table II-12 showed that for availability, 32 purchasers reported the U.S. shrimp as comparable, 44 reported it as inferior, and 4 reported it as superior. For reliability of supply, results were 37 reporting the U.S. product as either comparable or inferior, and 4 reporting it as superior.

¹⁰ CR at V-6-V-7; PR at V-5.

¹¹ CR at V-7; PR at V-5.

¹² These data include Product 1, to which the Commission determined neither to give controlling weight or to discount in the previous antidumping duty investigations, as this category includes both deveined and undeveined product. CR/PR at Table V-4. If product 1 were excluded, underselling by the subject imports predominated, by a larger margin, ***.

capture more of the market space vacated by EMS-affected countries than what otherwise might have been expected. I find this underselling to be significant.

The record also demonstrates that subject imports had a significant price suppressing effect. Despite price increases during the period of investigation, costs rose faster and domestic processors were not able to fully cover increases in cost of goods sold. Unit COGS rose by *** percent from *** to *** per pound during 2010-12, while the unit value of net sales rose by only *** percent from *** to *** per pound. The COGS to sales ratio also rose, from *** percent in 2010 to *** percent in 2012.¹³

I find that the substantial and increasing volume of subject imports has prevented price increases, which otherwise would have occurred, to a significant degree.

Impact of Subject Imports

According to COGSI, while the domestic industry has seen some improvements since 2010, when the oil spill disrupted its operations, the domestic industry has not returned to its prior sales level or its prior market share because of the rising volumes and price impact of the subject imports. Although parties are divided as to how best to interpret the domestic industry's financial results, the domestic industry clearly has not performed well during the period of investigation.

The domestic industry is comprised of both fishermen and processors. The U.S. fishermen's overall performance indicators show a downward trend during the period of investigation. Shrimp harvests increased from 9.2 million pounds in 2010 to 10.6 million pounds in 2011, but fell to 9.6 million pounds in 2012. The interim 2013 harvest data show 644 thousand pounds compared to 1.1 million pounds in interim 2012. Employment data followed a similar overall downward trend. Interim data show a nearly 50 percent decline. The number of days boats were at sea likewise declined over the period of investigation, from 19,108 in 2010 to 18,201 in 2012; interim 2013 days were 2,434 compared to 3,404 in 2010.¹⁴

Fishermen's shipments by volume and value followed a similar trend – showing initial improvements in 2011 over 2010, but ultimately declining in 2012 and interim 2013. All interim 2013 indicators were below the comparable ones in interim 2012. U.S. shipments increased from 9.4 million pounds in 2010 to 10.9 million pounds in 2011, before falling to 9.7 million pounds in 2012; interim 2013 U.S. shipments were 686 million pounds compared to 1.1 million pounds shipped during interim 2012. The per pound value of shipments for U.S. fishermen improved from \$3.63 in 2010 to \$3.80 in 2011, before falling to \$3.77 in 2012. Interim 2013 U.S. shipments were \$4.13 per pound, below the \$4.32 level reported for interim 2012.¹⁵

Domestic processors' performance and certain financial indicators generally improved over the period of investigation, although both remained lackluster. Production gains were strong, as could be expected as fishing and processing picked up once the Gulf was re-opened to the industry in 2010 after the oil-spill. Production improved by *** percent, from *** million

¹³ Suppl. Summary at Table C-2.

¹⁴ CR/PR at Table D-3.

¹⁵ CR/PR at Table D-2.

pounds in 2010 to *** million pounds in 2012. However, the interim 2013 production level fell *** percent, from *** million pounds in interim 2012 to *** million pounds in interim 2013. U.S. shipments initially gained in 2011, reaching *** million pounds from *** million pounds in 2010, before falling somewhat in 2012 to *** million pounds.¹⁶

While the domestic industry showed overall production and shipment improvements as it recovered from depressed levels resulting from the 2010 oil spill, the fact that unsold inventories represented a large and increasing percentage of the volume of U.S. producers' total shipments undercuts arguments that rising domestic production contributed to any overall improved performance of the domestic processors. Inventory quantities were *** million pounds in 2010 and *** million pounds in 2011, before increasing to *** million pounds in 2012, an increase of nearly *** percent over 2011. As a share of shipments, inventories grew from *** percent of shipments in 2010 and *** percent in 2011, to *** percent in 2012, an increase of *** percent over 2011, and growing at the same time that domestic shipments fell by *** percent.¹⁷

The domestic industry's financial results were weak throughout the period. Net sales improved overall despite a drop in 2012 compared to 2011, from *** million pounds in 2010 to *** million pounds in 2011, an increase of *** percent, and *** million pounds in 2012, a drop of *** percent. The value of net sales initially increased consistent with the volume improvement, from \$*** million in 2010 to \$*** million in 2011, or by *** percent, before dropping to \$*** million in 2012, or by *** percent. This suggests that value held up somewhat, falling by less than the decline in net shipment volume. However, unit costs continued to increase, by *** percent overall and by *** percent from 2011 to 2012, when most production and shipment indicators fell. The domestic industry showed a *** percent operating margin in 2010, *** in 2011 and *** in 2012. This, however, reflects the higher SG&A costs in that year. Nevertheless, even adjusting for these SG&A costs, as argued by Respondents,¹⁸ as well as anomalous company-specific COGS, the domestic industry still recorded only a very small operating profit in 2012, of *** percent.¹⁹

In sum, I find that the significant increases in the volume of the subject imports and the significant underselling of those imports during the period of investigation resulted in significant adverse price effects, and held down the domestic industry's financial performance and thereby materially harmed the domestic industry.

In conducting my impact analysis, I have also considered the role of other factors so as not to attribute injury from other factors to subject imports. I have considered the role of

¹⁶ Suppl. Summary at Table C-2.

¹⁷ Suppl. Summary at Table C-2.

¹⁸ VASEP/SEAI's Posthearing Brief at 1-7; Importers' Posthearing Brief at 1; Importers' Prehearing Brief at 36-47; VASEP/SEAI's Prehearing Brief at 27-31.

¹⁹ CR at VI-12-13, n.35 and VI-15, n.41; PR at VI-7, n.35 and VI-8, n.41. With respect to the industry's profitability, respondents argue the Commission should give weight to funds received from BP and accounted for as "other income." Although I find that funds received from BP are properly excluded from operating income, I recognize that funds spent impacted SG&A expenses for the industry as a whole, as some companies applied these funds to pay compensation and other costs incurred prior to the period of investigation. Nevertheless, even adjusting oil spill compensation as argued by respondents does not change the fact that the domestic industry was only marginally profitable at best during the investigation period.

nonsubject imports, including any role that may be played by now-nonsubject imports from Thailand, the largest single supplier to the U.S. market. Nonsubject import share declined sharply over the period of investigation, largely due to the impact of EMS on certain Asian suppliers. Nonsubject imports fell from 57.2 percent of the market in 2010 to *** percent in 2012. Thailand accounted for the largest decline, 10.8 percentage points, compared to a 8.8 percentage point drop overall for nonsubject product. Although the domestic industry has argued that the Thai industry and others will recover, data on the record suggest that while producers of the subject product in Vietnam may be experiencing some recovery, producers in Thailand have not yet increased export volumes and, instead their exports remain at levels well below those early in the period of investigation.²⁰

Natural and manmade disasters such as the oil spill and hurricanes that affected the domestic industry's performance during the period of investigation are commonplace for this industry. I note that the Commission's analysis requires that I take the industry as I find it.²¹ The domestic industry's supply was affected by the oil spill during 2010, but began to improve to pre-spill levels in 2011. Subject imports gained U.S. market share throughout 2011 and 2012 however, with the most significant increase occurring in 2012, when the domestic industry showed its weakest performance of the period.²² Consequently, I find that the cumulated subject imports have had a significant adverse impact on the domestic industry producing frozen warmwater shrimp.

For the foregoing reasons, I determine that the domestic industry producing frozen warmwater shrimp is materially injured by reason of cumulated subject imports from China, Ecuador, India, Malaysia and Vietnam.

²⁰ CR at I-11 and 12; PR at I-9; Petitioner's Prehearing Brief at 18-19; Importers' Prehearing Brief at 5-7; Hearing Tr. At 43-44 and 189.

²¹ See Iwatsu Electric Co. v. United States, 758 F. Supp. 1506, 1512, 1518 (Ct. Int'l Trade 1991.)

²² Suppl. Summary at Table C-2.

Dissenting Views of Commissioner Shara L. Aranoff

Based on the record in these investigations, I determine that an industry in the United States producing frozen warmwater shrimp is materially injured by reason of subject imports from China, Ecuador, India, Malaysia and Vietnam that have been found by the Department of Commerce to be subsidized. I join my colleagues' findings with respect to domestic like product, domestic industry, negligibility, cumulation, legal standards and conditions of competition.

Background

Parties to the Investigation. The petitions in these investigations were filed on December 28, 2012 by the Coalition of Gulf Shrimp Industries ("CGSI" or "Petitioner"), a trade association whose members are processors of frozen shrimp in the United States. Representatives of Petitioner appeared at the hearing accompanied by counsel, and Petitioner submitted prehearing and posthearing briefs. A second domestic producer group, the Ad Hoc Shrimp Industry Committee ("AHSIC"), consists of several hundred businesses operating within the U.S. domestic shrimp industry, the great majority of which are shrimp fishermen. AHSIC takes no position on the petitions but filed prehearing and posthearing briefs to submit comments regarding the analysis and appropriate definitions of the domestic like product and domestic industry.¹

Several respondent groups participated in the final phase of these investigations. Four respondent groups, representing interested parties from three of the five subject countries, submitted prehearing and posthearing briefs and participated in the hearing. These Respondents consist of (1) Zhanjiang Guolian Aquatic Products Co., Inc. ("Guolian"), a producer and exporter of subject shrimp from China ("Chinese Respondent"); (2) Seafood Exports Association of India ("SEAI"), an association of foreign manufacturers and exporters of subject merchandise from India ("Indian Respondent"); (3) Vietnamese Association of Seafood Exporters and Producers ("VASEP"), an association of foreign manufacturers and exporters of subject shrimp from Vietnam ("Vietnamese Respondent");² (4) a group of seven U.S. importers of subject merchandise (Eastern Fish Company, Mazzetta Company, Ore-Cal Corporation, Seafood Exchange of Florida, Sea Port Products Corporation, Stavis Seafoods, and Tri-Union Frozen Products) (collectively, "Importers"). Another respondent group consisting of manufacturers and exporters of subject shrimp from Malaysia (Aquatech Venture Sdn Bhd, HK Food (M) Sdn Bhd, Kian Huat Fishery Sdn Bhd, Ocean Famous Sdn Bhd, Ocean Pioneer Food Sdn Bhd, Sanjune Sdn Bhd, Sunlight Seafood Sdn BHD, and TM Foods Sdn BHD) (collectively, "Malaysian Respondents") submitted a posthearing brief.

Data Coverage. In these investigations, U.S. industry data are based on the questionnaire responses of 40 U.S. processors of frozen shrimp, accounting for *** percent of

¹ AHSIC's Posthearing Brief at 1.

² SEAI and VASEP jointly submitted a prehearing and posthearing brief; VASEP also submitted a separate posthearing brief.

U.S. production of frozen shrimp in 2012.³ U.S. import data are based on official Commerce import statistics and on questionnaire responses from 31 U.S. importers, accounting for 40.7 percent of total subject imports.⁴ The Commission received responses to its questionnaires from 70 foreign producers of subject merchandise.⁵

Domestic Like Product

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁶ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole 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.”⁷ In turn, 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.”⁸

The decision regarding the appropriate domestic like product in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁹ No single factor is

³ Confidential Staff Report, Memorandum INV-LL-071 (Sept. 6, 2013) (“CR”) at III-1 and Public Staff Report (“PR”) at III-1. U.S. production is based on live (head-on shell-on) weight. The Commission received questionnaire responses from 48 U.S. processors, 40 of which provided usable quantitative data.

⁴ CR/PR at IV-1. The U.S. importers also account for 78.1 percent of subject imports from China, 36.9 percent of subject imports from Ecuador, 31.1 percent of subject imports from India, 33.6 percent of subject imports from Malaysia, and 45.3 percent of subject imports from Vietnam between 2010 and 2012. *Id.*

⁵ CR/PR at VII-3. The foreign producer questionnaires are from five producers/exporters in China, accounting for approximately *** of subject imports from China as reported in official Commerce statistics in 2012; nine producers/exporters in Ecuador, accounting for approximately 60.8 percent of subject imports from Ecuador in 2012; 28 producers/exporters in India, accounting for approximately 79.0 percent of subject imports from India in 2012; two producers/exporters in Malaysia, accounting for approximately *** of subject imports from Malaysia in 2012; and 26 producers/exporters in Vietnam, accounting for approximately 89.0 percent of subject imports from Vietnam in 2012. CR at VII-3-4, VII-7, and VII-9; PR at VII-3 and VII-5.

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10).

⁹ *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); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors, including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. *See Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996). In a semi-finished products analysis, the Commission examines the following: (1) the significance and extent of the processes used to transform the upstream into the downstream articles; (2) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) whether there are perceived to be separate markets for the upstream and downstream articles; and (5) differences in the costs or

dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁰ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹¹ Although the Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,¹² the Commission determines what domestic product is like the imported articles Commerce has identified.¹³

Product Description

Commerce defined the scope of the imported merchandise under investigation as follows:

[c]ertain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink

value of the vertically differentiated articles. See, e.g., *Glycine from India, Japan, and Korea*, Inv. Nos. 731-TA-1111-1113 (Preliminary), USITC Pub. No. 3921 at 7 (May 2007); *Artists' Canvas from China*, Inv. No. 731-TA-1091 (Final), USITC Pub. No. 3853 at 6 (May 2006); *Live Swine from Canada*, Inv. No. 731-TA-1076 (Final), USITC Pub. No. 3766 at 8 n.40 (Apr. 2005); *Certain Frozen Fish Fillets from Vietnam*, Inv. No. 731-TA-1012 (Preliminary), USITC Pub. No. 3533 at 7 (Aug. 2002).

¹⁰ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

¹¹ *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

¹² See, e.g., *USEC, Inc. v. United States*, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd*, 865 F.3d 240 (Fed. Cir.), *cert. denied*, 492 U.S. 919 (1989).

¹³ *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Cleo*, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); *Torrington*, 747 F. Supp. at 748-52 (affirming the Commission's determination defining six like products in investigations in which Commerce found five classes or kinds).

shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the nonshrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.¹⁴

The scope of investigation is identical to the scope in the preliminary phase of these investigations¹⁵ and virtually identical to that in the prior investigations and reviews regarding frozen warmwater shrimp.¹⁶

At the request of Petitioner, Commerce clarified in its final scope ruling that the scope language in these investigations refers simply to “frozen shrimp” without reference or

¹⁴ *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 Fed. Reg. 50391, 50392 (Appendix I)(Dep't of Commerce Aug. 19, 2013) (footnotes omitted). Commerce's scope of investigation in the China CVD determination is identical to the scope of investigations in the CVD determinations regarding Ecuador (78 Fed. Reg. 50389), India (78 Fed. Reg. 50385), Malaysia (78 Fed. Reg. 50381), and Vietnam (78 Fed. Reg. 50387).

¹⁵ CR at I-9, n.16.

¹⁶ Specifically, the scope in these investigations is substantively the same as that in the most recent five-year reviews, with the exception that one scope exclusion in the five-year reviews (for a product called Lee Kum Kee shrimp sauce) is not repeated in the current scope definition. See *Certain Frozen Warmwater Shrimp and Prawns from Brazil, China, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Pub. 4221 at 5 (March 2011) (“2011 Review Determinations”). “Dusted shrimp,” which is included in the scope in these investigations and also was included in the scope of the five-year reviews, was not within the scope of the Commission's original antidumping duty investigations. Further, canned shrimp was within the scope in the original investigations, but the Commission defined it as a separate domestic like product and made negative or negligible import determinations for canned shrimp from all countries subject to the original investigations. See *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. 3748 at 4-5 and 8-11 (Jan. 2005) (“Antidumping Duty Final Determination”).

limitation to any specific method of freezing or any stage of processing at which the freezing must occur.¹⁷ Commerce stated that “the plain language of the scope indicates that these investigations cover frozen shrimp, including frozen shrimp that may have undergone some processing in the form of head, shell, tail, and/or vein removal. Thus, I determine that the scope language itself did not provide a basis for finding brine-frozen shrimp to be outside the scope.”¹⁸

As noted above, the Commission has previously conducted antidumping duty investigations and reviews of frozen shrimp. In the 2004 antidumping duty investigations on warmwater shrimp, the Commission determined, as proposed by the domestic producers in those investigations, that the domestic like product should be defined to include fresh warmwater shrimp, an item excluded from the scope. Using the “semifinished products” like product analysis, the Commission found that fresh shrimp should be included in the domestic like product because fresh shrimp was overwhelmingly used as an input in the production of the frozen product, the shrimp was overwhelmingly sold in a processed form, and the initial stages of processing did not significantly change the physical characteristics and uses of the product and appeared to add at most moderate value to the product.¹⁹ Consequently, the domestic like product on which the Commission reached affirmative determinations in the antidumping duty investigations and subsequent five-year reviews consisted of both fresh warmwater shrimp and the frozen warmwater shrimp products described in the scope.²⁰

Arguments of the Parties

Prior to Commerce’s final scope ruling, Petitioner proposed defining the domestic like product as certain frozen warmwater shrimp produced in the United States and not including fresh shrimp and brine-frozen shrimp in the domestic like product.²¹ Petitioner did not address the domestic like product issue after Commerce’s final ruling on the scope clarification. Domestic interested party AHSIC, comprised primarily of shrimp fishermen, contends that the Commission should define the domestic like product to encompass both fresh warmwater

¹⁷ *Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp*, at 6 (Aug. 12, 2013) (“*Final Scope Ruling*”).

¹⁸ *Final Scope Ruling* at 6. Commerce added that “the best reading of the scope language as presented to the Department in the petitions and on which the Department initiated these investigations is that it includes brine-frozen shrimp because they are frozen shrimp.” *Id.* at 7. Commerce also noted that “the products that are the subject of the CVD petitions are the same as those covered by the antidumping duty orders.” *Id.*

¹⁹ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Preliminary), USITC Pub. 3672 at 14-15 (Feb. 2004) (“*2004 Preliminary Determinations*”); *Antidumping Duty Final Determination*, USITC Pub. 3748 at 6 (Jan. 2005).

²⁰ See generally *2011 Review Determinations*, USITC Pub. 4221 at 6.

²¹ Petitioner’s Prehearing Brief at 4-5, and Exhibit 2; Hearing Tr. at 43-44, and 98. Petitioner had made similar arguments in the preliminary phase of these investigations, acknowledging that its request was not based on a change in the facts traditionally examined in the domestic like product analysis. Conference Tr. at 66. Despite the fact that the scope was virtually identical to prior investigations and reviews, Petitioner indicated that it “never intended to include onboard brine-frozen shrimp within the scope of investigation” and that it had requested a clarification of the scope by Commerce. Petitioner’s Prehearing Brief at 4-5.

shrimp and those frozen articles described in the scope definition.²² It maintains that the record of these reviews does not provide any basis to “diverge from the Commission’s established definition of the domestic like product and domestic industry in these investigations.”²³ Respondents also argue that the domestic like product should include fresh warmwater shrimp as it has in the prior investigations and reviews.²⁴

Domestic Like Product Analysis

I find a single domestic like product, encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope of the investigations. As previously discussed, Commerce has clarified that the scope of the investigations includes onboard brine-frozen shrimp in addition to frozen further processed shrimp,²⁵ consistent with the Commission’s view in defining the domestic like product in the preliminary determinations.

In the preliminary determinations, the Commission also considered whether to include fresh warmwater shrimp in the definition of the domestic like product, as it did in prior Commission proceedings concerning this product.²⁶ Because fresh and processed frozen shrimp are products at different stages of the same production process, the Commission concluded that use of the “semifinished product” like product analysis was appropriate. The Commission found that the vast majority of fresh warmwater shrimp is dedicated for further processing into frozen shrimp; the initial stages of processing do not significantly change the physical characteristics and uses of the product and appear to add at most moderate value to the product; the basic processing needed to transform fresh shrimp to processed shrimp – freezing and deheading – can be and is performed directly on the vessel; and there are separate markets for harvested (whether fresh or brine-frozen) shrimp and processed warmwater shrimp in the sense that vessels sell their catch to a dock house or processor, while processors sell shrimp to end users and distributors. However, fresh shrimp and shrimp frozen on the vessel are both sold at the dock.²⁷

The record in the final phase of these investigations does not indicate that there have been any changes in the product characteristics of either fresh or frozen warmwater shrimp since the preliminary phase of the investigations to warrant defining the domestic like product differently.²⁸ Therefore, for the same reasons discussed in the preliminary determinations, I

²² AHSIC’s Posthearing Brief at 1-15.

²³ AHSIC’s Posthearing Brief at 2.

²⁴ Importers’ Prehearing Brief at 4; VASEP/SEAI’s Prehearing Brief at 4-6.

²⁵ *Final Scope Ruling* at 6. Offshore shrimping vessels brine-freeze shrimp on board the boat to temporarily preserve the shrimp while the boats are fishing. This permits the boats to make longer offshore trips, perhaps lasting as long as several weeks. Inshore shrimp boats place shrimp on ice or in ice slush in vats during their shorter voyages, so the shrimp arriving at the dock is fresh, i.e., never frozen. *Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701-TA-491-497 (Preliminary), USITC Pub. 4380 at 8 (Feb. 2013) (“*Preliminary CVD Determinations*”).

²⁶ *Preliminary CVD Determinations*, USITC Pub. 4380 at 8-11.

²⁷ *Preliminary CVD Determinations*, USITC Pub. 4380 at 10. Some of the shrimp sold at the dock is in fresh form (not in scope) and some has already been brine-frozen (included in the scope). *See, e.g., id.* at 9.

²⁸ CR at I-10-19; PR at I-8-14. Moreover, the domestic like product arguments Petitioner asserted in its prehearing brief were premised on an analysis of the scope that Commerce concluded were incorrect.

include fresh shrimp in the definition of the domestic like product, whether frozen on board a vessel or further processed suitable for commercial use or sale. In light of these factors, I define a single domestic like product encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope definition.

Domestic Industry

The domestic industry is defined as the domestic “producers as a whole 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.”²⁹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic producers of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁰

I must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 771(4)(B) of the Tariff Act. This provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.³¹ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each investigation.³²

²⁹ 19 U.S.C. § 1677(4)(A).

³⁰ In the prior antidumping duty investigations and reviews, the Commission found that processing activities such as deheading, grading, machine peeling, deveining, and cooking were all sufficient activities to constitute domestic production because these operations typically each required specialized equipment and added more value to the process than any preceding stage. By contrast, the Commission found that marinating and skewering do not constitute domestic production because they involved no specialized equipment and added relatively modest value to the processed shrimp product. Finally, the Commission found that breading could not constitute domestic production activity because breaded shrimp was not part of the domestic like product in the prior antidumping duty investigations and reviews. *Antidumping Duty Final Determinations*, USITC Pub. 3748 at 12-13; *2011 Review Determinations*, USITC Pub. 4221 at 8-9. In the preliminary determinations, the Commission found that the record did not indicate any change in the nature of shrimp processing since the time of the antidumping duty investigations and reviews, and thus made the same findings as it did in the prior proceedings concerning what shrimp processing activities constitute domestic production. *Preliminary CVD Determinations*, USITC Pub. 4380 at 11, n.45. The record in the final phase investigations provides no indication of a change in the nature of these processing activities. CR at I-15-I-17. Moreover, the parties have not addressed the issue. Thus, I make the same findings that I did in the preliminary determinations concerning the shrimp processing activities that constitute domestic production. Based on these findings, I find that each processor that submitted a response to the domestic producers’ questionnaire engages in sufficient production-related activities to be considered a domestic producer.

³¹ See *Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993); *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d mem.*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987).

³² The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and

One U.S. processor, Tampa Bay Fisheries, imported frozen shrimp directly from subject countries during the period of investigation.³³ As such, it is a related party as defined by the statute.³⁴ I find that appropriate circumstances exist to exclude Tampa Bay Fisheries from the domestic industry.³⁵

Tampa Bay Fisheries accounted for only *** of the domestic industry's production in 2012, a decline from *** in 2011 and *** in 2010.³⁶ Its imports of subject merchandise were relatively *** as a share of its domestic production during the period of investigation. Tampa Bay Fisheries' domestic production *** in 2012.³⁷ Its imports of subject merchandise, which were primarily from ***, *** in 2012.³⁸ Its annual ratios of subject imports to production *** in 2012.³⁹ Tampa Bay Fisheries stated at the staff conference that the domestic suppliers cannot provide the amount of shrimp that it needs nor generally supply the peeled shrimp which its customers require.⁴⁰ Tampa Bay Fisheries *** the petitions.⁴¹ In view of the foregoing, specifically its *** U.S. production and *** ratio of subject imports to production, which indicate its principal interest lies in importation, I find that appropriate circumstances exist to exclude Tampa Bay Fisheries from the domestic industry as a related party.

(3) the position of the related producer vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v United States*, 790 F. Supp. at 1168.

³³ CR at III-9 and Table III-9; PR at III-8 and Table III-9.

³⁴ Fifteen other U.S. processors did not import subject merchandise directly, but did purchase such merchandise. CR/PR at Table III-9. The Commission has previously concluded that a purchaser may be treated as a related party if it controls large volumes of subject imports. The Commission has found such control to exist when the domestic producer was responsible for a predominant proportion of an importer's purchases and these purchases were substantial. *See, e.g., Foundry Coke from China*, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 at 8-9 (Sept. 2001). Most of the processors that purchased subject merchandise did so in small amounts. Although in the U.S. market total annual imports from subject sources were at least 415 million pounds during each year of the period of review, CR/PR at Table IV-3, only two of these 15 processors purchased as many as one million pounds of imports in a calendar year. *** purchased *** in 2011 and 2012. CR/PR at Table III-9. *** purchased *** in 2010, but only *** in 2011 and *** in 2012. CR/PR at Table III-9. U.S. processors generally reported purchasing frozen shrimp to supplement their inventory, given the seasonality of the shrimp harvest, or due to customer requests or the Gulf oil spill. CR/PR at Table III-9, Note; Hearing Tr. at 139. The record consequently indicates that *** and the other 13 processors do not control large volumes of subject imports. Accordingly, I find that none of the processors that purchased subject merchandise warrants treatment as a related party.

³⁵ No party has addressed the related parties issue.

³⁶ CR/PR at Table III-2 and calculated from Tables III-4 and III-9.

³⁷ CR/PR at Table III-9.

³⁸ CR/PR at Tables III-9 and IV-1. Tampa Bay Fisheries also purchased substantial volumes of subject imports throughout the period: *** in interim 2013. CR/PR at Table III-9. Its purchases in full year 2012 represented about *** of total subject imports in that year. CR/PR at Tables III-9 and IV-3. Tampa Bay Fisheries also is related to U.S. importer Red Chamber, which accounted for about *** of total subject imports in 2012. CR/PR at Tables IV-1 and IV-2.

³⁹ CR/PR at Table III-9.

⁴⁰ CR/PR at Table III-9, Note, and Conf. Tr. at 115-116. Tampa Bay Fisheries did not report its reasons for importing or purchasing subject imports in its questionnaire response.

⁴¹ CR/PR at Table III-2.

Accordingly, in light of the definition of the domestic like product and the foregoing analysis, I define a single domestic industry encompassing all warmwater shrimp fishermen and processors of warmwater shrimp, except for Tampa Bay Fisheries.⁴²

Negligible Imports

Section 771(24) of the Tariff Act, which defines “negligibility,” provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or self-initiation, as the case may be, shall be deemed negligible.⁴³ The statute further provides that subject imports from a single country which comprise less than 3 percent of total such imports of the product may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries collectively accounts for more than 7 percent of the volume of all such merchandise imported into the United States.⁴⁴ In the case of countervailing duty investigations involving developing countries (as designated by the United States Trade Representative), the statute indicates that the negligibility limits are 4 percent and 9 percent, rather than 3 percent and 7 percent. Ecuador and Malaysia have been designated as developing countries, and India has been designated as a least developed country by the U.S. Trade Representative and thus are subject to the 4 percent and 9 percent negligibility limits.⁴⁵

Based on official import statistics, market shares for subject imports exceed the requisite 3 percent or 4 percent statutory negligibility threshold.⁴⁶ For the 12-month period from December 2011 to November 2012, imports from China and Vietnam (governed by the 3 percent standard) accounted for 3.2 percent and 8.3 percent, respectively, of total imports of frozen shrimp, as measured by quantity.⁴⁷ For the 12-month period from December 2011 to November 2012, imports from Ecuador, India, and Malaysia (governed by the 4 percent standard) accounted for 15.7 percent, 13.2 percent, and 4.4 percent, respectively, of total imports of frozen shrimp, as measured by quantity.^{48 49}

⁴² While there is limited U.S. farm production and no U.S. shrimp farming entities responded to the Commission’s questionnaire, U.S. shrimp farm producers would also be included in the domestic industry. Farm-raised shrimp production accounted for about *** of domestic production in 2012. CR at I-12, n.25; PR at I-9, n.25. U.S. shrimp aquaculture is constrained by the cost of coastal land and environmental and water quality regulations, among other factors. *Id.* and Hearing Tr. at 174.

⁴³ 19 U.S.C. § 1677(24)(A)(i).

⁴⁴ 19 U.S.C. § 1677(24)(A)(ii).

⁴⁵ 15 C.F.R. § 2013.1 (regarding negligible import standards for definition of “Developing Country” under 19 U.S.C. § 1677(36)(A) and definition of “Least Developed Country” under 19 U.S.C. § 1677(36)(B)).

⁴⁶ CR/PR at Table IV-4.

⁴⁷ CR/PR at Table IV-4.

⁴⁸ CR/PR at Table IV-4.

⁴⁹ The Malaysian Respondents contend that subject imports from Malaysia should be considered negligible because such imports have been at or near the negligibility level during the period of investigation. Whether imports from a particular subject country are “near” the negligibility standard during a three-year period of investigation is not the statutory standard. Instead, the statutory standard concerns whether imports are below a specific threshold during a specific 12-month period. 19 U.S.C. § 1677(24)(A)(i). The Malaysian Respondents do

The Chinese Respondent raises a number of arguments regarding the appropriate data that the Commission should use to calculate the negligibility levels.⁵⁰ It contends that use of the official Commerce statistics for the most recent 12-month period that precedes the filing of the petition to calculate negligibility levels for imports from China would not be accurate because such data include imports of nonsubject merchandise.⁵¹ While the official import statistics include certain “basket” classifications which may include nonsubject merchandise, the arguments raised by the Chinese Respondent, with one exception, rely on data that I believe are less reliable than the official import statistics.⁵² The one argument that warrants further consideration is premised on the fact that data from ***.⁵³ When the data for *** for the December 2011-November 2012 period.⁵⁴ Thus, in addition to the unadjusted official Commerce statistics, I have considered the negligibility levels for China with the adjustment made to *** subject merchandise to the United States.

I consequently conclude that subject imports from all five countries are not negligible.

Cumulation

For purposes of evaluating the volume and price effects for a determination of material injury by reason of subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.⁵⁵ In assessing whether subject imports compete with each other and with the domestic like product, the Commission generally has considered four factors:

- (1) the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

not dispute the data indicating that for the most recent 12-month period preceding the filing of the petition, subject imports from Malaysia exceed 4 percent of total imports. Malaysian Respondents’ Posthearing Brief at 2-4.

⁵⁰ Similar to the Malaysian Respondents, the Chinese Respondent also suggests calculating the negligibility levels for 12-month periods that are not consistent with the 12-month timeframe set forth in the statute. Because these arguments are contrary to the statute, I do not discuss them further. See Chinese Respondent’s Posthearing Brief at 7.

⁵¹ Chinese Respondent’s Posthearing Brief at 2-6.

⁵² The Chinese Respondent also proposes use of foreign producer questionnaire responses plus Customs Net Import File (“CNIF”) data for certain nonresponding exporters to calculate the Chinese negligibility level. Chinese Respondent’s Posthearing Brief at 7 and 8. This approach is not only contrary to the Chinese Respondent’s argument that CNIF data are not correct but also would combine questionnaire data from responding exporters with CNIF data for a “cherry-picked” nonresponding exporter but not for other nonresponding exporters. Given that questionnaire coverage is incomplete, I find Commerce statistics to be more reliable than Commission questionnaire responses for calculating negligibility. CR at IV-8, n.8 .

⁵³ Chinese Respondent’s Posthearing Brief at 5.

⁵⁴ CR at IV-8, n.8.

⁵⁵ 19 U.S.C. § 1677(7)(G)(i).

- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁵⁶

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁵⁷ Only a “reasonable overlap” of competition is required.⁵⁸

Petitioner contends that each of the four reasonable overlap factors supports cumulation of imports from the five countries in these investigations.⁵⁹ Respondents do not address the issue of cumulation for purposes of the present material injury analysis.

The threshold requirement for cumulation is satisfied because Petitioner filed the countervailing duty petitions with respect to all subject countries on the same day, December 28, 2012. In addition, none of the statutory exceptions to cumulation applies. As discussed below, I find a reasonable overlap of competition between subject imports from all five countries and between subject imports from each source and the domestic like product.

Fungibility. The record in these investigations indicates that there is a moderate degree of substitutability between U.S.-produced frozen shrimp and that imported from subject countries.⁶⁰ Most purchasers also reported that the U.S. product and subject imports “always”

⁵⁶ See *Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int’l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

⁵⁷ See, e.g., *Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁵⁸ The Statement of Administrative Action (SAA) to the Uruguay Round Agreements Act (URAA), expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” H.R. Rep. No. 103-316, Vol. I at 848 (1994) (*citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. at 902; see *Goss Graphic Sys., Inc. v. United States*, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); *Wieland Werke, AG*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”)).

⁵⁹ Petitioners’ Posthearing Brief at 2.

⁶⁰ CR at II-19. Most responding domestic processors reported that subject imports from all subject countries are “always” or “frequently” used interchangeably with each other and with the domestic like product. CR/PR at Table II-13. While most responding importers reported that subject imports are “sometimes” used interchangeably with each other and with the domestic like product, there also were a number of importers reporting that the subject imports and U.S. product were “never” interchangeable. *Id.* Importers reported that factors limiting interchangeability include differences in customer preferences, wild-caught and farm-raised shrimp, quality, geography, and species. Importers’ Prehearing Brief at 20-23. While most purchasers reported that subject imports are “always,” “frequently,” or “sometimes” used interchangeably with each other and with the domestic like product, there also were a number of purchasers reporting that the subject imports and U.S. product were “never” interchangeable. CR/PR at Table II-13.

or “usually” meet minimum quality specifications,⁶¹ and most purchasers reported that the U.S. product and shrimp from subject sources were comparable in product and shipment consistency, minimum quantity requirements, freshness, taste/ flavor profile, and their ability to meet purchasers’ quality standards.⁶²

Channels of Distribution. Both the domestic like product and the subject imports are sold to distributors, end users, and/or retail/institutional customers such as grocers and restaurants. The majority of both domestically produced product and subject imports in 2012 was sold to distributors, although the share to distributors and retail/institutional customers has differed among the subject countries and has fluctuated annually.⁶³

Geographic Overlap. Both U.S. producers and importers reported selling frozen shrimp to all regions in the contiguous United States.⁶⁴ Thus, frozen shrimp from all sources served a nationwide market during the period of investigation.

Simultaneous Presence in Market. Subject imports from all five countries entered the United States in every month of the period of investigation.⁶⁵

Conclusion. For the foregoing reasons, I cumulate subject imports from China, Ecuador, India, Malaysia, and Vietnam for purposes of my analysis of whether there is material injury by reason of subject imports.

Material Injury by Reason of Subject Imports

Based on the record in the final phase of these investigations, I find that an industry in the United States is not materially injured by reason of imports of frozen shrimp from China, Ecuador, India, Malaysia, and Vietnam that Commerce has found to be subsidized.

Legal Standards

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.⁶⁶ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁶⁷ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁶⁸ In

⁶¹ CR/PR at Table II-14.

⁶² CR/PR at Table II-12.

⁶³ CR/PR at Table II-1.

⁶⁴ CR at II-4 and Table II-2.

⁶⁵ CR at IV-9; PR at IV-8.

⁶⁶ 19 U.S.C. §§ 1671d(b), 1673d(b).

⁶⁷ 19 U.S.C. § 1677(7)(B). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

⁶⁸ 19 U.S.C. § 1677(7)(A).

assessing whether the domestic industry is materially injured by reason of subject imports, I consider all relevant economic factors that bear on the state of the industry in the United States.⁶⁹ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁰

Although the statute requires the Commission to determine whether the domestic industry is “materially injured or threatened with material injury by reason of” unfairly traded imports,⁷¹ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.⁷² In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.⁷³

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.⁷⁴ In performing its examination, however, the Commission need not isolate

⁶⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁷¹ 19 U.S.C. §§ 1671d(a), 1673d(a).

⁷² *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *aff’g*, 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

⁷³ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

⁷⁴ SAA at 851-52 (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); *accord Mittal Steel*, 542 F.3d at 877.

the injury caused by other factors from injury caused by unfairly traded imports.⁷⁵ Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.⁷⁶ It is clear that the existence of injury caused by other factors does not compel a negative determination.⁷⁷

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”⁷⁸ Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁷⁹

The Federal Circuit’s decisions in *Gerald Metals*, *Bratsk*, and *Mittal Steel* all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in *Bratsk* as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.⁸⁰ The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases,

⁷⁵ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n*, 266 F.3d at 1345 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing *Gerald Metals*, 132 F.3d at 722 (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁷⁶ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁷⁷ See *Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

⁷⁸ *Mittal Steel*, 542 F.3d at 877-78; see also *id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.”) citing *United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁷⁹ *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also *Mittal Steel*, 542 F.3d at 879 (“*Bratsk* did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

⁸⁰ *Mittal Steel*, 542 F.3d at 875-79.

including the *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago* determination that underlies the *Mittal Steel* litigation.

Mittal Steel clarifies that the Commission's interpretation of *Bratsk* was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have "evidence in the record" to "show that the harm occurred 'by reason of' the LTFV imports," and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.⁸¹ Accordingly, I do not consider that it is required to apply the replacement/benefit test that was included in Commission opinions subsequent to *Bratsk*.

The progression of *Gerald Metals*, *Bratsk*, and *Mittal Steel* clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.⁸²

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard.⁸³ Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.⁸⁴

Conditions of Competition and the Business Cycle

The following conditions of competition inform my analysis of whether there is material injury by reason of subject imports.

Demand Considerations

Frozen shrimp continues to be used principally in meal preparations. Demand for the product comes primarily from retail sellers of both prepared and unprepared warmwater

⁸¹ *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission's alternative interpretation of *Bratsk* as a reminder to conduct a non-attribution analysis).

⁸² To that end, after the Federal Circuit issued its decision in *Bratsk*, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

⁸³ I provide in my respective discussions of volume, price effects, and impact a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

⁸⁴ *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp.*, 458 F.3d at 1350, citing *U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

shrimp, such as grocers and restaurants.^{85 86} During the period of investigation, U.S. consumption of shrimp per capita was consistent from year to year, at about 4.0 pounds.⁸⁷ There is some seasonality in U.S. demand for shrimp, which typically is higher around the Easter, Christmas and New Year's holidays.⁸⁸

Apparent U.S. consumption of frozen shrimp fluctuated within a relatively narrow range during the period of investigation. Apparent U.S. consumption was 1.25 billion pounds in 2010, increased to 1.30 billion pounds in 2011, and declined to *** in 2012.⁸⁹ These levels of apparent U.S. consumption are consistent with historical levels in prior investigations and reviews.^{90 91} Domestic processors' perceptions of whether U.S. demand changed during the period of investigation differed from those of U.S. importers and purchasers.⁹² Firms reported the following reasons for why the demand for frozen shrimp declined: the recession, more price sensitive customers, imports, the BP Oil Spill, increased prices, reduced quality, and availability. Firms that reported an increase in demand stated that this trend was driven by the reported health benefits of eating seafood/shrimp (a low-fat food), more eating out, the popularity of shrimp, promotion of seafood, price increases for competing meats, stable supply, high quality,

⁸⁵ CR at II-15. Petitioner reports that the food service industry purchases the majority of frozen shrimp in the United States and that larger shrimp are used as a "center-of-the-plate item," accounting for the largest portion of the cost of the meal. CR at II-15 and II-16; PR at II-11. In the prior antidumping duty investigations, it was estimated that 80 percent of shrimp in the U.S. market is bought by restaurants. CR at I-13; PR at I-10. In recent years, larger restaurant chains and U.S. seafood processors (*i.e.*, breaders, skewers, and marinaters) have demanded frozen shrimp in larger quantities, with year-round availability, standardized sizes, and lower prices. CR at II-15.

⁸⁶ The market tendency is for large shrimp (less than 36 per pound, heads-off, shell-on basis) to be sold raw and frozen to restaurants, hotels, and other food institutions; for small to medium shrimp (36-60 per pound) to be breaded, canned or sold at retail (*e.g.*, supermarkets); and for extra small (61 to 70 per pound) and tiny shrimp (more than 70 per pound) to be used by canners, dryers, and producers of specialty products. CR at I-13; PR at I-10.

⁸⁷ CR at I-13; PR at I-10.

⁸⁸ CR at II-15.

⁸⁹ CR/PR at Table IV-6. Apparent U.S. consumption was *** million pounds during January-March 2012. *Id.* Because NOAA Fisheries Service data on domestic shipments (wild catch landings from the Gulf region) are not yet available for March 2013, apparent U.S. consumption and market share for interim 2013 were not available. See CR/PR at Tables IV-5 and IV-6. By contrast, interim period data collected in the Commission questionnaires are reported on a January-March basis for both 2012 and 2013.

⁹⁰ See *2011 Review Determinations*, USITC Pub. 4221 at Table I-15; *Antidumping Duty Final Determinations*, USITC Pub. 3748 at Table IV-4; VASEP/SEAI's Prehearing Brief at Exhibit 8.

⁹¹ Petitioner requests that the Commission include 2009 in its period of investigation due to supply disruption caused by the April 20, 2010 "Deepwater Horizon" incident in the Gulf of Mexico ("BP Oil Spill") and the substantial decrease in landings that it caused. Petitioner's Posthearing Brief at 5; Petitioner's Prehearing Brief at 10-14. As discussed below, while I have looked at the 2010 data in light of the BP oil spill, I also note that landings historically have fluctuated from year to year and in some prior years have been at levels somewhat comparable to 2010. See *2011 Antidumping Review Determinations*, USITC Pub. 4221 at Table I-15; *Antidumping Duty Final Determinations*, USITC Pub. 3748 at Table IV-4.

⁹² Most processors reported decreases in demand while most importers and purchasers reported increases or no change in demand. CR/PR at Table II-5; Petitioner's Prehearing Brief at 14-15; Importers' Prehearing Brief at 9; see also VASEP/SEAI's Prehearing Brief at 7.

consistent specifications, improving economy, increasing market share, and increased offers of U.S. product and shortage of large sized imports.⁹³

Supply Considerations

Domestically produced shrimp is overwhelmingly wild caught (ocean harvested).⁹⁴ Harvesting takes place in the waters of the Gulf of Mexico and off the Atlantic Coast from the Carolinas to Florida.⁹⁵ In the United States, the main fishing season is from May to December, with different times of the year being better for different species and sizes of shrimp.⁹⁶ During the off season (roughly January through April), some fishermen make repairs and upgrades, and U.S. processors make sales from inventory. Historically, prices have been higher when the supply of both fresh and frozen shrimp is lower, such as in the off season.⁹⁷ Phenomena that affect the waters in which shrimp is harvested and in the coastal areas where fishing boats are docked and processing plants are located will also affect the supply of the domestic like product. Processors reported that hurricanes and other weather-related problems, pollution-caused diseases, and “black gill” disease affected the shrimp harvest and consequently the supply of frozen shrimp.⁹⁸ Additionally, areas in the Gulf were closed to fishing for various periods of time in 2010 because of the BP Oil Spill; most U.S. processors said the BP Oil Spill both reduced supply and undermined demand, while British Petroleum (“BP”)’s willingness to pay for losses and its hiring of boats for the clean-up effort reduced the number of boats engaged in shrimping.⁹⁹

Respondents argue that the supply of U.S. shrimp is finite and the processors depend on biological factors (*e.g.*, how many shrimp can be harvested from the Gulf and southern Atlantic coast) for their livelihood.¹⁰⁰ During the period of investigation, the domestic industry supplied

⁹³ CR at II-16 and II-17.

⁹⁴ CR at I-12 and II-1; PR at I-9 and II-1.

⁹⁵ CR at II-5.

⁹⁶ CR at II-6.

⁹⁷ CR at II-6 and II-7.

⁹⁸ CR at II-9 and II-10.

⁹⁹ CR at II-9. In June 2010, as much as 37 percent of the Gulf of Mexico was closed to fishing due to the BP Oil Spill, and portions of state waters closed to fishing ranged from 2 percent (Florida) to 95 percent (Mississippi). The spill lasted for nearly three months during the prime fishing season, and a small area close to the well that caused the spill remained closed for much longer. Petitioner’s Prehearing Brief at 11 and Exhibit 4 (“The Deepwater Horizon Oil Spill and the Gulf of Mexico Fishing Industry,” Congressional Research Service at 1 (Feb. 17, 2011)); *see also* 2011 Review Determinations, USITC Pub. 4221 at II-5, n.10. During this period, a large percentage of the Gulf shrimping fleet received payments from BP either for assistance in the Gulf clean-up or as compensation for damages. Because boats used in the clean-up effort were not shrimping, supply was lower. CR at II-9.

¹⁰⁰ Importers’ Prehearing Brief at 8; *see also* VASEP/SEAI’s Prehearing Brief at 13-15. As the Commission previously has noted, “there is no short supply provision in the statute” and “the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports.” *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 108, n.310 (Dec. 2003); *see also* *Small Diameter Graphite Electrodes from China*, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 22-23 (Feb. 2009); *Sodium Hexametaphosphate from China*, Inv. No. 731-TA-1110 (Final), USITC Pub. 3984 at 27 n.109 (Mar. 2008).

between 9.6 percent and *** of apparent U.S. consumption on an annual basis.¹⁰¹ That is substantially less than the share supplied by either subject or nonsubject imports.¹⁰²

Shrimp imported from subject sources is primarily farm raised; shrimp of many different species can be farmed, and shrimp farms generally are designed principally to produce shrimp for export.¹⁰³ Most importers describe the subject imports as having no business cycles or seasonality because farming permits year-round availability.¹⁰⁴ However, farmed shrimp are more prone than wild shrimp to exposure to diseases that may dramatically impact harvest levels because shrimp populations in ponds are much denser.¹⁰⁵ A disease called Early Mortality Syndrome (“EMS”) is currently affecting farm-raised shrimp in three subject countries (China, Malaysia and Vietnam) and nonsubject country Thailand.¹⁰⁶ While the specific cause of EMS was identified in the spring of 2013, there still is no test that can reliably identify infected broodstock. Opinions consequently differ as to how quickly the disease will be contained and when production levels in these countries will recover.¹⁰⁷ ***.¹⁰⁸

Subject imports supplied a large share of apparent U.S. consumption during the period of investigation, ranging from 33.2 percent to *** of the U.S. market on an annual basis.¹⁰⁹ Imports from three of the subject countries (China, India, and Vietnam) were subject to antidumping duty orders during the period of investigation.¹¹⁰

Nonsubject sources supplied the majority of the U.S. market, but their share declined from 57.2 percent in 2010 to 53.8 percent in 2011 and *** in 2012.¹¹¹ The largest sources of nonsubject imports during the period of investigation were Thailand, Indonesia, and Mexico. Other major nonsubject sources included Honduras, Peru, Guyana, Bangladesh, Singapore, and Venezuela.¹¹²

¹⁰¹ CR/PR at Table IV-6.

¹⁰² CR/PR at Table IV-6.

¹⁰³ CR at II-11. Imports of shrimp from nonsubject sources are available both as farmed and wild-caught; Mexico, the third largest nonsubject source of imports, provides wild-caught shrimp with the same seasonal supply period as U.S. product. *Id.* at II-13.

¹⁰⁴ CR at I-11 and II-7.

¹⁰⁵ CR at I-11; PR at I-9.

¹⁰⁶ CR at I-11; PR at I-9. Some farms in China and Thailand reportedly have lost 60 to 80 percent of their stock to the disease. *Id.*

¹⁰⁷ CR at I-11; PR at I-9. According to Petitioner, the industries in the affected countries have learned to control the diseases after major research this year and are expected to recover by the end of this year or in 2014. Petitioner’s Prehearing Brief at 18-19; Hearing Tr. at 43-44. Respondents argue that while the disease was recently identified, a reliable cure has not been developed and it likely will take longer to recover. Importers’ Prehearing Brief at 5-7; Hearing Tr. at 189.

¹⁰⁸ CR at I-12; PR at I-9.

¹⁰⁹ CR/PR at Table IV-6.

¹¹⁰ The antidumping duty orders covering shrimp from Ecuador were revoked with respect to all producers on August 15, 2007. 72 Fed. Reg. 48257 (Aug. 23, 2007). The order on subject imports from India was revoked with respect to producer Devi effective February 1, 2009. 75 Fed. Reg. 41813 (July 19, 2010). The United States also maintains antidumping duty orders on imports of frozen shrimp from Brazil and Thailand, CR at I-6 and I-7, but imports from Brazil and Thailand are not subject to these countervailing duty investigations.

¹¹¹ CR/PR at Table IV-6.

¹¹² CR at II-13 and II-14.

Substitutability

The parties have expressed divergent views on the substitutability of the domestic like product and the subject imports, with Petitioner arguing that the products are at least moderately substitutable¹¹³ and Respondents arguing that any competition between the domestic like product and the subject imports is attenuated.¹¹⁴ As indicated in the discussion of cumulation, U.S. processors and importers provided different general assessments of interchangeability, with U.S. processors overwhelmingly reporting that the domestic like product and imports from each subject country were “always” or “frequently” interchangeable, and most responding importers reporting that the domestic like product and imports from each subject country were “sometimes” interchangeable.¹¹⁵ Most purchasers reported that subject imports are “always,” “frequently,” or “sometimes” used interchangeably with each other and with the domestic like product.¹¹⁶ Most purchasers also reported that the U.S. product and subject imports “always” or “usually” meet minimum quality specifications,¹¹⁷ and most purchasers reported that the U.S. product and shrimp from subject sources were comparable in product and shipment consistency, minimum quantity requirements, freshness, taste/flavor profile, and their ability to meet purchasers’ quality standards.¹¹⁸

When asked whether differences other than price are ever significant to purchasers in choosing between shrimp from subject countries and shrimp from the United States, a plurality of responding domestic processors reported “never.”¹¹⁹ Responding importers were divided on the question, with a plurality reporting that differences other than price are “always” significant comparing the U.S. product to subject imports, but only “sometimes” between subject sources.¹²⁰ Responding purchasers also were divided on the question, with a plurality reporting

¹¹³ Petitioner’s Posthearing Brief at 3-4; Petitioner’s Prehearing Brief at 19-24. Petitioner contends that imported and domestic product compete across the market, at the same major purchasers, in retail, food service, and distribution, and across product forms, sizes, and types, and that purchasing decisions come down to price. According to Petitioner, domestic producers produce a full range of value-added shrimp, prices for different species fluctuate within a narrow band, and no consistent premium is paid for a particular type of shrimp. Petitioner also refutes claims that the domestic industry cannot serve large national accounts under long-term contracts.

¹¹⁴ Importers’ Prehearing Brief at 10-15; VASEP/SEAI’s Prehearing Brief at 15-16; VASEP/SEAI’s Posthearing Brief at 1-2 and 10-13. Respondents argue that domestic wild-caught shrimp and imported farm-raised shrimp are interchangeable only in the broadest sense, *i.e.*, both forms can be cooked and eaten with little difference in taste noted by the average consumer, and that domestic wild-caught shrimp is not a substitute for the vast majority of buyers. Thus, they argue that competition between domestic and imported shrimp is attenuated for a wide variety of reasons, including differences between wild-caught and farm-raised shrimp; species of shrimp; size, flavor and texture of shrimp; degree of processing; country of origin; year-round vs. seasonal availability; contract vs. spot sales; ability to supply large volumes; individually quick frozen (IQF) vs. block-frozen forms; and other factors. According to Respondents, significant purchasers buy both or, to put it another way, they have no preference for either because they seek to satisfy as many customers as they can in order to maximize their revenues and profits.

¹¹⁵ CR/PR at Table II-13.

¹¹⁶ CR/PR at Table II-13.

¹¹⁷ CR/PR at Table II-14.

¹¹⁸ CR/PR at Table II-12.

¹¹⁹ CR/PR at Table II-15.

¹²⁰ CR/PR at Table II-15.

that differences other than price are “always,” “frequently,” or “sometimes” significant comparing the U.S. product to subject imports, but only “sometimes” between subject sources.¹²¹

One distinction between the domestic like product and the subject imports is that the domestic like product is overwhelmingly wild-caught, while the subject imports are predominantly farm-raised. However, the record does not indicate that this distinction, taken alone, significantly limits substitutability between the domestic like product and the subject imports. The record in these investigations also does not indicate clear distinctions in the markets or customers served by the domestic like product and the subject imports. Both the domestic like product and the subject imports are available in every region of the country and through the same channels of distribution.¹²²

The record indicates that the domestic industry supplies all major product forms. Although a large proportion of domestic production is block-frozen product, the domestic industry has the capacity to produce appreciable quantities of IQF product.¹²³ The domestic industry also offers products in all possible size ranges. Similarly, the record does not indicate any major product form that the subject imports do not supply.¹²⁴

I find that differences in product mix and availability among the subject imports and the domestic like product limit to some extent the substitutability of warmwater shrimp from different sources. Nevertheless, I do not perceive significant differences in availability or product range among the domestically produced and subject products. I find that the record in these investigations supports finding that the products are at least moderate substitutes and that they compete for sales in the U.S. market.

Other Conditions

Most U.S. processors and importers of Chinese product reported selling frozen shrimp in the spot market, while most importers of frozen shrimp from the other four subject countries reported selling frozen shrimp under short-term contracts.¹²⁵ Both U.S. processors and importers entered into short-term contracts of three to six months duration with both price and quantity fixed.¹²⁶

U.S. processors reported that fuel is the most important cost for fishermen.¹²⁷ High fuel costs can serve as a disincentive to fishermen to take their boats out to harvest shrimp.¹²⁸

¹²¹ CR/PR at Table II-15.

¹²² CR/PR at Tables II-1 and II-2. The majority of both domestically produced product and subject imports in 2012 was sold to distributors, although the share to distributors and retail/institutional customers has differed among the subject countries and has fluctuated annually. *Id.* at Table II-1.

¹²³ CR/PR at Table III-6.

¹²⁴ *See, e.g.*, CR/PR at Tables III-6 and VII-7.

¹²⁵ CR/PR at Table V-2. For responding U.S. processors and importers of Chinese product, 86.9 percent and 74.0 percent, respectively, reported selling frozen shrimp in the spot market. *Id.*

¹²⁶ CR at V-3; PR at V-3. Two importers that use long-term contracts reported providing such contracts for two years or less. *Id.*

¹²⁷ CR/PR at V-1; Conf. Tr. at 39 (“Fishermen in turn need to be able to cover their cost of production, the most significant of which is fuel.”).

Diesel prices in the Gulf Coast region increased irregularly from about \$3 to \$4 per gallon from January 2010 to May 2011, and then remained at about the \$4 level through June 2013.¹²⁹

Volume of Subject Imports

As discussed above in Conditions of Competition, the United States and certain of the subject countries' industries faced supply challenges during the period of investigation. The BP (Gulf) oil spill affected the volume of shrimp available to domestic processors in 2010 and diseases impacted certain subject and nonsubject producers later in the period of investigation.

Despite these challenges for subject frozen shrimp imports, cumulated subject import volume was significant in absolute terms, and increased, throughout the period. These imports totaled 415.2 million tons in 2010, capturing a 33.2 percent share of the domestic market. Subject imports increased each of the following two years, reaching 462.3 million pounds in 2011 and 484.8 million pounds in 2012. The January-March 2013 volume totaled 107.8 million pounds, compared to 99.3 million pounds in January-March 2012. Overall, subject imports increased to a share of apparent U.S. consumption of *** percent in 2012, *** percentage points above the 2010 market share.¹³⁰

This increase is particularly significant in light of several conditions prevailing in the US market. Overall, apparent U.S. consumption declined over the period of investigation, 2010-12, by *** percentage points. While the U.S. industry was able to make a small gain in market share, increasing to *** percent in 2012 from 9.6 percent in 2010, it was the subject imports that captured the largest increase.¹³¹ When the shrimp industries in several Asian countries developed EMS, including subject producers in China and Malaysia, and the largest producer and source for U.S. imports, Thailand, the U.S. market experienced a sudden shortage of supply from the affected countries. Although recognizing that imports supply the majority of domestic consumption, the domestic industry had reasonably expected to be able to take advantage of this supply opportunity, in attempting to regain sales volumes and return to pre-spill levels similar to those experienced in 2009, as it recovered from the impact on its operations from the BP oil spill and its aftermath.

Instead, subject producers were able to quickly ramp up production and exports to the U.S. market. Combined data for the five subject countries shows that capacity and production increased during the period of investigation by 15.6 and 13.7 percent, respectively, enabling them to take advantage of declining imports from EMS-affected countries to increase their U.S. market presence in both absolute and relative terms. Accordingly, I find the volume of subject imports to be significant, both absolutely and relative to domestic consumption.

¹²⁸ CR/PR at II-5, and V-1; Hearing Tr. at 36, 65 and 71 ("A fisherman has no incentive to do so {go out every day to catch the shrimp} if the price he gets at the dock cannot cover the cost of fuel, maintenance, labor, food, and other costs, and eventually the shrimper has to make the only rational business decision he can: tie up the boat.").

¹²⁹ CR/PR at Figure V-1.

¹³⁰ CR/PR at Tables IV-6.

¹³¹ Table IV-6.

Price Effects of Subject Imports

As the Commission found in its preliminary determinations, domestic and subject imported frozen warmwater shrimp are at least moderate substitutes. As discussed above in conditions of competition, domestic processors, importers of subject merchandise and purchasers reported that domestic frozen shrimp and the subject imports are interchangeable at least to a certain degree, and comparable in nearly all factors addressed. The most significant differences other than price were availability and reliability of supply.¹³² While the importance of these two attributes is undeniable, even for these, responses showed a substantial number of purchasers rating the U.S. product as comparable to subject imports.¹³³ Prices are negotiated on a near daily basis, contributing to price sensitivity in the U.S market. Thus, while the US and subject imported frozen shrimp show some level of differentiation, the market, particularly purchasers, find a substantial degree of comparability between the products, supporting the importance of price as a one of the leading considerations in purchasing decisions.

During the period of investigation, subject imports undersold the domestic like product in 168 of 333 quarterly comparisons, or 50.5 percent of instances.¹³⁴ Further, as COGSI argued and the record supports, underselling in each year occurred in over half of all comparisons, thus not lessening over the period as the domestic industry attempted to recover from the Gulf oil spill and the market faced some disruption as certain significant suppliers were affected by EMS.¹³⁵ This level of underselling persisted despite certain of the subject imports being covered by antidumping duty orders and overall improvements in price trends during the period. Underselling allowed the subject imports to capture more of the market space vacated by EMS-affected countries than what the domestic industry gained. I find this underselling to be significant.

I also find that petitioners' arguments as to price suppression are supported by the record. Despite strong price increases during the period of investigation, domestic processors were not able to fully cover increases in cost of goods sold. Unit COGS improved from *** to *** per pound during 2010-12, or by *** percent, while the unit value of net sales improved by less, from *** to *** per pound, or by *** percent.¹³⁶

I find that the substantial and increasing volume of subject imports has prevented price increases, which otherwise would have occurred, to a significant degree.

¹³² CR/PR at Table II-12 – II-14.

¹³³ Table II-12 showed that for availability, 32 purchasers reported the U.S. shrimp as comparable, 44 reported it as inferior, and 4 reported superior. For reliability of supply, results were 37 reporting the U.S. product as either comparable or inferior, and 4 reporting it as superior.

¹³⁴ I note that Product 1 includes both deveined and undeveined product, which the Commission determined to neither give controlling weight nor disregard, in the previous antidumping duty investigations. If Product 1 were excluded, underselling by the subject imports would increase in magnitude, to *** percent of comparisons, or *** CR/PR at Table V-3.

¹³⁵ CR/PR at Table V-3-V-9.

¹³⁶ Supplemental Summary Table, EDIS Document Number 518620 (“Suppl. Summary”) at Table C-2.

Impact of Subject Imports

The domestic industry is comprised of both processors and fishermen. COGSI argued that while the domestic industry has seen some improvements since 2010, when the oil spill disrupted their operations, they have not returned to the prior sales level or domestic market share because of the rising volumes and price impact of the subject imports. Although parties are divided as to how best to interpret the domestic industry's financial results, it is clear that the domestic industry has not performed well during the period of investigation.

U.S. fishermen's shipments initially improved in 2011, with shrimp harvested increasing from 9.2 million pounds in 2010 to 10.6 million pounds in 2011, before falling to 9.6 million pounds in 2012. The interim 2013 harvest data show 644 thousand pounds compared to 1.1 million pounds in interim 2012. Employment data followed a similar overall downward trend. Interim data show a nearly 50 percent decline, with 2,366 PRWs during interim 2013 compared to 4,253 PRWs in interim 2012. The number of days boats were at sea likewise declined over the period of investigation, from 19,108 in 2010 to 18,201 in 2012; interim 2013 days were 2,434 compared to 3,404 in 2010.¹³⁷

Fishermen's shipments by volume and value also initially improved in 2011 over 2010, before falling in 2012. All interim 2013 indicators were below the comparable ones in interim 2012. U.S. shipments increased from 9.4 million pounds in 2010 to 10.9 million pounds in 2011, before falling to 9.7 million pounds in 2012; interim 2013 U.S. shipments were 686 million pounds compared to 1.1 million pounds shipped during interim 2012. The per pound value of shipments for U.S. fishermen improved from \$3.63 in 2010 to \$3.80 in 2011, before falling to \$3.77 in 2012. Interim 2013 U.S. shipments were \$4.13 per pound, below the \$4.32 level reported for interim 2012.¹³⁸

Domestic processors' performance and certain financial indicators generally improved over the period of investigation, although its financial performance remained lackluster. Production gains were strong, as could be expected as fishing and processing again picked up as the Gulf was re-opened to the industry in 2010. Production improved by *** percent from 2010 to 2012, from *** million pounds to *** million pounds; the interim 2013 production level however was well below that in 2012, *** million pounds compared to *** million pounds, a difference of *** percent. U.S. shipments initially gained in 2011, reaching *** million pounds from *** million pounds in 2010, before falling somewhat in 2012 to *** million pounds.¹³⁹

While the domestic industry showed overall production and shipment improvements, this follows the low 2010 levels impacted by the inability to fish and process shrimp during much of the 2010 shrimping season. The fact that unsold inventories represented a large and increasing percentage of the volume of U.S. producers' total shipments undercuts arguments that rising domestic production contributed to any overall improved performance of the domestic processors.¹⁴⁰

¹³⁷ CR/PR at Table D-3.

¹³⁸ CR/PR at Table D-2.

¹³⁹ Suppl. Summary at Table C-2.

¹⁴⁰ Inventory quantities were *** million pounds in 2010 and *** million pounds in 2011, before increasing to *** million pounds in 2012, an increase of nearly *** percent over 2011. As a share of shipments, inventories grew from *** percent of shipments in 2010 and *** percent in 2011, to *** percent in 2012, an increase of ***

The domestic industry's financial results were weak throughout the period. Net sales improved overall despite a drop in 2012 compared to 2011, from *** million pounds in 2010 to *** million pounds in 2011, an increase of *** percent, and *** million pounds in 2012, a drop of *** percent. The value of net sales initially increased consistent with the volume improvement, from *** million in 2010 to *** million in 2011, or by *** percent, before dropping to *** million in 2012, or by *** percent. This suggests that value held up somewhat, falling by less than the decline in net shipment volume. However, unit costs continued to increase, by *** percent overall and by *** percent from 2011 to 2012, when most production and shipment indicators fell. The domestic industry showed a *** percent operating margin in 2010, *** in 2011 and *** in 2012. This, however, reflects the higher SG&A costs in that year. Nevertheless, even adjusting for these SG&A costs, as argued by respondents, as well as anomalous company-specific COGS,¹⁴¹ the domestic industry still recorded only a very small (essentially break-even) operating profit in 2012, of *** percent.¹⁴²

As discussed above, I have found the cumulated volume of subject imports and the market share of those imports to be significant over the period of investigation, along with significant underselling and significant price suppression.

In conducting my impact analysis, I have also considered the role of other factors so as not to attribute injury from other factors to subject imports. I have considered the role of nonsubject imports, including any role that may be played by now-nonsubject imports from Thailand, the largest single supplier to the U.S. market. Nonsubject import share declined sharply over the period of investigation, largely due to the impact of EMS on certain Asian suppliers. Nonsubject imports fell from 57.2 percent of the market in 2010 to *** percent in 2012, with Thailand accounting for the largest decline, *** percentage points, compared to a *** percentage point drop overall for nonsubject product. Although arguments have been made by the domestic industry that the Thai industry and others will recover ahead of time frames argued by the respondents, data on the record suggest that while producers of the subject product in Vietnam may be experiencing some recovery,¹⁴³ producers in Thailand have not yet showed increased export volumes and instead remain at levels well below those early in the investigation period.

Natural and manmade disasters such as the oil spill that affected the domestic industry's performance during the period of investigation are commonplace for this industry. I note that

percent over 2011, and growing at the same time that domestic shipments fell by *** percent. Suppl. Summary at Table C-2.

¹⁴¹ VASEP/SEAI's Posthearing Brief at 1-7; Importers' Posthearing Brief at 1; Importers' Prehearing Brief at 36-47; VASEP/SEAI's Prehearing Brief at 27-31.

¹⁴² CR at VI-12-13, n. 35 and VI-15, n.41; PR at VI-7, n. 35 and VI-8, n.41. With respect to the industry's profitability, respondents argue the Commission should give weight to funds received from BP and accounted for as "other income." Although I find that funds received from BP are properly excluded from operating income, I recognize that funds spent impacted SG&A expenses for the industry as a whole, as some companies applied these funds to pay compensation and other costs incurred prior to the period of investigation. Nevertheless, even adjusting oil spill compensation as argued by respondents does not change the fact that the domestic industry was only marginally profitable at best during the investigation period.

¹⁴³ CR at I-11 and 12; PR at I-9. Petitioner's Prehearing Brief at 18-19; Importers' Prehearing Brief at 5-7' Hearing Tr. At 43-44 and 189.

the Commission's analysis requires that I take the industry as I find it.¹⁴⁴ The domestic industry's supply was affected by the oil spill during 2010, but began to improve to pre-spill levels in 2011. Subject imports gained U.S. market share throughout 2011 and 2012 however, with the most significant increase occurring in 2012, when the domestic industry showed its weakest performance of the period.¹⁴⁵

Consequently, I find that the cumulated subject imports have had a significant adverse impact on the domestic industry producing frozen warmwater shrimp.

I therefore determine that the domestic industry producing frozen warmwater shrimp is materially injured by reason of cumulated subject imports from China, Ecuador, India, Malaysia and Vietnam.

¹⁴⁴ See Iwatsu Electric Co. v. United States, 758 F. Supp. 1506, 1512, 1518 (Ct. Int'l Trade 1991.)

¹⁴⁵ Suppl. Summary at Table C-2.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by the Coalition of Gulf Shrimp Industries (“COGSI”), Biloxi, MS, on December 28, 2012, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of frozen warmwater shrimp¹ from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. The following tabulation provides information relating to the background of these investigations.^{2 3}

Effective date	Action
December 28, 2012	Petition filed with Commerce and the Commission; institution of the Commission's investigation (78 FR 764, January 4, 2013)
January 25, 2013	Commerce's notice of initiation (78 FR 5416)
February 15, 2013	Commission's preliminary determinations (78 FR 11221)
June 4, 2013	Commerce's preliminary determination; scheduling of final phase of Commission investigation (78 FR 35643, June 13, 2013)
August 19, 2013	Commerce's final determinations (78 FR 50379-50394)
August 19, 2013	Commission's termination of investigations on Indonesia and Thailand (78 FR 54912, September 6, 2013)
August 13, 2013	Commission's hearing
September 20, 2013	Commission's vote
October 21, 2013	Commission's determination to Commerce

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

¹ See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to these investigations.

² Pertinent *Federal Register* notices are referenced in app. A, and may be found at the Commission's website (www.usitc.gov).

³ A list of witnesses that appeared at the hearing is presented in app. B.

shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

. . .

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether. . .(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

. . .

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to . . . (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of report

Part I of this report presents information on the subject merchandise, subsidy margins, and domestic like product. *Part II* of this report presents information on conditions of

competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV* and *V* present the volume of subject imports and pricing of domestic and imported products, respectively. *Part VI* presents information on the financial experience of U.S. processors. *Part VII* presents the statutory requirements and information obtained for use in the Commission’s consideration of the question of threat of material injury as well as information regarding nonsubject countries.

MARKET SUMMARY

Apparent U.S. consumption of frozen warmwater shrimp totaled approximately *** billion pounds (\$*** billion) in 2012. U.S. shipments⁴ of frozen warmwater shrimp totaled *** million pounds (\$*** million) in 2012, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from subject sources totaled 484.8 million pounds (\$1.9 billion) in 2012 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from nonsubject sources totaled 596.8 million pounds (\$2.4 billion) in 2012 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C, table C-1.⁵ U.S. industry data in *Part III* of this report are based on questionnaire responses of 48 firms, 39 of which provided usable data, which accounted for *** percent of U.S. production of frozen warmwater shrimp during 2012.⁶ U.S. imports are based on official Commerce import data and from questionnaire responses from 31 companies, representing 40.7 percent of total subject imports, 78.1 percent of imports from China, 36.9 percent of imports from Ecuador, 31.1 percent of imports from India, 33.6 percent of imports from Malaysia, and 45.3 percent of

⁴ U.S. shipments are derived from National Marine Fisheries Service (“NMFS”) data.

⁵ Import data presented in table C-1 are based on official Commerce statistics. U.S. industry data presented in table C-1 are based on questionnaire responses from U.S. processors. Apparent U.S. consumption totals presented in table C-1 are based on U.S. industry data provided by NMFS and official Commerce import statistics.

⁶ Staff’s coverage estimate is based on a comparison of data compiled from Commission questionnaires to official NMFS statistics for wild catch landings data and Granvil Treece, Texas A&M for farmed production data.

imports from Vietnam between 2010 and 2012.⁷ A summary of trade and financial data as well as related information for fishermen as collected is presented in appendix D.⁸ Appendix E contains alleged effects of imports on U.S. processors' existing development and production efforts, growth, investment, and ability to raise capital. Appendix F contains alleged effects of imports on U.S. fishermen's existing development and production efforts, growth, investment, and ability to raise capital. Appendix G contains processor-specific financial information.

PREVIOUS AND RELATED INVESTIGATIONS

Frozen warmwater shrimp has been the subject of prior antidumping duty investigations in the United States. On December 31, 2003, following receipt of a petition filed with the Commission and Commerce by the Ad Hoc Shrimp Trade Action Committee, Washington DC, the Commission instituted antidumping duty investigations on certain frozen and canned warmwater shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam (Inv. Nos. 731-TA-1063-1068). In January 2005, the Commission determined that an industry in the United States was materially injured by reason of frozen warmwater shrimp imports from Brazil, China, Ecuador, India, Thailand, and Vietnam, found by Commerce to be sold in the United States at LTFV.⁹

In May 2005, pursuant to section 751(b) of the Act, the Commission instituted changed circumstances investigations (Inv. Nos. 751-TA-28-29) on the antidumping duty orders from India and Thailand. In November 2005, the Commission determined that revocation of the antidumping duty orders covering warmwater shrimp from India and Thailand would be likely to lead to a continuation or recurrence of material injury to an industry in the United States.¹⁰ In August 2007, the order on imports from Ecuador was revoked as a result of World Trade

⁷ Prior to 2012, warmwater and coldwater shrimp were both provided for in HS subheading 0306.13. HS subheadings 0306.16 and 0306.17 were created in 2012 to provide separately coldwater and warmwater shrimp. Therefore, while staff recognizes that HS subheading 0306.16 contains out of scope product (coldwater shrimp), it is included in the import data statistics in this report (along with HTS subheadings 0306.13 and 0306.17) to maintain data consistency across the entire period. Import data statistics also include certain residual or "basket" classifications, such as statistical reporting numbers 1605.20.1010, 1605.20.1030, 1605.21.1030, and 1605.29.1010, which may include non-subject merchandise.

⁸ In some instances, fishermen provided trade data, but no financial data (and/or vice versa). For this reason, trade and financial data do not reconcile.

⁹ *Certain Frozen and Canned Warmwater Shrimp From Brazil, China, Ecuador, India, Thailand, and Vietnam*, 70 FR 3943, January 27, 2005. The Commission also determined that an industry in the United States was not injured by reason of imports from China, Thailand, and Vietnam of canned warmwater shrimp and prawns that had been found by Commerce to be sold at LTFV. Additionally, the Commission determined that imports from Brazil, Ecuador, and India of canned warmwater shrimp and prawns were negligible.

¹⁰ *Certain Frozen Warmwater Shrimp and Prawns from India and Thailand, Investigation Nos. 751-TA-28-29*, USITC Publication 3813, Nov. 2005.

Organization (“WTO”) panel findings.¹¹ In March 2011, the Commission completed its first five year reviews on the antidumping duty orders on Brazil, China, India, Thailand, and Vietnam, and determined that revocation of the orders would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹²

NATURE AND EXTENT OF SUBSIDIES

Subsidies

On August 19, 2013, Commerce published a notice in the *Federal Register* of its affirmative final determinations in the countervailing duty investigations of imports of frozen warmwater shrimp from Ecuador, India, Malaysia, China, and Vietnam and negative final determinations in the countervailing duty investigations of imports from Indonesia and Thailand.¹³ The Commission terminated its investigations of Indonesia and Thailand on August 19, 2013.¹⁴ Table I-1 presents Commerce’s findings.

Table I-1
Frozen warmwater shrimp: Commerce’s subsidy determinations with respect to imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam

Country and firm	Subsidy rate (percent)
China	
Zhanjiang Guolian Aquatic Products Co., Ltd. (Guolian) and its cross-owned affiliates (collectively, the Guolian Companies)	18.16
All others	18.16
Ecuador	
Promarisco S.A.	13.51
Songa	10.13
All others	11.68

Table continued on next page.

¹¹ *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador*, 72 FR 48257, August 23, 2007.

¹² *Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam*, 76 FR 18782, April 5, 2011.

¹³ 78 FR 50379-50394, August 19, 2013.

¹⁴ 78 FR 54912, September 6, 2013.

Table I-1--Continued

Frozen warmwater shrimp: Commerce's subsidy determinations with respect to imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam

Country and firm	Subsidy rate (percent)
India	
Devi Fisheries Limited	10.54
Devi Seafoods Ltd.	11.14
All others	10.84
Indonesia	
PT. Central Pertiwi Bahari, PT. Central Proteinaprima Tbk.	0.23 (<i>de minimis</i>)
PT. First Marine Sea-foods, PT. Khom Foods.	0.27 (<i>de minimis</i>)
All others	(<i>de minimis</i>)
Malaysia	
Asia Aquaculture (M) Sdn. Bhd. (Asia Aquaculture), Star Feedmills (M) Sdn. Bhd. (Star Feedmills), and Charoen Pokphand Foods (Malaysia) Sdn. Bhd. (CPFM), (collectively, the Asia Aquaculture Companies)	10.80
Kian Huat Aquaculture Sdn. Bhd. (Kian Huat)	54.50
All others	54.50
Thailand	
Marine Gold Products Limited	1.52 (<i>de minimis</i>)
Thai Union Frozen Products Public Co. Ltd/Thai Union Seafoods Co., Ltd.	1.41 (<i>de minimis</i>)
All others	(<i>de minimis</i>)
Vietnam	
Minh Qui Seafood Co. Ltd	7.88
Nha Trang Seaproduct Company	1.15
All others	4.52

Source: 78 FR 50379-50394, August 19, 2013.

THE SUBJECT MERCHANDISE

Commerce's scope

Commerce has defined the scope of these investigations as follows:

Certain frozen warmwater shrimp includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or

tail-off,¹⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns; (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting

¹⁵ “Tails” in this context means the tail fan, which includes the telson and the uropods.

*above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.*¹⁶

Tariff treatment

Based upon the scope set forth by the Department of Commerce, information available to the Commission indicates that the subject goods are imported under the following provisions of the 2013 HTS: subheadings 0306.17.00 (statistical reporting numbers 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, and 0306.17.0040), 1605.21.10 (statistical reporting number 1605.21.1030), and 1605.29.10 (statistical reporting number 1605.29.1010).¹⁷ The HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

THE PRODUCT

Description and applications

The imported products subject to these investigations are frozen warmwater shrimp. The subject product can be any species of warmwater shrimp and includes both shrimp that were harvested from the ocean (wild-caught) and those produced by aquaculture (farm-raised). The shrimp can be in a wide variety of processed forms including head-on or head-off, tail-on or tail-off, shell-on or peeled, and deveined or not deveined. They may be raw or further processed by cooking, skewering, or addition of marinades, spices, or sauces. Food preparations containing more than 20 percent by weight of shrimp are included in the subject product, as are dusted shrimp.

Warmwater shrimp are crustaceans that usually inhabit salt waters in coastal regions in the tropics and subtropics. There are also freshwater species of shrimp. The warmwater shrimp subject to these investigations are either wild-caught or farm-raised in tropical or subtropical

¹⁶ *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391. August 19, 2013. Commerce's scope is the same for China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. 78 FR 33342-33351, June 4, 2013. On August 12, 2013, Commerce issued its Final Scope ruling and found that the scope does not exclude onboard brine-frozen shrimp. Commerce also found the definitions of onboard brine-frozen shrimp put forward by Petitioner are not administrable and invite circumvention of any orders that result from these investigations. Thus, the final scope of scope of investigation is the same as in the preliminary investigations in these proceedings. *Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, and Socialist Republic of Vietnam: Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp*, August 12, 2013.

¹⁷ The HTS general duty rates for these subheadings are free.

regions, are generally classified in the *Penaeidae* family, and comprise shrimp of several genera and species.¹⁸

Imported shrimp are often farm-raised in ponds. One advantage of producing shrimp through aquaculture is that harvests of farm-raised shrimp are available year-round. Also, producers can adjust production to respond to demand for different sizes and species.¹⁹ A downside of shrimp farming, however, is that shrimp ponds are periodically affected by diseases that can dramatically impact harvest levels. While these diseases can also affect wild shrimp, they are more common in farming because shrimp populations in ponds are much denser.²⁰ A disease called Early Mortality Syndrome (“EMS”) is currently affecting farm-raised shrimp in China, Malaysia, Thailand, and Vietnam. Some farms in China and Thailand reportedly lost 60 to 80 percent of their stock to the disease.²¹ Opinions differ as to how quickly production levels in these countries will recover. The specific strain of bacterium causing EMS was identified in the spring of 2013, but so far, there is no test that can reliably identify infected broodstock before the disease takes over. Based on the experience of white spot disease in Thailand in the 1990s, and forecasts such as those published by Rabobank, petitioners expect affected areas to recover by 2014.²² Respondents argue that relatively little is known about EMS, how it spreads, and exactly how to resolve it, so it will likely take longer to recover.²³ ***²⁴

In the United States, virtually all warmwater shrimp are wild-caught.²⁵ The catch is composed primarily of brown shrimp (*Penaeus aztecus*), white shrimp (*Penaeus setiferus*), and pink shrimp (*Penaeus duorarum*). Shrimp vary greatly in size, depending on age and species.

¹⁸ In the previous investigations, it was noted that subject imports included, but were not limited to, shrimp from the following species: whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Machrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

¹⁹ Hearing transcript, pp. 249-50 (Stern).

²⁰ Hearing transcript, p. 90 (Veal).

²¹ FAO, “Culprit behind Massive Shrimp Die-offs in Asia Unmasked,” May 3, 2013.

²² Hearing transcript, p. 43-44 (Drake).

²³ Hearing transcript, p. 189 (Stern).

²⁴ ***.

²⁵ Shrimp aquaculture in the United States peaked in 2003 at around 4.5 percent of production and, in 2012, represented approximately *** of production. Staff correspondence with Granvil Treece, Texas A&M, January 31, 2013 and ***. U.S. shrimp aquaculture is constrained by the cost of coastal land and environmental and water quality regulations, among other factors. (Hearing transcript, p. 174 (Veal)).

They typically grow to a harvestable size within one year; their size largely depends on the time of year they are harvested.²⁶

Fresh shrimp (never frozen) in any form are excluded from Commerce's scope definition. Likewise, coldwater shrimp in any form,²⁷ shrimp in prepared meals, breaded shrimp, canned shrimp, and dried shrimp are excluded from the subject product.

Over the subject period, U.S. consumption of shrimp was consistent from year to year, at around 4 pounds per capita.²⁸ Warmwater shrimp are used principally for human consumption and are sold primarily on the basis of size. Because the tail section is the edible portion and spoilage is more rapid with the head on, most shrimp are marketed raw and frozen with the heads off. The market tendency is for large shrimp (less than 36 per pound, heads-off, shell-on basis) to be sold raw and frozen to restaurants, hotels, and other food institutions; for small to medium shrimp (36 to 60 per pound) to be breaded, canned, or sold at retail; and for extra small (61 to 70 per pound) and tiny shrimp (more than 70 per pound) to be used by canners, dryers, and producers of specialty products. In the previous investigations, it was estimated that 80 percent of shrimp in the U.S. market are bought by restaurants.²⁹

MANUFACTURING PROCESSES

Harvesting

The U.S. Gulf and South Atlantic warmwater shrimp³⁰ fleet is composed of vessels³¹ spread across about two dozen port communities. The vessels fall into one of three broad categories: recreational shrimpers, commercial bait shrimpers, and commercial shrimpers. The catch of recreational shrimpers and commercial bait shrimpers is very small in proportion to the

²⁶ U.S. shrimp fisheries in both the South Atlantic and the Gulf of Mexico are seasonal, and seasonal peaks vary by species, with white shrimp and brown shrimp peaking between the late spring and the fall, and pink shrimp peaking in the first half of the calendar year.

²⁷ Species of coldwater shrimp, which are generally classified in the *Pandalidae* family, have different physical characteristics than warmwater species. In particular, they are generally much smaller in size than warmwater species. Coldwater shrimp are harvested and processed in cold water regions (e.g., the U.S. Pacific Northwest, New England, Canada, Greenland, Iceland, and Norway).

²⁸ National Marine Fisheries Service (NMFS), *Fisheries of the United States, 2011*, August 2012, 96.

²⁹ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. I-6.

³⁰ Shrimp harvested off the Pacific and Northern Atlantic coasts is coldwater shrimp.

³¹ The number of shrimp vessels has declined substantially in recent years. In 2005, NOAA estimated that the number of vessels dropped from 4,000 to 2,500 between 2000 and 2005, and the number has reportedly declined further since then. In press reports, the COGSI (Petitioner) reported a 50 percent decline in the number of vessels in the past ten years (Hotakainen, "U.S. Shrimp Processors Seek Federal Help to Slow Imports," McClatchy, January 15, 2013, <http://www.mcclatchydc.com/2013/01/15/179931/us-shrimp-processors-seek-federal.html#storylink=cpy> (accessed July 22, 2013)).

catch of commercial shrimpers, who account for the great bulk of all U.S. Gulf and South Atlantic warmwater shrimp landings.

There are two categories of commercial shrimpers. Inshore shrimpers operate small boats typically manned by one person on day-long trips in bays, estuaries, and shallow near-shore waters. Offshore shrimpers operate larger vessels typically manned by a crew of three in deeper waters to the 200-mile U.S. territorial limit. In 2011, shrimp caught less than 3 miles offshore accounted for about 42 percent of warmwater shrimp landings, with the remaining 58 percent caught between 3 and 200 miles offshore. Some offshore vessels can freeze their catch and thus make trips lasting several weeks.³²

Offshore shrimpers use vessels that are typically 56 to 85 feet in length, constructed of steel, and diesel-powered. Such vessels are often equipped with sophisticated electronic gear for navigation, communication and locating shrimp. Most vessels are individually owned, often by the skipper. Major costs of operating a vessel include crew share (wages) and fuel as well as depreciation, mortgage payments, insurance, and maintenance on the vessel.

Vessels catch shrimp by towing one or more large, funnel-shaped nets. The U.S. fleet, particularly that portion in the Gulf, is relatively mobile and migrates with the seasonal warmwater shrimp populations, or away from areas of poor fishing. Therefore vessels may land shrimp at different ports in different states. Some shrimp vessels are equipped to perform simple processing steps (e.g., deheading, washing, grading, icing, or freezing) while at sea. Shrimp may be placed in mesh bags prior to freezing. Thus, warmwater shrimp can be landed either whole or headed (heads-off) and either fresh or frozen, and shrimp in different forms can be landed from the same trip. Upon unloading, shrimp are generally sold at dockside to dealers or processors. As payment, the vessel's crew typically receive a percentage of the revenue generated by the catch. While horizontal and vertical integration is limited, some shrimpers also process shrimp and/or own multiple vessels.³³

Because of the differing feeding habits, migration patterns, and habitats of the different species, Gulf and South Atlantic shrimp vessels usually land one species at a time. Likewise, harvesting activities and hence, landings in the U.S. Gulf and South Atlantic, exhibit seasonal patterns that are influenced by the natural patterns of development of the different species of warmwater shrimp.

³² NMFS, *Fisheries of the United States, 2011*, August 2012, 15.

³³ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. I-7.

Processing

While some processors own their boats, most have buying arrangements with several shrimp vessels. After unloading, shrimp are transferred to processing facilities, which are often located dockside, and undergo initial processing such as separating shrimp from ice, weighing, washing, sizing, and grading.³⁴

At this stage, shrimp may either be frozen in whole form (head-on, shell-on) or may undergo a number of further steps such as deheading, peeling, deveining, and cooking. Resulting from these steps are shrimp in a variety of forms (e.g., head-on, shell-on; headless, shell-on; raw, peeled; and cooked, peeled). Regardless of their specific processed form, shrimp then are typically frozen (with the exception that cooked, peeled shrimp may be canned rather than frozen).

Many processing steps (e.g., washing, grading, peeling, deveining, and cooking) may be performed manually or mechanically using purpose-built machinery.³⁵ Peeling can be done by one of two types of machines – the Laitram machine that operates by pushing the shrimp out of its shell, or the Jonsson machine that must be fed manually and that peels the shrimp with cutting equipment.

Freezing may take either of two forms: block frozen or individually quick frozen (IQF). In the block freezing method, shrimp and water are poured into a frame and frozen, typically in 5-pound blocks. The block is then sealed with a wrap that provides a barrier to moisture and vapor. IQF uses carbon dioxide, nitrogen, or ammonia to freeze each shrimp individually as it travels on a belt.³⁶ IQF lines require significant capital investment and are thus less common among smaller processors.³⁷ Block frozen shrimp is most suited to customers who know that they are going use at least the full block in one day,³⁸ since it must be defrosted all at once. IQF technology thus allows processors to serve additional market segments, but there is little to no price premium for IQF over block frozen shrimp.³⁹ Figure I-1 presents the production process for frozen warmwater shrimp.

³⁴ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. I-7.

³⁵ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. I-8.

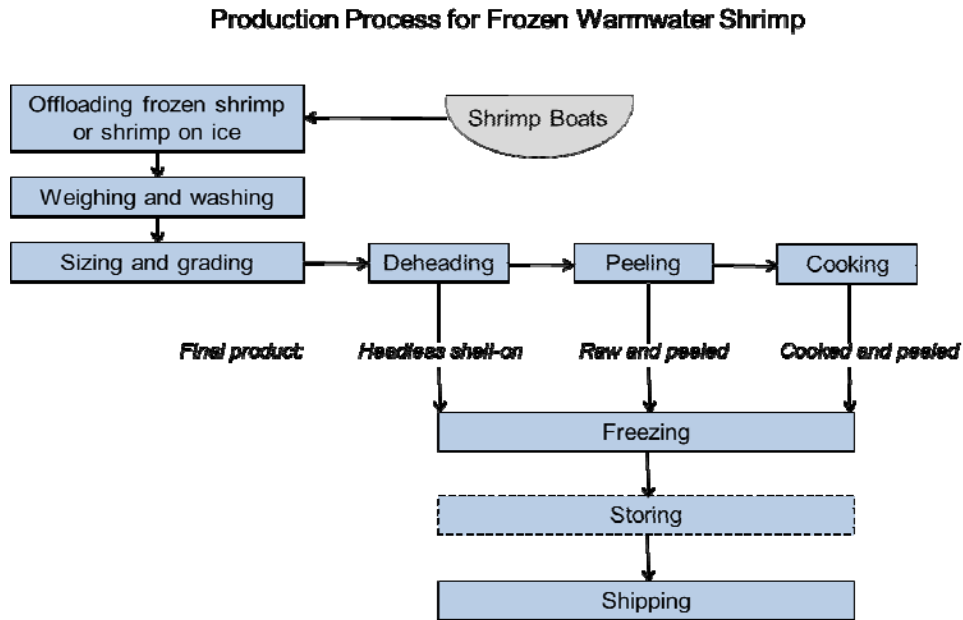
³⁶ Conference transcript, p. 88 (Babin).

³⁷ Hearing transcript, p. 92 (Gibson) and p. 93 (Gollott).

³⁸ Conference transcript, pp.88-89 (Babin).

³⁹ Hearing transcript, p. 87 (Gibson).

Figure I-1
Frozen warmwater shrimp: Production process



Processing of warmwater shrimp is conducted by a variety of types of operations. Dealers (a.k.a. shrimp houses or fish houses) and packing houses perform minimal processing steps (e.g., weighing, washing, sorting, and packing) for other processors or distributors. Other processors, variously known as freezers, peelers, and breaders, produce the variety of processed forms of shrimp noted previously and perform additional steps such as breading, cutting, and preparing specialty items. Processors often hold shrimp in inventory, for anywhere from a few days to six months.⁴⁰

DOMESTIC LIKE PRODUCT ISSUES

In making its preliminary determinations, the Commission used the “semifinished product” like product analysis to determine whether fresh shrimp should be included in the same like product as the processed frozen shrimp products within the scope, as it was in the

⁴⁰ Hearing transcript, p. 144 (Gibson).

prior Commission proceedings concerning this product.⁴¹ Based on the record in the preliminary phase of these investigations and on application of the semifinished product analysis, the Commission defined a single domestic like product encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope definition.⁴²

In the final phase of these investigations, Petitioner argues that the Commission should define the domestic like product as certain frozen warmwater shrimp produced in the United States and exclude fresh shrimp and brine-frozen shrimp from the domestic like product.⁴³ Domestic interested party AHSIC, comprised of primarily shrimp fishermen, argues that the Commission should define the domestic like product to encompass both fresh warmwater shrimp and those frozen articles describe in Commerce's scope as it did in the preliminary phase investigations.⁴⁴ Respondents also argue that the domestic like product should include fresh warmwater shrimp as it has in the prior investigations and reviews.⁴⁵

⁴¹ In a semifinished product analysis, the Commission examines the following: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) the significance and extent of the processes used to transform the upstream into the downstream articles.

⁴² *Frozen Warmwater Shrimp from, China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam, Investigation Nos. 701-TA-491-497 (Preliminary)*, USITC Publication 4380, February 2013, pp. 10-11. On August 12, 2013, Commerce issued its Final Scope ruling and found that the scope includes onboard brine-frozen shrimp. *Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, and Socialist Republic of Vietnam: Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp*, August 12, 2013.

⁴³ Hearing transcript, pp. 43-44, 98 (Drake).

⁴⁴ AHSIC's posthearing brief, pp. 1-15.

⁴⁵ National Fisheries Institute prehearing brief, p. 4; Indian and Vietnamese Respondents' prehearing brief, pp. 4-6.

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

U.S. MARKET CHARACTERISTICS

Warmwater shrimp are intended for human consumption and may be farm-raised or wild-caught, and may be processed to varying levels (e.g., peeled, deveined, shell-off, tail-off, marinated, skewered, or sauced). There are also multiple species of shrimp both farm-raised and wild-caught, and they exist in a range of sizes.¹

For U.S.-processed warmwater shrimp, fresh shrimp are harvested (generally wild) and brought to dock by fishermen. Some deheading, sorting, and freezing may take place on the fishing boats. U.S. processors buy the fresh or frozen shrimp at the dock, and then may inspect, weigh, count, devein, peel, and cook it before freezing (refreezing) it. Some of the production will be put into inventory for later sale. U.S. processors may sell the warmwater shrimp to distributors or to retail customers directly, or have their sales handled by brokers. The market is similar for importers of warmwater shrimp; however, importers may sometimes import the warmwater shrimp and then process it themselves, either into another form of warmwater shrimp (e.g., marinated or sauced) or into a nonsubject product (e.g., breaded shrimp).² Some processors process both U.S. and imported shrimp.³

U.S. PURCHASERS

Questionnaires were sent to the four largest purchasers reported by all the producers and importers that submitted questionnaires in the preliminary investigation, and firms for which there were lost sales or lost revenue allegations in the preliminary investigation. Thirty purchasers returned usable questionnaires. Overall, purchasers reported purchasing 1.16 billion pounds of U.S. and imported frozen warmwater shrimp between 2010 and 2012, an amount equal to 30.8 percent of apparent consumption during that period. The largest responding purchasers were ***. No other purchaser purchased close to 100 million pounds over the three years.

¹ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063,1064,1066-1068 (Review)*, USITC Publication 4221, March 2011, p. II-1.

² *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. II-1.

³ Hearing transcript, p. 59 (Gollott).

CHANNELS OF DISTRIBUTION

U.S. processors and U.S. importers from all subject countries sold more to distributors than to end users or retailers/institutional buyer during 2010-12 and the first quarter of 2013 (table II-1). Imports from Thailand, a nonsubject country, were sold principally to retail and institutional buyers. Imports of product from other nonsubject countries were mainly sold to distributors.

GEOGRAPHIC DISTRIBUTION

Both U.S. processors and U.S. importers reported selling frozen warmwater shrimp to all regions in the contiguous United States (table II-2). Processors reported selling 22.8 percent within 100 miles of their production facility, 36.5 percent between 101 and 250 miles, 16.1 percent between 250 and 500 miles, and 24.6 percent over 500 miles. A larger share of imported product from both subject and nonsubject countries was shipped within 100 miles than domestic product, but a smaller share of imports was shipped 101 to 250 miles than domestic product (table II-3). For shipments over 250 miles, shares of shipments varied by country.

Table II-1

Frozen warmwater shrimp: U.S. processors' and U.S. importers' U.S. shipments by sources and channels of distribution, 2010-12, and January-March 2013

Item	Period			
	2010	2011	2012	Jan.-March 2013
	Share of U.S. shipments (percent)			
U.S. processors' U.S. shipments of frozen warmwater shrimp:				
Distributors	82.6	82.9	81.2	79.1
End users	5.4	5.2	5.5	4.7
To retailers ¹ /institutional buyers ²	12.0	11.9	13.4	16.3
U.S. importers' U.S. shipments of frozen warmwater shrimp from China:				
Distributors	92.5	85.1	76.6	75.2
End users	0.0	0.0	0.0	0.0
To retailers ¹ /institutional buyers ²	7.5	14.9	23.4	24.8
U.S. importers' U.S. shipments of frozen warmwater shrimp from Ecuador:				
Distributors	80.9	77.5	64.2	56.8
End users	0.2	0.8	0.4	0.8
To retailers ¹ /institutional buyers ²	18.8	21.7	35.4	42.4
U.S. importers' U.S. shipments of frozen warmwater shrimp from India:				
Distributors	82.0	4.7	71.9	72.7
End users	0.1	0.0	0.4	0.4
To retailers ¹ /institutional buyers ²	17.9	95.3	27.7	26.9
U.S. importers' U.S. shipments of frozen warmwater shrimp from Malaysia:				
Distributors	34.3	79.9	82.6	74.7
End users	0.0	0.0	0.0	0.0
To retailers ¹ /institutional buyers ²	65.6	20.1	17.4	25.3
U.S. importers' U.S. shipments of frozen warmwater shrimp from Vietnam:				
Distributors	50.1	49.6	50.9	54.7
End users	3.6	2.6	2.3	3.5
To retailers ¹ /institutional buyers ²	46.4	47.8	46.8	41.8
U.S. importers' U.S. shipments of frozen warmwater shrimp from all subject countries:				
Distributors	72.5	22.0	67.6	66.3
End users	1.0	0.3	0.7	1.0
To retailers ¹ /institutional buyers ²	26.5	77.7	31.7	32.8
U.S. importers' U.S. shipments of frozen warmwater shrimp from Indonesia:³				
Distributors	48.4	50.8	55.2	55.3
End users	13.0	11.1	6.7	7.9
To retailers ¹ /institutional buyers ²	38.6	38.1	38.1	36.9
U.S. importers' U.S. shipments of frozen warmwater shrimp from Thailand:³				
Distributors	44.4	45.1	40.7	38.7
End users	0.8	0.8	1.0	1.0
To retailers ¹ /institutional buyers ²	54.8	54.0	58.3	60.3
U.S. importers' U.S. shipments of frozen warmwater shrimp from all other countries:				
Distributors	62.0	67.3	66.9	68.4
End users	3.1	1.7	1.9	2.2
To retailers ¹ /institutional buyers ²	34.9	31.1	31.2	29.4

¹ Entities that purchase and resell to end users (i.e., supermarkets and other retailers that sell to customers).

² Entities such as restaurants, hotels, hospitals, etc.

³ Nonsubject country.

Note.—Numbers may not add to 100 because of rounding.

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

Table II-2

Frozen warmwater shrimp: Geographic market areas in the United States served by U.S. processors and importers, by number of responding firms

Region	U.S. producers	China	Ecuador	India	Malaysia	Vietnam	Indonesia³	Thailand³
South Atlantic (Gulf Coast) ¹	65.9	28.2	22.6	41.3	18.7	19.9	15.2	19.9
Northeast	10.3	22.6	18.0	12.0	23.9	18.8	29.2	26.7
Midwest	9.8	18.4	19.2	17.3	14.5	14.3	8.0	12.5
Southeast	8.6	6.8	12.2	3.0	12.2	13.5	8.5	12.6
Central Southwest	1.3	3.1	1.6	3.0	3.9	3.3	1.4	2.8
Mountains	1.0	5.2	7.0	4.9	6.4	7.8	4.9	7.1
Pacific Coast	2.4	14.9	18.9	18.0	20.0	21.9	32.3	16.9
Other ²	0.8	0.9	0.5	0.3	0.4	0.5	0.5	1.3

¹ Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Texas.

² All other U.S. markets, including AK, HI, PR, VI, among others.

³ Nonsubject country.

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

Table II-3

Frozen warmwater shrimp: Distance shipping reported by U.S. producers and importers

Item	Share of sales (percent)			
	0 to 100 miles	101-250 miles	250 to 500 miles	500+ miles
U.S. producers	22.8	36.5	16.1	24.6
China	62.3	3.6	5.9	28.3
Ecuador	31.9	22.9	20.8	24.5
India	82.4	4.2	5.4	8.0
Malaysia	26.1	28.9	20.3	24.7
Vietnam	28.5	14.2	15.7	41.6
Indonesia ¹	55.7	18.7	13.6	12.0
Thailand ¹	29.6	14.7	17.0	38.7

¹ Nonsubject country.

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

SUPPLY AND DEMAND CONSIDERATIONS

U.S. supply

U.S. supply of fresh shrimp and natural cycle

U.S. fishermen generally harvest white, pink, and brown shrimp from the Gulf, and white and pink shrimp from the Carolina and Florida Atlantic coasts, respectively. U.S. shrimp fishermen primarily harvest only shrimp. Shifting to harvests of other animals would be

expensive since their equipment (trawlers, nets, etc.) are not appropriate for catching other forms of seafood. Fishermen's decisions on whether or not to shrimp depend on fixed costs including the cost of the boat, boat maintenance, insurance, and debt-servicing costs, and variable costs, including most importantly fuel, as well as equipment repair and replacement, and labor.⁴

Supply of warmwater shrimp in the United States

Eleven of the 43 responding U.S. processors and 8 of the 29 responding importers reported changes in their product range, product mix, and/or marketing since January 2010. U.S. processors reported changes in the types of shrimp caught, increases in direct sales to retail, more value added products and a shift from block frozen to IQF shrimp; increased marketing of U.S. shrimp; poor seasons, the oil spill and fuel prices changed product range; and the effects of imports on the U.S. market. Importers reported changes, including: processors selling directly to customers; a shift to larger sized shrimp; a shift from Black Tiger to Vannimei shrimp; more sales of peeled and deveined shrimp rather than shell on; and a shift from cooked to raw product.

Seasonality

The U.S. supply of wild-caught fresh shrimp varies by season. The main fishing season is May to December, although different times of the year are better for particular species and sizes. In the offseason (roughly January through April), some fishermen take time for maintenance and upgrades while others continue fishing. Although U.S. processors are able to maintain some supply of warmwater shrimp during the offseason by freezing part of their in-season inventory for later sale, prices have been historically higher in the offseason as the supply of both fresh and frozen shrimp is lower. U.S. processors and fishermen have described his seasonal supply characteristic as a necessary cycle for fishermen and U.S. processors to make money (through higher offseason prices) and make needed repairs and upgrades.⁵

Most U.S. processors (37 of 43 responding firms) reported that there are business cycles or seasonality in U.S. warmwater shrimp supply.⁶ U.S. processors reported that U.S. shrimping tends to be seasonal, although they hold inventories of frozen shrimp for year round sales. In contrast, most importers, 17 of 31 reported no business cycles or seasonality.

Most processors (19 of 37) and most importers (13 of 19) reported no change in business cycles or conditions of competition since 2010. The change that processors reported most frequently was the effect of the BP oil spill.

⁴ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063,1064,1066-1068 (Review)*, USITC Publication 4221, March 2011, p. II-4.

⁵ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, , India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063,1064,1066-1068 (Review)*, USITC Publication 4221, March 2011, p. II-6.

⁶ Some processors reported that business was not seasonal because they carried product for year round sales.

U.S. processors' supply

Based on available information, U.S. warmwater shrimp processors have the ability to respond to changes in demand with moderate changes in their quantity of shipments to the U.S. market. The main contributing factors to the moderate degree of supply responsiveness are some availability of inventories, and large unused processing capacity. Supply responsiveness is limited most importantly by the biological/environmental limits on the amount of fresh shrimp that can be fished from U.S. waters and by few alternative markets and production alternatives.

Industry capacity

U.S. processors' capacity increased from 571 million pounds in 2010 to 617 million pounds in 2012. The capacity utilization rate fluctuated within a small range between 2010 and 2012, increasing from 25.4 percent in 2010 to 27.7 percent in 2011 before decreasing to 26.6 percent in 2012. This low level of capacity utilization suggests that U.S. processors may have substantial capacity to increase processing of frozen warmwater shrimp in response to an increase in prices. The actual responsiveness of supply, given excess capacity, depends on the availability of shrimp to be processed which is determined by the amount of shrimp available and the size and success of the shrimp fishing fleet.

Export markets

U.S. processors' exports, as a percentage of total shipments, were *** throughout the period. U.S. processors may have very little, if any, ability to shift shipments between the U.S. market and other markets in response to price changes.

Inventory levels

U.S. processors maintain inventories to respond to year-round demand for warmwater shrimp and seasonal fluctuations in landings. U.S. processors' inventories, as a ratio of their total warmwater shrimp shipments, increased irregularly from 20.2 percent in 2010 to 26.5 percent in 2012. These inventory levels suggest that U.S. processors may have some ability to respond to changes in demand with changes in the quantity shipped from inventories.

Production alternatives

Only 2 of 42 responding processors stated that they could switch production from frozen warmwater shrimp to other products. Other products that processors reported producing on the same equipment as frozen warmwater shrimp are fresh shrimp, breaded shrimp, and other fish.

Supply constraints

Twenty-nine of 42 responding processors reported that they had been unable to supply shrimp since January 1, 2010 citing low prices that did not cover the cost of fishing; high fuel costs that reduced vessel profit; the BP oil spill; vessels hired to work for BP; closed shrimping areas; lack of inventories and supply in different sizes, no supply, lower landings, and shrimp in short supply; the lack of availability of preservative free shrimp for processing; and production affected by availability of labor.

U.S. processors reported that fishing, safety, sanitary, environmental, business, and employment regulations increased their costs, thus affecting their supply. A number of processors questioned whether imports faced the same level of regulation/enforcement as they faced. Processors were also asked about “manmade” or natural disasters or diseases. Most processors mentioned that the BP oil spill both reduced supply and undermined demand, while BP’s willingness to pay for losses and hiring of boats for the cleanup effort reduced the number of boats used for shrimping. Firms also reported that hurricanes and other weather related problems,⁷ pollution causing diseases, and “black gill” disease affected the supply of frozen warmwater shrimp.

Respondents reported that the BP oil spill severely curtailed shrimping activity, as annual wild-catch landings were *** million pounds, below the 40-year average landings volume of 260 million pounds. They also stated that numerous purchasers stopped buying processed domestic shrimp due to their fears of adverse health effect, which in turn affected domestic processors’ sales levels.⁸

Most processors reported that they faced different regulations than importers. U.S. regulations that affect supply include: labor laws, environmental regulations, FDA, HACCP,⁹ and other regulations that increase costs even though they also may improve the quality and safety of the food produced. Most processors reported that other countries’ regulations were less costly than those they faced, and some reported that a lack of regulation in other countries reduce their competitors’ costs. Also, the EU has banned substances that are permitted or not tested for by the United States, allowing a lower grade of warmwater shrimp to be imported into the U.S. market than into the EU. The EU also has a tariff on U.S. product sold in the EU.

⁷ Other weather problems reported included: unusually warm weather that increased predation; freezes that reduced the shrimp population; and floods that reduced the shrimp population.

⁸ Respondents’ joint answers to Commissioner questions, p. A-23.

⁹ Hazard analysis & critical control points (HACCP) “is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product.” Source:

[HTTP://WWW.FDA.GOV/food/foodsafety/hazardanalysiscriticalcontrolpointsHACCP/default](http://www.fda.gov/food/foodsafety/hazardanalysiscriticalcontrolpointsHACCP/default) retrieved February 1, 2013.

Most of the importers (17 of 31) reported supply constraints, often citing EMS¹⁰ which has affected supply from China, Malaysia, Thailand, and Vietnam in 2012 and 2013, with one importer reporting that Thailand's production has fallen almost 50 percent. Most importers reported that U.S. regulations affect supply, including: FDA inspections slow delivery; and antidumping regulations limiting availability. Most importers were uncertain of the importance of other countries' regulations' or knew of no effect from these regulations.

Subject imports

Warmwater shrimp production in subject foreign countries primarily uses farm-raised shrimp unlike U.S. production which primarily uses wild-caught shrimp. Shrimp of many different species can be farmed, and shrimp farms are usually designed principally for export.

Imports from subject countries increased from 415 million pounds in 2010 to 485 million pounds in 2012. Imports from India and Ecuador increased, while from China, Malaysia, and Vietnam decreased. Subject imports increased from 33.2 percent of the quantity of all U.S. imports in 2010 to 39.8 percent in 2012. Country-by-country data were available for imports of the majority of product imported into the U.S. markets for all subject countries except Malaysia. These data including imports, capacity, capacity utilization, ratios of inventories to shipments, shares of sales to the United States and home markets are presented in table II-4.

Nonsubject imports

Imports of warmwater shrimp from nonsubject countries are available both as farmed and wild caught. Nonsubject source Thailand, is larger than any subject source of shrimp to the U.S. market and nonsubject source Indonesia is larger than any subject source except Ecuador. Both Indonesia and Thailand supply mainly farmed shrimp. Their share of total imports decreased from 47.9 percent in 2010 to 39.9 percent in 2012. Mexico provides wild-caught warmwater shrimp with the same seasonal supply surge as U.S. production. Other major nonsubject country sources include Honduras, Peru, Guyana, Bangladesh, Singapore, and Venezuela.

Respondents report that nonsubject countries could supply the U.S. market with the current level of total imports without any imports from subject country sources¹¹ and that nonsubject imports would have a similar impact on U.S. prices as product from subject countries.¹²

¹⁰ EMS is a shrimp disease reported in some Asian shrimp farms.

[HTTP://aquatichealth.net/taxonomy/term/page=5](http://aquatichealth.net/taxonomy/term/page=5) retrieved July 11, 2013.

¹¹ Hearing transcript, pp. 240-41 (Connelly).

¹² Ecuador National Chamber of Aquaculture (NCA) post conference brief, pp. 21-22.

II-4

Frozen warmwater shrimp: Foreign producer capacity, total shipments to the U.S. market, capacity utilization, inventories, sales to various markets and overall capability to shift sales to the United States

Year	Total capacity	U.S. imports ¹	Capacity utilization	Inventories to shipments	Sales to markets		Factors influencing supply responsiveness to changes in the U.S. market
	1,000 pounds				Percent		
China:							
2010	***	54,591	***	***	***	***	***
2012	***	30,537	***	***	***	***	
Ecuador:							
2010	505,895	141,620	40.9	4.1	1.9	41.2	Ecuador's increasing capacity and increasing shipments to the U.S. market may increase its ability to increase supply to the U.S. market. Relatively low capacity utilization, and large quantities shipped to other markets also increase its ability to shift shipments to the U.S. market. Low inventories, however, reduce its ability to shift shipments to the U.S. market.
2012	628,145	176,688	49.2	4.6	2.1	35.4	
India:							
2010	641,907	65,444	19.2	14.0	0.2	45.0	India has the second largest capacity of the subject countries and its capacity is growing, which may increase its ability to increase supply to the U.S. market. In addition, low capacity utilization (although rising), and a large share of production exported to other markets may allow it to increase shipments to the U.S. market. The growth of Indian exports into the U.S. market indicates that India may be able to increase U.S. shipments further.
2012	752,968	143,163	27.9	13.1	0.1	56.1	
Malaysia:							
2010	***	52,721	***	***	***	***	***
2012	***	50,882	***	***	***	***	
Vietnam:							
2010	409,447	100,834	76.7	19.1	4.1	30.6	Vietnam's large and rising capacity, falling capacity utilization, inventories, and moderate share sold to the U.S. market may increase its ability to shift product to the U.S. market. EMS may reduce the amount of Vietnamese shrimp available for processing.
2012	444,227	83,534	57.6	23.7	2.1	29.1	

Table continued on the next page.

Table II-4 Continued

Frozen warmwater shrimp: Foreign producer capacity, total shipments to the U.S. market, capacity utilization, inventories, sales to various markets and overall capability to shift sales to the United States

Year	Total capacity	U.S. imports ¹	Capacity utilization	Inventories to shipments	Sales to markets		Factors influencing supply responsiveness to changes in the U.S. market
	1,000 short tons				Percent		
Indonesia:²							
2010	332,860	126,661	45.5	10.3	4.0	60.5	Indonesia had the second largest shipments of product to the U.S. market in 2009, however exports to the U.S. market have risen relatively little and it is no longer the second largest in 2011. High quantities sold may increase the ability to increase supply to the U.S. market; low capacity utilization increases Indonesia's ability to shift shipments to the U.S. market.
2012	318,333	157,702	59.7	11.6	2.1	72.3	
Thailand:²							
2010	1,006,024	414,954	67.5	17.9	5.5	50.2	Relatively high shipments to the U.S. market (more than twice as much as reported by any other subject country), and a majority of production shipped to the U.S. market may increase the ability to increase supply to the U.S. market. None-the-less both shipments to the United States and the share sold to the U.S. market have fallen. EMS may reduce the amount of Thai shrimp available for processing.
2012	1,049,041	273,541	52.4	24.6	5.6	41.5	

¹ U.S. imports are from official Commerce statistics. All other data are from the foreign producers' questionnaires.

² Nonsubject country.

Note.—Foreign producer data for most subject countries cover the majority of imports into the United States: China ***, Ecuador ***, Vietnam ***, and India ***, and from nonsubject countries Indonesia ***, and Thailand ***. Malaysian responding foreign producers, however, cover only ***% of Malaysian exports to the United States.

Source: Compiled from data submitted in response to Commission questionnaires, and Official Commerce Statistics.

New suppliers

Only two purchasers indicated that new suppliers entered the U.S. market since 2010; the only new supplier listed was Vita Clean, a broker for product from Vietnam.

Supply constraints

Seventeen of 31 responding importers reported supply constraints since January 1, 2010. Importers reported a variety of constraints including: bad harvests; delayed shipments; shortages; smaller catches of wild shrimp forced the firm to replace U.S.-produced product with imports because of a lack of availability of U.S. product; shifted to selling COD due to the economy; FDA inspection caused delays; demand can be higher than supply; limits on species and sizes available; refused customers out of delivery area or for credit reasons; antidumping duties bond requirements curtailed growth; and limitation in Asian supply due to disease and demand in other markets.

Importers were asked if regulations in the United States or other countries affected supply. A number of importers stated that FDA inspections can delay shipments for up to 6

weeks, increasing their need for inventories or causing delayed deliveries. A few reported that other countries' regulations affected supply, including: in Ecuador, peelers are required to be full-time employees with benefits, increasing cost by 25 percent; other purchasing countries have changed import policies; and restrictions on the use of antibiotic for product sold to other countries result in this product being supplied to the U.S. market.

U.S. demand

Demand for warmwater shrimp comes primarily from retail sellers of both prepared and unprepared warmwater shrimp (e.g., grocery stores) and restaurants. In recent years, larger restaurant chains and U.S. seafood processors (i.e., breaders, skewers, and marinaters) have demanded warmwater shrimp in larger quantities, with year-round availability, standardized sizes, and lower prices. There is some seasonality in U.S. shrimp demand, which is typically higher around the Easter, Christmas, and New Year's holidays.¹³

End uses

U.S. demand for frozen warmwater shrimp depends on the demand for shrimp as food either as a standalone item or as an ingredient with other food. Downstream products include breaded shrimp, frozen meals, and skillet meals. Petitioners report that the "food service industry" purchases the majority of frozen warmwater shrimp in the United States. In the food service industry, larger shrimp are used as a "center-of-the-plate item", and accounts for the largest portion of the costs of the meal.¹⁴

Business cycles

The majority of all questionnaire respondents reported that there are business cycles or conditions of competition that are distinct to the industry. Producers and importers frequently reported that demand for shrimp is stronger during the holiday season and holidays in general and the Lenten period than at other times of the year.

Apparent consumption

Apparent U.S. consumption of frozen warmwater shrimp fluctuated between 2010 and 2012. It increased from 1,249 billion pounds in 2010 to 1,295 billion pounds in 2011, and then decreased to *** billion pounds in 2012. Overall, apparent U.S. consumption in 2012 was *** percent lower than in 2010.

¹³ *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063, 1064, 1066-1068 (Review)*, USITC Publication 4221, March 2011, p. II-15.

¹⁴ Conference transcript, pp. 35-36 (Kimbrough) and Hearing transcript, p. 80 (Folse).

Demand trends

Most U.S. processors reported that U.S. demand had decreased since 2010, most importers reported that demand had increased or fluctuated since 2010, and most purchasers reported that demand had increased or was unchanged since 2010 (table II-5). Reasons given for reduced demand include: the recession; more price sensitive customers; imports; the BP oil spill has created a negative perception of shrimp quality; price increases; reduced quality; availability; and prices are getting so high customers substitute meat.¹⁵ Reasons given for increased demand include: health conscious eaters/health benefits from eating seafood; more eating out; the popularity of shrimp; promotion of seafood; rise in the price of competing meats; stable supply; high quality; consistent specifications; improving economy; increased market share; increased offers of U.S. product and shortage of large sized imports have increased consumption of U.S. produce; and increased interest in local product.

Table II-5
Frozen warmwater shrimp: Number of firms reporting actual changes in demand in the United States since 2010

Supplier	Increased	No change	Decreased	Fluctuated
U.S. processors	6	5	23	6
Importers	14	6	2	8
Purchasers	10	8	2	7

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

Firms were asked how demand had changed outside the U.S. market (table II-6). Most processors reported demand was unchanged or had decreased, while most importers and purchasers reported that demand outside the United States had increased. Reasons given for increased demand include: strong economies; growing populations, emerging middle class; other countries being willing to pay prices equivalent to the U.S. market; demand in developing countries and China, preference for seafood; consistent quality; low price; and China is a net importer. Reasons given for decreased demand include: global economic decline, consumer perceptions from the BP oil spill; price; European reluctance to accept farm raised shrimp because of chemicals used in their production; and recession in Europe.

Table II-6
Frozen warmwater shrimp: Number of firms reporting actual changes in demand outside the United States since 2010

Supplier	Increased	No change	Decreased	Fluctuated
U.S. processors	3	7	7	1
Importers	14	2	1	3
Purchasers	12	4	1	3

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

¹⁵ U.S. processors also reported that demand had fallen because of low-priced imports and U.S. importers reported that the steady supply of shrimp increased demand.

Substitute products

Almost all processors, importers, and purchasers reported that there were no substitutes for warmwater shrimp.¹⁶ The few firms reporting substitutes cited “any protein”, crawfish, lobsters, crabmeat, and scallops. While other proteins, particularly meats, fish, or shellfish may be consumed, they offer different tastes, textures, and presentations. One possible substitute for imported subject frozen warmwater shrimp is increased imports of value-added product, such as breaded shrimp, produced overseas, rather than having the frozen warmwater shrimp imported and having the value added in the United States.¹⁷

Cost share

Frozen warmwater shrimp accounts for a moderate-to-large share of the cost of the end-use products in which it is used. Firms were specifically requested to report the cost share of shrimp in restaurant meals and in breaded shrimp. Six importers reported cost shares for restaurant meals, with four importers reporting that shrimp accounts for 25 to 30 percent of the cost, and two importers reporting that it was 70 to 75 percent. Two producers reported that shrimp was 95 percent of the cost of a meal. Three importers, four processors, and one purchaser reported the share of shrimp in frozen breaded shrimp. One importer and one processor reported it was 40 to 50 percent of the cost, three processors and one purchaser reported it was 65 to 70 percent of the cost of breaded shrimp, and two importers and one processor reported that it was 80 to 90 percent of the cost. Reported cost shares for other end uses were as follows: shrimp gumbo (25 percent); breaded shrimp with sauce (50 percent); other shrimp with sauce (60 percent); skillet meals (28 percent); frozen meals (17 percent); shrimp scampi (66 percent); shrimp bisque (54 percent); and seafood bisque (29 percent).

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported frozen warmwater shrimp depends upon such factors as relative prices, quality (e.g., species characteristics, consistency, flavor profile, etc.), and conditions of sale (e.g., price discounts/rebates, availability, payment terms, product services, reliability of supply, etc.). Based on available data, staff believes that there is a moderate degree of substitutability between U.S.-produced frozen warmwater shrimp and that imported from subject countries.

¹⁶ Two of 34 processors, 1 of 28 responding importers reported a substitute, and 1 of 22 responding purchasers reported substitutes.

¹⁷ Conference transcript, pp. 118, 159 (Paterson).

Knowledge of country sources

Twenty-one purchasers reported knowing the sources of frozen warmwater shrimp, with some firms reporting knowledge of as many as eight sources (table II-7).

Table II-7

Frozen warmwater shrimp: Sources known country of origin

Country	U.S.	China	Ecuador	India	Malaysia	Vietnam	Indonesia ¹	Thailand ¹
Number of purchasers knowing source	21	8	20	16	4	15	18	19

¹ Nonsubject country.

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

As shown in table II-8, most purchasers “always” make purchasing decisions based on the processor. In contrast most purchasers’ customers “sometimes” or “never” make purchase decisions based on the producer or country. Most purchasers “always” or “sometimes” make purchase decisions based on country of origin. Purchasers that reported that they “always” make decisions based on the producer frequently cited a number of concerns including: quality, food safety, regulatory requirements, consistency, buy from approved sources, social audits for non-U.S. product, quality assurance approval from major customers, sustainability requirements, and brand.

Table II-8

Frozen warmwater shrimp: Purchasing decisions based on producer and country of origin

Purchaser/Customer Decision	Always	Usually	Sometimes	Never
Purchaser makes decision based on producer	19	1	5	5
Purchaser’s customers make decision based on producer	4	8	7	9
Purchaser makes decision based on country	9	4	15	2
Purchaser’s customers make decision based on country	1	6	16	5

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

Factors affecting purchasing decisions

The most often cited top three factors firms consider in their purchasing decisions for frozen warmwater shrimp were quality (23 of 29 firms), price (16 firms), and availability (13 firms) as shown in table II-9. Quality was cited most frequently as the most important factor (cited by 15 firms); price was the most frequently reported second most important factor (7 firms); and availability was the most frequently reported third most important factor (6 firms).

When 29 responding purchasers were asked whether they “always,” “usually,” “sometimes,” or “never” purchase at the lowest price, two answered “always,” 11 answered “usually,” 12 answered “sometimes,” and four answered “never.”

Table II-9
Frozen warmwater shrimp: Ranking of factors used in purchasing decisions as reported by U.S. purchasers, by number of reporting firms

Factor	First	Second	Third	Total
Quality	15	7	1	23
Price	4	7	5	16
Availability	3	4	6	13
Traditional supplier/related supplier	3	0	1	4
Approved source	2	0	0	2
Service	0	4	0	4
Consistency	0	2	1	3
Delivery time/delivery time accuracy	0	1	1	2
Other ¹	1	2	3	6

¹ Other factors includes: credit and meeting specification for second factors, and contracts, size availability, product line, and food safety for the third factor.

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

When asked if they purchased frozen warmwater shrimp from one source although a comparable product was available at a lower price from another source, 19 purchasers reported yes and cited reasons including time to fill orders (shipping from South American takes less time than from Asia), quality, availability, reliability of supplier, a need to have two country sources of supply; require aquaculture for consistency; contracts; relationship with suppliers; require U.S. product for military; other than U.S. product do not make decisions based on country of origin; to secure quantity; amount of tri-poly phosphate used,¹⁸ prefer U.S. product even if a little higher priced; buy only U.S. product; qualified producer; meet sustainability standards; and availability. Fourteen of 28 responding purchasers reported that certain types of product were only available from a single source including 16/20 and 21/25 black tigers from Vietnam; smaller peeled shrimp are typically not available from India and Thailand but are available from China and some Latin American countries; aztecus, stifreus, and duorarum species are only available from U.S. and Mexico while the indicus species is only available from India; large shrimp from Vietnam; ezy peels, peeled and deveined, and tail-on shrimp are not available from U.S. and Mexico; India grows larger 16/20 thru 26/30, others grow 31/40s to 51/60s; 6/9 products are available from India or Bangladesh; cooked peeled and deveined is available from limited countries; U.S. has best availability of colossal product from Brown shrimp fisheries; wild caught is available primarily from U.S. and Mexico, and is different from farm raised; the U.S. does not produce P&D products, India produces larger shrimp, Thailand produces small shrimp, Tigers are only produced in India and Vietnam; and browns are only produced by U.S.

¹⁸ Tri-poly phosphate is used as a preservative in seafood and can increase the sales weight of seafood. http://en.wikipedia.org/wiki/sodium_triphosphate retrieved July 10, 2013.

Importance of specified purchase factors

Purchasers were asked to rate the importance of 25 factors in their purchasing decisions (table II-10). Twenty-six of 29 responding purchasers rated consistency within shipments, product consistency, and quality meets industry standards as “very important”. Other factors rated as “very important” by most responding purchasers were availability, consistency from one shipment to another, and sanitary standards (25 each); reliability of supply and taste/flavor profile (24); freshness and size of shrimp (23); proper cutting, handling, and packaging techniques (21); price (20); and delivery time (17). Factors rated as not important by 9 or more purchasers included processed by hand (13); and extension of credit and U.S. transportation costs (9).

Table II-10
Frozen warmwater shrimp: Importance of purchase factors, as reported by U.S. purchasers, by number of responding firms

Factor	Very important	Somewhat important	Not important
Availability	25	3	1
Consistency from one shipment to another	25	3	1
Consistency within shipments	26	2	1
Delivery terms	15	13	1
Delivery time	17	11	1
Discounts offered	10	12	6
Extension of credit	6	13	9
Freshness	23	4	2
Minimum quantity requirements	4	17	7
Packaging	14	11	4
Price	20	8	1
Processed by hand	4	11	13
Product consistency	26	2	1
Product range	9	17	2
Proper cutting, handling, and packaging techniques	21	6	1
Quality meets industry standards	26	2	1
Quality exceeds industry standards	10	12	7
Reliability of supply	24	4	0
Sanitary standards	25	2	1
Size of shrimp	23	5	1
Species	15	12	1
Taste/flavor profile	24	4	1
Technical support/service	12	9	7
U.S. transportation costs	8	11	9
Wild caught shrimp	10	12	6

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

Purchasers reported characteristics that determine the quality of frozen warmwater shrimp which included: factors to do with the aesthetic qualities of the shrimp, (flavor, odor, color, texture, and eye appeal); workmanship (proper deveining, lack of damaged or broken shrimp, and no excessive throat meat); proper handling (freshness, wholesomeness, amount of tri-poly, and lack of freezer burn); consistency (size consistency and flavor consistency); and proper packing (proper labeling, net weight, proper sizing, uniform size, and count per pound).

Supplier certification

Twenty of 30 responding purchasers require that all products they purchase be certified.¹⁹ Almost all purchasers (27 of 29) reported some standards for the product they purchased with 19 reporting that they require the same standards for both farmed and wild caught shrimp and the remaining 8 requiring different standards for wild caught shrimp than farm raised shrimp. Of those firms that reported the same standards for wild and farmed shrimp, most reported public standards such as HACCP compliance, GFS certificate USDA audits, and NOAA USDC²⁰ but others reported more general requirements such as sanitary environmental and social standards, or specific quality requirements. Firms that required different standards for wild caught and farmed shrimp required MSC certification²¹ or working for MSC certification or fishery improvement plan for wild caught shrimp and Best Aquaculture Practices certificate or GAA/BAP certificates for farmed shrimp.

Purchasers reported that the time to qualify a new supplier ranged from 1 to 360 days. Seventeen firms reported that certification took 30 days or less, while ten reported that it took 30 days or longer.²² Five purchasers reported that suppliers had either lost certification or failed to be certified since 2010. Both domestic and foreign suppliers had failed in their attempts to qualify product, or had lost their approved status since 2010. One purchaser changed its standards to require “Best Aquaculture Practice” and some suppliers no longer wanted to pursue this business. One purchaser reported that price and an unstable supply had disqualified suppliers, one reported that it had rejected new suppliers because it did not need any new suppliers, one reported rejecting three firms ***, and one rejected three U.S. and three Indian sources. Six purchasers reported rejecting product, with freezer burn being the most common problem. Other problems include: temperature problems; lack of uniformity; weight problems;²³ and contamination.²⁴

Changes in purchasing patterns

Purchasers were asked about changes in their purchasing patterns from different sources since 2010 (table II-11). Reasons reported for decreases in sourcing U.S. product included: reduced production of soup, the downstream product, the gulf oil spill, and lower supply caused share to decline. For increased U.S. purchases, purchasers noted customer

¹⁹ Eight reported that they did not require prequalification, and two reported that they required qualification for 80 percent of their purchases.

²⁰ The National Oceanic and Atmospheric Administration (NOAA) provides inspection services for fish, shellfish, and fishery products to the industry. Its Inspection Program uses the USDC moniker. NOAA Seafood inspection program, <http://www.seafood.nmfs.noaa.gov/> retrieved July 10, 2013.

²¹ Marine Stewardship Council developed standards for sustainable fishing and seafood traceability. Marine Stewardship Council, retrieved July 10, 2013, <http://www.msc.org/about-us/what-we-do>.

²² In addition, one purchaser reported that the time required could be both longer than and shorter than 30 days, reporting qualification time ranged from 1 to 60 days.

²³ One purchaser reported rejecting product for weight or freezer burn issues from ***.

²⁴ Firms rejected product from Ecuador, Guyana, the United States and Indonesia but gave no reason.

preference for U.S. product, expanding private label to include domestic, and increased number of “SKUS” and promotions. Reasons for fluctuating purchases included cost and change in retail strategy, customer requirements for U.S. shrimp, and purchases vary with availability and advertisement schedules. Reasons given for why Chinese purchases fluctuated include changed source based on quality and price; purchases slowed after 2012; and presence of EMS in 2009. Reasons for decreases in purchases of Ecuadorian product include: producing less soup and less small wild caught available. Reasons for increasing purchases of Ecuadorian product include: prompt delivery, cost, more customers, availability, quality, new product uses Ecuador’s small shrimp, product meets sustainability standards, and EMS in other countries. Purchasers reported that fluctuations in purchases of Ecuadorian product were based on prices. Reasons for changes in purchases of Indian product include: increased (more customers, price and ability, availability and quality, meets sustainability standards, and EMS in other countries) and fluctuate (offered best value and met quality needs and demands of customers and large shipments in 2012). Reasons for changes in purchases of product from Malaysia include: fluctuation (quality and a one-time purchase in 2011). Reasons for changes in purchases from Vietnam include: reduced (EMS in 2010 and 2011, and changes in retail strategy); increased (more customers, product availability, quality and price, Tiger shrimp); and fluctuated (price). Reasons for changes in purchases of product from Indonesia included: increase (more customers, price and availability, supply quality and flavor, meets sustainability standards and EMS in other countries) and fluctuation (large shipments in 2012). Reasons for changes in purchases of product from Thailand include: reduced (lost share to Indonesia and EMS in 2012, availability, cost, and changes in retail strategy); increased (available peeled and raw and cooked and business expansion); and fluctuations (quality and price, price, and small supplier). Reasons for changes in purchases from other nonsubject sources include: reduced (quality and shift to other sources); increase (business expansion and cost); and fluctuations (quality and price and need). Only two purchasers reported that there were new suppliers; one reported a new broker for Vietnamese product.

Table II-11

Frozen warmwater shrimp: Changes in purchase patterns from U.S., subject, and nonsubject countries, since 2010

Source of purchases	Did not purchase	Decreased	Increased	Constant	Fluctuated
United States	4	4	8	3	9
China	17	4	0	1	6
Ecuador	4	2	12	6	3
India	8	2	12	1	6
Malaysia	16	3	1	2	5
Vietnam	7	6	6	6	3
Indonesia ¹	6	4	9	6	4
Thailand ¹	6	8	3	6	5
All other countries	5	7	5	2	6

¹ Nonsubject country.

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

Importance of purchasing domestic product

Ten of 29 responding purchasers reported no requirement to purchase U.S.-produced product, 4 reported that purchasing U.S. product was required by law, 13 reported that it was required by customers, and 4 reported it was required for other reasons. Three firms reported shares required by law (2 and 85 percent),²⁵ seven reported shares required by customers (0.1, 5, 10, 11, 20, 50, and 100 percent), and one reported amount required for other reasons (5 percent). Five purchasers explained why U.S. produced shrimp was required, including: Berry Amendment²⁶ compliance (military accounted for 0.5 percent of purchases); orders for wild caught/product of U.S./specific species; traditionally sell some U.S. shrimp; always sell domestic shrimp at all locations as a competitive difference; and as a domestic processor, purchase domestic product.

Comparisons of domestic products, subject imports, and nonsubject imports

Purchasers were asked a number of questions comparing frozen warmwater shrimp produced in the United States, subject countries, and nonsubject countries. First, purchasers were asked for a country-by-country comparison on the same 25 factors (table II-12) for which they were asked to rate the importance in purchasing decisions.

Most purchasers reported that the U.S. product and subject imports from each of the subject countries, and nonsubject countries Indonesia and Thailand, were comparable on nine factors including: consistency from one shipment to another, delivery terms, discounts offered, extension of credit, minimum quantity requirement, packaging, size of shrimp, species, and U.S. transportation cost. Most purchasers reported that U.S. product was superior to product from all subject countries for availability of wild caught shrimp. Most purchasers reported that U.S. product was inferior to all subject countries except Malaysia and Vietnam for availability. Most responding purchasers reported U.S. and Chinese product were comparable with regard to 11 factors, that U.S. was superior for delivery time and wild caught shrimp, that the U.S. product was inferior on availability, price, hand processing, and product range, there was no clear majority for product consistency, proper cutting, handling and packing techniques, reliability of supply, sanitary standards, quality meets and quality exceeds firm standards, and taste/flavor profile. Most purchasers reported that U.S. and Ecuador product was comparable on 20 factors, and that U.S. product was inferior on availability, price, and reliability of supply; U.S. was superior for delivery time and availability of wild caught shrimp. Most firms reported that U.S. and Indian product was comparable on 13 factors with most reporting that U.S. product was inferior on availability, and reliability of supply, and was superior on delivery time and wild caught shrimp. No majority was reported for consistency from one shipment to another, consistency within shipment, price, processed by hand, quality exceeds firm standard, sanitary

²⁵ Two purchasers reported that 2.0 percent of their purchases were required by law to be from the United States.

²⁶ The Berry Amendment was passed by Congress in 1941 to promote the purchase of U.S. goods.

standards, species, and taste/flavor profile. Half or more the responding purchasers reported U.S. and Malaysian product were comparable for 23 factors. The U.S. product was superior for availability of wild caught shrimp; there was no consensus for taste/flavor profile. Most responding purchasers reported the U.S. and Thai product were comparable for 14 factors and that U.S. product was superior for delivery time and wild caught shrimp; U.S. product was inferior for availability, processed by hand, product range, and sanitary standard; while there was no consensus on consistency within shipments, freshness, quality exceeds firm standard, price, and taste/flavor profile. Most of the responding purchasers reported the U.S. and Vietnamese product were comparable for 20 factors and that the U.S. product was superior for delivery time and wild caught shrimp; while there was no consensus on availability, product range, and taste/flavor profile.

Most purchasers reported product was comparable for all products for all subject country pairs and therefore, no table with comparisons is presented.

Table II-12
Frozen warmwater shrimp: Purchasers' comparisons between U.S.-produced and imported product

Factor	U.S. vs. China			U.S. vs. Ecuador			U.S. vs. India			U.S. vs. Malaysia		
	S	C	I	S	C	I	S	C	I	S	C	I
Availability	1	5	6	0	7	13	2	5	12	1	6	4
Consistency from one shipment to another	1	8	3	0	11	8	2	9	7	1	8	2
Consistency within shipment	1	8	3	0	11	8	2	9	7	1	8	2
Delivery terms	4	8	0	5	14	0	6	12	0	3	8	0
Delivery time	9	3	0	12	7	0	12	5	1	5	6	0
Discounts offered	0	8	4	0	15	4	2	13	3	1	9	1
Extension of credit	2	9	1	1	17	1	2	14	2	2	9	0
Freshness	2	6	4	1	13	5	2	11	5	2	6	3
Minimum quantity requirements	3	8	1	3	12	4	5	10	3	2	8	1
Packaging	0	9	3	0	16	2	1	15	2	1	7	3
Price ¹	1	4	7	3	4	12	1	8	9	2	6	3
Processed by hand	1	4	7	0	10	9	2	8	8	1	6	4
Product consistency	1	6	5	0	11	8	2	10	6	1	8	2
Product range	1	4	7	0	12	7	1	9	7	1	7	3
Proper cutting, handling and packing techniques	1	6	5	0	11	8	2	11	5	1	8	2
Quality meets your firm's standards	1	6	5	0	13	6	3	10	5	1	8	2
Quality exceeds your firm's standards	1	5	5	0	11	8	3	9	6	1	8	2
Reliability of supply	1	5	6	0	9	10	2	5	11	1	8	2
Sanitary standards	1	5	6	1	10	8	2	9	7	1	7	3
Size of shrimp	2	7	3	2	13	4	3	14	1	1	9	1
Species	1	10	1	3	11	5	5	9	4	1	8	2
Taste/flavor profile	3	6	3	4	10	4	7	8	3	4	5	2
Technical support/service	2	8	1	1	14	3	3	12	3	2	6	3
U.S. transportation costs ¹	4	7	1	4	13	1	6	10	1	4	7	0
Wild caught shrimp	7	3	2	8	7	2	13	4	1	7	2	1

Table continued on next page

Table II-12--Continued

Frozen warmwater shrimp: Purchasers' comparisons between U.S.-produced and imported product

Factor	U.S vs. Vietnam			U.S vs. Indonesia ²			U.S. vs. Thailand ²			U.S vs. nonsubject countries		
	S	C	I	S	C	I	S	C	I	S	C	I
Availability	0	9	9	1	5	14	2	6	12	1	7	5
Consistency from one shipment to another	0	10	8	1	12	7	1	11	8	1	9	3
Consistency within shipment	0	11	7	1	11	8	1	10	9	1	9	3
Delivery terms	4	14	0	5	15	0	6	14	0	2	10	0
Delivery time	10	7	1	10	9	1	11	7	2	6	7	0
Discounts offered	0	16	2	1	15	4	1	16	3	0	13	0
Extension of credit	1	16	1	2	16	2	2	16	2	0	13	0
Freshness	0	12	6	2	9	9	1	10	9	0	11	2
Minimum quantity requirements	3	13	1	3	14	3	3	14	3	1	12	0
Packaging	0	16	2	1	15	4	0	17	3	0	13	0
Price ¹	1	10	7	2	7	11	1	9	10	1	10	2
Processed by hand	0	10	8	1	7	12	0	9	11	0	11	2
Product consistency	0	11	7	1	10	9	1	9	10	0	10	3
Product range	1	8	9	1	10	9	0	9	11	1	10	2
Proper cutting, handling and packing techniques	0	12	6	1	10	9	0	11	9	0	11	2
Quality meets your firm's standards	0	14	4	1	12	7	0	12	7	0	10	3
Quality exceeds your firm's standards	0	13	4	1	12	7	0	11	8	0	10	3
Reliability of supply	0	10	8	1	8	11	0	11	9	1	8	4
Sanitary standards	0	11	7	1	8	11	1	8	11	1	11	1
Size of shrimp	2	12	4	4	14	2	3	14	3	1	10	2
Species	2	11	5	4	12	4	4	11	5	2	10	1
Taste/flavor profile	4	9	5	8	8	4	7	8	5	0	12	1
Technical support/service	2	10	5	2	13	5	2	12	6	1	12	0
U.S. transportation costs ¹	6	11	0	6	13	1	6	13	1	3	10	0
Wild caught shrimp	11	5	1	13	4	2	11	6	2	3	10	0

¹ A rating of superior means that price/U.S. transportation costs is generally lower. For example, if a firm reported "U.S. superior," it meant that the U.S. product was generally priced lower than the imported product.

² Nonsubject country

Note: S=first listed country's product is superior; C=both countries' products are comparable; I=first list country's product is inferior.

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

Comparison of U.S.-produced and imported frozen warmwater shrimp

In order to determine whether U.S.-produced frozen warmwater shrimp can generally be used in the same applications as imports from both subject and nonsubject countries U.S. producers, importers, and purchasers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. As shown in table II-13, most processors reported that product from all pairs could “always” or “frequently” be used interchangeably.²⁷ Most importers reported that product from all country pairs was “sometimes” or never interchangeable. Similarly, most purchasers reported that U.S. and imported product from all countries could only “sometimes” or “never” be used interchangeably. However, most purchasers reported product from other countries pairs “always” or “frequently” could be used interchangeably except for Malaysia compared with China, India, and Ecuador, and “other” nonsubject countries compared to China, Malaysia, and Vietnam, as well as nonsubject countries Thailand and Indonesia. In these cases most purchasers reported that they were at least “sometimes” interchangeable.

²⁷ In the importers prehearing brief, the respondents stated that U.S.-produced shrimp is not closely substitutable with imports due to such factors as customer preferences for domestic wild caught as compared to farm raised domestic shrimp, quality differences, geographic differences, and species differences. Importers’ prehearing brief, pp. 20-23. In their posthearing brief, the petitioner’s stated that differences other than price are rarely significant in purchasing decisions. They noted that many purchasers buy both the domestic wild caught and imported farm raised shrimp for the same purposes. Petitioners’ posthearing brief, p. 3.

Table II-13
Frozen warmwater shrimp: Perceived interchangeability between frozen warmwater shrimp produced in the United States and in other countries, by country pairs

Country pairs	Number of U.S. processors reporting				Number of U.S. importers reporting				Number of purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. subject countries:												
U.S. vs. China	22	10	4	3	0	2	9	6	4	2	8	6
U.S. vs. Ecuador	23	9	4	3	0	0	11	9	4	5	8	5
U.S. vs. India	22	10	4	3	0	1	10	10	4	1	13	5
U.S. vs. Malaysia	22	9	4	3	1	1	9	7	3	0	10	5
U.S. vs. Vietnam	22	9	4	3	0	1	11	8	3	2	11	7
Subject vs. subject countries:												
China vs. Ecuador	18	9	3	1	1	1	12	0	6	6	5	1
China vs. India	19	8	2	1	1	2	12	1	7	4	6	1
China vs. Malaysia	20	8	2	1	0	2	11	0	4	3	7	1
China vs. Vietnam	20	8	2	1	1	2	12	1	7	6	4	1
Ecuador vs. India	17	8	3	1	2	0	15	2	5	8	7	1
Ecuador vs. Malaysia	18	9	3	1	1	0	10	1	3	4	7	2
Ecuador vs. Vietnam	18	9	3	2	2	0	14	2	6	9	4	2
India vs. Malaysia	20	7	2	1	0	2	11	1	7	1	8	1
India vs. Vietnam	20	7	2	2	2	3	14	0	9	7	5	1
Malaysia vs. Vietnam	20	7	2	1	3	1	10	1	9	4	5	1
U.S. vs. nonsubject:												
U.S. vs. Indonesia	22	9	5	3	0	1	11	9	4	0	13	6
U.S. vs. Thailand	23	9	4	3	1	0	12	9	4	2	10	7
U.S. vs. Nonsubject	20	7	4	3	0	0	10	6	3	2	9	4
Subject vs. nonsubject countries:¹												
China vs. Indonesia	21	6	2	2	1	2	12	1	6	4	7	1
China vs. Thailand	21	7	2	1	1	2	12	1	7	6	4	1
China vs. Nonsubject	18	6	3	1	0	1	12	0	4	3	7	1
Ecuador vs. Indonesia	19	7	3	1	2	2	15	2	5	8	6	0
Ecuador vs. Thailand	19	9	3	1	2	0	15	2	7	8	4	1
Ecuador vs. Nonsubject	18	6	3	1	1	0	12	1	4	5	7	1
India vs. Indonesia	20	6	2	1	3	3	14	0	9	4	7	0
India vs. Thailand	20	7	2	1	2	3	15	0	9	7	6	0
India vs. Nonsubject	18	5	3	1	0	0	14	1	6	4	7	1
Malaysia vs. Indonesia	18	7	2	1	2	1	10	1	8	2	7	1
Malaysia vs. Thailand	20	7	2	1	3	2	9	1	9	4	2	3
Malaysia vs. Nonsubject	18	5	3	1	1	0	11	0	5	1	6	1
Vietnam vs. Indonesia	20	7	2	1	4	4	12	0	9	6	5	0
Vietnam vs. Thailand	20	8	2	1	4	2	14	0	7	4	6	1
Vietnam vs. Nonsubject	18	5	3	1	0	0	14	1	5	2	7	2
Nonsubject vs. nonsubject countries:¹												
Indonesia vs. Thailand	21	6	2	1	4	4	13	0	11	7	3	1
Indonesia vs. Nonsubject	18	5	3	1	1	0	14	1	5	3	7	1
Thailand vs. Nonsubject	18	5	3	1	1	0	14	1	5	3	7	1

¹ Indonesia and Thailand are nonsubject countries.

Note.—A=Always, F=Frequently, S=Sometimes, N=Never.

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

Only 8 of 28 responding purchasers reported that domestically-produced product “always” met minimum quality specifications (table II-14) and only a minority of purchasers reported imported product “always” met minimum quality standards for all countries for which data were collected, but most purchasers did report that product from all countries at least “usually” met purchaser’s minimum standards.

Table II-14
Frozen warmwater shrimp: Ability to meet minimum quality specifications, by source and number of reporting firms¹

Source	Always	Usually	Sometimes	Rarely or never
United States	8	8	5	3
China	6	3	2	1
Ecuador	11	6	1	2
India	7	9	4	1
Malaysia	1	4	1	1
Mexico	6	6	2	1
Vietnam	12	8	0	1
Indonesia ²	7	10	1	1
Thailand ²	11	10	0	1

¹ Purchasers were asked how often domestically produced or imported frozen warmwater shrimp meets minimum quality specifications for their own or their customers’ uses.

² Nonsubject country.

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

In addition, producers, importers, and purchasers were asked to assess how often differences other than price were significant in sales of frozen warmwater shrimp from the United States, subject, or nonsubject countries. As shown in table II-15, most processors reported that there were either “never” or only “sometimes” differences other than price for product from each of the country pairs. Most importers, however, reported there were “always” or “frequently” differences other than price between U.S. and imported product but that there were “sometimes” differences between all but one subject pair.²⁸ Purchasers responses were more varied, particularly when comparing U.S. product with product from other countries. Most purchasers agreed that there were at least “sometimes” differences other than price for all country pairs. Purchasers reported “always” and “frequently” more often when comparing U.S. product with product from the subject countries than when comparing pairs of subject countries.

²⁸ For Malaysia compared to Thailand six reported there were “sometimes” differences other than price, three each reported “frequently” and “never” difference other than price and two reported that there were “always” differences other than price.

Table II-15

Frozen warmwater shrimp: Significance of differences other than price between frozen warmwater shrimp produced in the United States and in other countries, by country pair

Country pairs	Number of U.S. processors reporting				Number of U.S. importers reporting				Number of purchasers reporting			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. subject countries:												
U.S. vs. China	7	4	8	19	8	5	2	1	5	4	6	3
U.S. vs. Ecuador	7	3	7	20	11	2	4	2	7	6	6	2
U.S. vs. India	7	6	7	18	13	4	2	1	6	3	11	2
U.S. vs. Malaysia	7	3	7	19	9	4	3	1	4	1	10	1
U.S. vs. Vietnam	7	3	7	19	12	4	3	1	6	5	8	3
Subject vs. subject countries:												
China vs. Ecuador	3	3	7	15	2	3	9	0	3	2	10	2
China vs. India	3	4	5	16	2	2	10	0	3	0	12	2
China vs. Malaysia	3	4	6	14	2	2	9	0	3	0	9	1
China vs. Vietnam	3	3	7	14	2	2	9	1	3	2	10	2
Ecuador vs. India	3	4	6	15	3	3	11	1	3	2	14	2
Ecuador vs. Malaysia	3	3	5	15	3	2	7	1	4	1	8	1
Ecuador vs. Vietnam	3	3	5	15	3	2	11	1	3	4	11	2
India vs. Malaysia	3	3	6	14	2	3	9	0	4	0	9	1
India vs. Vietnam	3	3	6	15	2	3	13	0	4	2	13	3
Malaysia vs. Vietnam	3	3	5	16	2	2	9	3	4	3	10	3
U.S. vs. nonsubject countries:												
U.S. vs. Indonesia	7	4	7	19	12	3	4	1	7	3	10	2
U.S. vs. Thailand	7	3	7	20	13	5	2	1	6	6	8	2
U.S. vs. Nonsubject	6	3	6	18	7	4	4	1	3	4	9	1
Subject vs. nonsubject countries:¹												
China vs. Indonesia	3	3	6	15	2	2	10	0	3	0	12	2
China vs. Thailand	3	3	7	15	2	3	9	0	3	2	10	2
China vs. Nonsubject	3	3	5	15	1	2	10	0	3	0	9	2
Ecuador vs. Indonesia	3	3	5	16	3	2	12	1	3	3	12	2
Ecuador vs. Thailand	3	3	6	16	3	3	11	2	3	5	10	2
Ecuador vs. Nonsubject	3	3	5	15	2	2	10	1	3	0	11	2
India vs. Indonesia	3	3	6	14	2	3	14	0	4	2	12	2
India vs. Thailand	3	4	6	15	2	4	13	0	4	2	13	2
India vs. Nonsubject	3	4	5	14	0	2	13	0	3	0	10	3
Malaysia vs. Indonesia	3	3	5	16	2	2	7	3	5	1	7	2
Malaysia vs. Thailand	3	3	7	14	2	3	6	3	4	2	10	3
Malaysia vs. Nonsubject	3	3	5	14	1	2	7	2	3	0	8	2
Vietnam vs. Indonesia	3	3	5	16	2	2	12	3	4	2	13	3
Vietnam vs. Thailand	3	3	5	16	2	2	11	4	5	2	12	3
Vietnam vs. Nonsubject	3	3	5	14	1	2	10	1	3	0	10	2
Nonsubject vs. nonsubject countries:¹												
Indonesia vs. Thailand	3	3	5	17	2	3	10	5	5	2	12	3
Indonesia vs. Nonsubject	3	3	5	15	1	2	10	2	3	0	10	2
Thailand vs. Nonsubject	3	3	5	14	1	2	10	2	3	0	10	3

¹Indonesia and Thailand are nonsubject countries.

Note.—A=Always, F=Frequently, S=Sometimes, N=Never.

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

Reported differences other than price not previously listed in this section include: small shrimp from Ecuador is hand peeled and phosphate free; BP oil spill has messed up local production, quality, and infrastructure; U.S. facilities lack good food safety controls; seasonality and labor expertise differ between countries; quality and technical support is available from Vietnam, and nonsubject Thailand and Indonesia; import product provides a year round supply; Vietnam and India produce tiger shrimp not produced in the United States; Thailand produces small vannamei shrimp in large volumes and the United States does not produce these in large volumes; customers prefer block frozen material that can't be easily damaged; and Indian product is lower quality than that from Malaysia and Vietnam, as well as from nonsubject countries Indonesia and Thailand.

ELASTICITY ESTIMATES

This section discusses elasticity estimates; parties were encouraged to comment on these estimates as an attachment to their prehearing or posthearing brief. Comments by parties that were included with their posthearing submissions are discussed along with the estimates.

U.S. supply elasticity

The domestic supply elasticity for frozen warmwater shrimp measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of frozen warmwater shrimp. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced frozen warmwater shrimp. Analysis of these factors earlier indicates that the U.S. industry is likely to have limited ability to increase or decrease shipments to the U.S. market which depends upon how much can be harvested; an estimate in the range of 2 to 5 is suggested. However, this depends on how much can be harvested.

U.S. demand elasticity

The U.S. demand elasticity for frozen warmwater shrimp measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of frozen warmwater shrimp. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the frozen warmwater shrimp in the production of any downstream products. Based on the available information, the aggregate demand for frozen warmwater shrimp is likely to be moderately elastic; a range of -1 to -3 is suggested.

The respondents agree that the elasticity of the overall quantity of shrimp demanded in the United States is -1 to -3.²⁹ However, they state that the elasticity of demand for U.S.-produced shrimp is lower than the overall elasticity because wild caught domestic shrimp does not face competition from farm raised imported shrimp. Even if domestic and imported shrimp are not particularly close substitutes, domestic shrimp would still face competition from other protein sources. The cost of U.S. produced shrimp accounts for a substantial share of the cost of end-use applications as discussed earlier, and therefore, a substantial increase in its price would likely lead to a large reduction in demand. Therefore, there doesn't appear to be a case for estimating a different demand elasticity for the domestic product than for imports.

Substitution elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.³⁰ Product differentiation, in turn, depends upon such factors as quality (*e.g.*, chemistry, appearance, *et cetera*) and conditions of sale (*e.g.*, availability, sales terms/ discounts/ promotions, *et cetera*). Based on available information, the elasticity of substitution between U.S.-produced frozen warmwater shrimp and imported frozen warmwater shrimp is likely to be in the range of 3 to 5.

The petitioner's believe that the substitution elasticity is higher, ranging from 5 to 10.³¹ They use this range in a compas analysis of the effects of subsidies on sales and profitability for the domestic industry.³² While the evidence indicates that there is some substitution between U.S.-produced shrimp and imports, a level of 10 seems to be too high considering all information developed in the investigations.

²⁹ Respondents' Joint Answers to Commissioner questions, p. A-58

³⁰ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

³¹ Petitioners' posthearing brief, exhibit 1.

³² One potential problem with this compas analysis is that it assumes a supply elasticity of 10 to infinity for the fair import supply (nonsubject imports) and an infinite supply elasticity for subject imports. Because of the effects of EMS affecting the largest nonsubject supplier, Thailand, and subject import suppliers, China, Malaysia, and Vietnam, these supply elasticities do not appear to be realistic.

PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the subsidies was presented in Part I of this report and information on the volume and pricing of imports of the subject merchandise is presented in Part IV and Part V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of 48 U.S. processors, 40 of which provided usable data that accounted for the *** percent of U.S. production of frozen warmwater shrimp during 2012.¹

U.S. PROCESSORS

Warmwater shrimp is largely wild-caught in the United States in the Gulf of Mexico and the Southeastern Atlantic. Table III-1 presents warmwater shrimp landings and farm production, by region, in 2012.

Table III-1
Warmwater shrimp: Wild-catch landings and farm production, by region, 2012

Region	Wild-catch landings	Farm production	All warmwater shrimp
	Quantity (1,000 pounds)		
Gulf	***	3,414	***
South Atlantic	***	(1)	***
Total	***	3,414	***

¹ Data not available.

Source: Staff correspondence with Granvil Treece, Texas A&M, January 31, 2013 and ***.

Table III-2 presents a list of current domestic processors of frozen warmwater shrimp and each company's position on the petition, processing location, and share of reported production of frozen warmwater shrimp in 2012.

¹ Staff's coverage estimate is based on a comparison of data compiled from Commission questionnaires (164.1 million pounds) to official NMFS statistics.

Table III-2

Frozen warmwater shrimp: U.S. processors of frozen warmwater shrimp, their positions on the petition, processing locations, and shares of reported production, 2012

Firm	Position on petition	Location	Share of 2012 reported production (percent)
Bama Sea Products, Inc.	***	FL	***
Bayou Shrimp Processors, Inc.	***	LA	***
Biloxi Freezing and Processing, Inc.	***	MS	***
Bluewater Shrimp Company	***	LA	***
Bon Secour Fisheries, Inc.	***	AL	***
Cape Canaveral Shrimp Co., Inc.	***	FL	***
Carson & Co., Inc.	***	AL	***
CF Gollot & Sons	***	MS	***
David Chauvin Seafood Co., LLC	***	LA	***
Dean Blanchard Seafood, Inc.	***	LA	***
Dominicks Seafood	***	AL	***
DoRan Seafood, LLC	***	LA	***
Fisherman's Reef Shrimp Company	***	TX	***
Fulton Seafood, Inc.	***	TX	***
Golden Gulf Coast Pkg. Co., Inc.	***	MS	***
Gulf Crown Seafood Company, Inc.	***	LA	***
Gulf Fish, Inc.	***	LA	***
Gulf Island Shrimp & Seafood II, LLC	***	LA	***
Gulf Pride Enterprises, Inc.	***	MS	***
Gulf South, Inc.	***	LA	***
Hi Seas of Dulac, Inc.	***	LA	***
Intracoastal Seafood	***	LA	***
International Oceanic Enterprises, Inc.	***	AL	***
James F Dubberly DBA Dubberly's Seafood	***	GA	***

Table continued on next page.

Table III-2--Continued**Frozen warmwater shrimp: U.S. processors of frozen warmwater shrimp, their positions on the petition, production locations, and shares of reported production, 2012**

Firm	Position on petition	Location	Share of 2012 reported production (percent)
JBS Packing Co.	***	TX	***
Lafitte Frozen Foods Corp.	***	LA	***
Livingston's Bulls Bay Seafood	***	SC	***
Michael E.Cooper dba P&M Seafood	***	MS	***
Ocean Harvest Wholesale, Inc.	***	TX	***
Ocean Springs Seafood Market, Inc.	***	MS	***
Palacios Processors, Inc. DBA Lighthouse Seafood	***	TX	***
Pamlico Packing Co., Inc.	***	NC	***
Paul Piazza & Son, Inc.	***	LA	***
Pearl, Inc. d/b/a Indian Ridge Shrimp Co.	***	LA	***
Penguin Frozen Foods, Inc.	***	IL	***
Philly Seafood	***	TX	***
RA Lesso Brokerage Co., Inc	***	MS	***
Roundtree Inc dba Leonard & Sons Shrimp Co	***	SC	***
Sea Gold Inc	***	LA	***
Sea Pearl Seafood Company, Inc.	***	AL	***
Seabrook Seafood, Inc.	***	TX	***
Tampa Bay Fisheries, Inc.	***	FL	***
Texas Gulf Seafood, Inc.	***	TX	***
Texas Pack, Inc.	***	TX	***
Tidelands Seafood Co., Inc.	***	LA	***
Tommy's Seafood, Inc.	***	LA	***
Vincent Piazza Jr. & Sons Seafood, Inc.	***	LA	***
Wood's Fisheries, Inc.	***	FL	***
Total			100.0

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

Table III-3 presents U.S. processors' ownership, and related and/or affiliated firms.

Table III-3
Frozen warmwater shrimp: U.S. processors' ownership, related and/or affiliated firms

* * * * *

Thirty-six U.S. processors indicated that the Gulf Oil Spill in 2010 affected the shrimp supply. Other events reported by the domestic industry include the following: two firms *** reported plant openings; three firms *** reported plant closings; three firms *** reported relocations; five firms *** reported expansions; three firms *** reported acquisitions; two firms *** reported revised labor agreements resulting in wage increases for employees; and seven firms *** reported investments in new equipment used for: sorting, freezing, packing and weighing frozen warmwater shrimp.

Two U.S. processors *** reported that they process other products, including fresh shrimp, breaded shrimp, and other fish utilizing the same equipment and related workers used to produce frozen warmwater shrimp. Ten firms *** indicated being involved in a toll agreement regarding the production of frozen warmwater shrimp and one firm *** indicated that it processed frozen warmwater shrimp in a foreign trade zone.

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Table III-4 presents U.S. processors' production, capacity, and capacity utilization. Between 2010 and 2012, U.S. processors' production capacity increased by 8.1 percent. Increases in capacity reflect upgrades in equipment or investments in different kinds of capacity to produce different kinds of products to meet market demand.²

² Hearing transcript, p. 65 (Authement). Counsel for Petitioner used the example of a processor adding an IQF line to its facility without discarding its existing block freezing equipment. Hearing transcript, p. 90 (Drake).

Table III-4
Frozen warmwater shrimp: U.S. processors' production, capacity, and capacity utilization, 2010-12, January-March 2012, and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
Capacity (1,000 pounds)	571,040	598,385	617,340	151,386	152,487
Production (1,000 pounds)	145,175	165,957	164,063	20,189	15,437
Capacity utilization (percent)	25.4	27.7	26.6	13.3	10.1

Note: The interim periods for which data were collected coincide with the shrimping offseason (roughly January through May) when processors typically rely on their in-season inventories for production.

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

Constraints on capacity

Table III-5 presents a ranking of constraints on U.S. processors' capacity to produce frozen warmwater shrimp. As indicated below, live shrimp supply was the most important constraint reported by U.S. processors.³

Table III-5
Frozen warmwater shrimp: Constraints on production capacity

Item	Not applicable	Most important	2nd most important	3rd most important	4th most important	5th most important
Freezing capacity	30	3	3	3	1	1
Live shrimp supply	9	22	8	1	0	0
Machinery or equipment other than freezers	27	0	3	4	1	3
Storage capacity	27	0	3	2	3	4
Labor availability	22	3	5	4	2	2
Other	8	7	2	0	0	0

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

³ Wild catch landings are subject to environmental, biological, and economic constraints. Hearing transcript, pp. 35-36 (Drake).

Freezing capacity

Table III-6 presents the U.S. processors' total and allocated freezing capacity. Between 2010 and 2012, block freezing capacity increased by 7.3 percent and IQF freezing capacity increased by 7.0 percent.⁴

Table III-6
Frozen warmwater shrimp: U.S. processors' freezing capacity, by type, 2010-12, January-March 2012, and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Quantity (1,000 pounds)				
Total potential freezing capacity	546,465	570,450	584,689	180,574	180,890
of which allocated to frozen warm water shrimp	484,118	507,861	522,078	129,055	129,255
Block freezing capacity	360,974	373,980	387,475	114,426	114,140
IQF freezing capacity	167,931	181,410	179,654	80,299	80,511
Total other	***	***	***	***	***

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

U.S. PROCESSORS' U.S. SHIPMENTS AND EXPORTS

Table III-7 presents U.S. processors' U.S. shipments, export shipments, and total shipments. Three firms *** reported transfers to related firms; four firms *** reported internal consumption; and four firms *** reported exports to Canada. Commercial shipments accounted for at least 91.6 percent of total shipments between 2010 and 2012.

⁴ There are no quality differences between block freezing and IQF. IQF technology, which is a more expensive method, allows flexibility in terms of usage for a consumer since shrimp are individually frozen; however, these shrimp have a shorter shelf life compared to block frozen shrimp. Hearing transcript, pp. 111-112 (Gollott) and pp. 112-113 (Gibson).

Table III-7

Frozen warmwater shrimp: U.S. processors U.S. shipments, exports shipments, and total shipments, 2010-12, January-March 2012, and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
Quantity (1,000 pounds)					
Commercial shipments	153,144	160,003	145,847	26,200	29,493
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
Value (1,000 dollars)					
Commercial shipments	552,517	601,318	565,173	110,176	118,096
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
Unit value (dollars per pound)					
Commercial shipments	\$3.61	\$3.76	\$3.88	\$4.21	\$4.00
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
Share of quantity (percent)					
Commercial shipments	96.4	94.4	91.6	92.6	95.1
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	100.0	100.0	100.0	100.0	100.0

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

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

U.S. PROCESSORS' INVENTORIES

Table III-8 presents U.S. processors' end-of-period inventories and the ratio of these inventories to U.S. producers' production, U.S. shipments, and total shipments over the period. The domestic industry's inventories increased by 31.4 percent from 2010 to 2012, and were 14.8 percent higher in interim 2013 than in interim 2012. U.S. processors hold more inventories in the offseason, which is at the end and the very beginning of the calendar year, and sell those products until the next shrimping harvest season.⁵

Table III-8
Frozen warmwater shrimp: U.S. processors' inventories, 2010-12, January-March 2012, and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
Inventories (1,000 pounds)	32,103	31,207	42,192	22,345	25,651
Ratio to production (percent)	22.1	18.8	25.7	27.7	41.6
Ratio to U.S. shipments (percent)	20.3	18.5	26.6	19.8	20.7
Ratio to total shipments (percent)	20.2	18.4	26.5	19.7	20.7

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

U.S. PROCESSORS' IMPORTS AND PURCHASES

One processor, Tampa Bay Fisheries, reported direct imports of frozen warmwater shrimp.⁶ Sixteen U.S. processors reported purchases of imports from subject sources.⁷ Table III-9 presents U.S. processors' imports and purchases of frozen warmwater shrimp.

Table III-9
Frozen warmwater shrimp: U.S. processors' U.S. production, imports and purchases, 2010-12, January-March 2012, and January-March 2013

* * * * * * *

⁵ Conference transcript, p. 64 (Drake). Hearing transcript, pp. 145-146 (Kimbrough).

⁶ At the staff conference, an official from Tampa Bay Fisheries testified that it purchases and processes foreign shrimp, as well as products from U.S. vessels. Conference transcript, p. 114 (Paterson).

⁷ Given the seasonality of the shrimp harvest, U.S. processors may purchase imported shrimp to supplement their inventory, allowing them to supply shrimp to their customers 52 weeks a year. Hearing transcript, p. 139 (Kimbrough).

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-10 shows U.S. processors' employment-related data during the period examined. The number of PRWs fluctuated from 2010 to 2012, but had an overall increase of 3.5 percent. Aggregate wages paid increased by 16.5 percent between 2010 and 2012.

Table III-10

Frozen warmwater shrimp: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2010-12, January-March 2012, and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
Production and related workers (PRWs)	1,980	2,055	2,050	1,649	1,583
Total hours worked (<i>1,000 hours</i>)	3,827	3,939	4,202	891	1,197
Hours worked per PRW ¹	1,943	1,926	2,060	543	761
Wages paid (<i>1,000 dollars</i>)	43,449	47,889	50,605	10,176	11,709
Hourly wages ¹	\$11.31	\$12.11	\$11.98	\$11.25	\$9.70
Productivity (<i>pounds produced per hour</i>) ¹	37.3	41.6	38.3	21.0	11.9
Unit labor costs (<i>per pound</i>)	\$0.30	\$0.29	\$0.31	\$0.50	\$0.76

¹ Ratios do not include ***, which failed to provide data concerning hours worked.

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

PART IV: U.S. IMPORTS, APPARENT U.S. CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission issued importer questionnaires to 52 firms believed to be importers of subject frozen warmwater shrimp, as well as to all U.S. producers of frozen warmwater shrimp.¹ Usable questionnaire responses were received from 31 companies, representing 40.7 percent of total subject imports (China, Ecuador, India, Malaysia, and Vietnam), 78.1 percent of imports from China, 36.9 percent of imports from Ecuador, 31.1 percent of imports from India, 33.6 percent of imports from Malaysia, and 45.3 percent of imports from Vietnam between 2010 and 2012.²

Table IV-1 lists all responding U.S. importers of frozen warmwater shrimp, the countries they import from, and their shares of subject U.S. imports in 2012.³

¹ The Commission issued questionnaires to those firms that, based on a review of data provided by U.S. Customs and Border Protection (“Customs”), may have accounted for more than *** percent of total imports under HTS subheadings in table IV-3 since 2010.

² Coverage was calculated based on official Commerce import statistics compared to the quantity of imports reported in questionnaire data between 2010 and 2012. Prior to 2012, warmwater and coldwater shrimp were both provided for in HS subheading 0306.13. HS subheadings 0306.16 and 0306.17 were created in 2012 to provide separately coldwater and warmwater shrimp. Therefore, while staff recognizes that HS subheading 0306.16 contains out of scope product (coldwater shrimp), it is included in the import data statistics in this report (along with HTS subheadings 0306.13 and 0306.17) to maintain data consistency across the entire period. Import data statistics also include certain residual or “basket” classifications, such as statistical reporting numbers 1605.20.1010, 1605.20.1030, 1605.21.1030, and 1605.29.1010, which may include non-subject merchandise.

³ Calculation of subject countries’ share of 2012 imports includes China, Ecuador, India, Malaysia, and Vietnam.

Table IV-1
Frozen warmwater shrimp: U.S. importers, countries from which they import, and shares of subject imports, 2012

Importer	China	Ecuador	India	Indonesia	Malaysia	Thailand	Vietnam	Share of subject imports
Arista Industries, Inc	***	***	***	***	***	***	***	***
Censea, Inc.	***	***	***	***	***	***	***	***
Choice Canning Co., Inc.	***	***	***	***	***	***	***	***
Contessa Premium Foods	***	***	***	***	***	***	***	***
CP Food Products, Inc.	***	***	***	***	***	***	***	***
Crystal Harbor Seafood	***	***	***	***	***	***	***	***
Delco, Inc	***	***	***	***	***	***	***	***
Devi Seafoods, Inc.	***	***	***	***	***	***	***	***
Eastern Fish Company	***	***	***	***	***	***	***	***
Expack Seafood, Inc.	***	***	***	***	***	***	***	***
Good World Foods, Inc.	***	***	***	***	***	***	***	***
H&N Foods International	***	***	***	***	***	***	***	***
Lucky Food, LLC	***	***	***	***	***	***	***	***
MV and Sons-Texas, LP	***	***	***	***	***	***	***	***
Mazzetta Company	***	***	***	***	***	***	***	***
North Food Group, Inc.	***	***	***	***	***	***	***	***
Ocean Bistro Corporation	***	***	***	***	***	***	***	***
OFI International, Inc.	***	***	***	***	***	***	***	***
Ore-Cal Corporation	***	***	***	***	***	***	***	***
Pacific Breeze Seafood	***	***	***	***	***	***	***	***
Pescanova, Inc.	***	***	***	***	***	***	***	***
Prime Seafood	***	***	***	***	***	***	***	***
Quirch Foods Co.	***	***	***	***	***	***	***	***
Red Chamber	***	***	***	***	***	***	***	***
Rubicon Resources, LLC	***	***	***	***	***	***	***	***
Sea Port Products	***	***	***	***	***	***	***	***
SSC, Inc.	***	***	***	***	***	***	***	***
Sunnywell Seafood	***	***	***	***	***	***	***	***
Suram Trading Corp.	***	***	***	***	***	***	***	***
Tampa Bay Fisheries	***	***	***	***	***	***	***	***
Tri-Union Frozen Products	***	***	***	***	***	***	***	***
Total								100.0

Note.--Calculation of subject countries' share of 2012 imports includes China, Ecuador, India, Malaysia, and Vietnam.

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

Of the responding U.S. importers, a number of firms reported being related to firms that are engaged in the production of frozen warmwater shrimp or being related to firms engaged in importing or exporting frozen warmwater shrimp. A list of these firms is presented in table IV-2.

Table IV-2
Frozen warmwater shrimp: Related U.S. importers

* * * * *

U.S. imports

Table IV-3 and figure IV-1 present and depict data for U.S. imports of frozen warmwater shrimp. Between 2010 and 2012, Ecuador and India were the two largest subject sources of frozen warmwater shrimp, while Thailand and Indonesia were the two largest nonsubject sources. Between 2010 and 2012, the volume of imports of frozen warmwater shrimp from India and Ecuador increased, while the volume of imports from China, Malaysia, and Vietnam decreased.⁴

Overall, the quantity of imports from subject countries increased by 16.8 percent between 2010 and 2012 and was 8.6 percent higher in interim 2013 compared to interim 2012. The quantity of imports from nonsubject countries decreased by 16.4 percent between 2010 and 2012 and was 19.9 percent lower in interim 2013 than in interim 2012.⁵

According to official Commerce statistics, U.S. imports from Malaysia had the lowest average unit values, ranging from \$2.92 per pound to \$3.40 per pound between 2010 and 2012, while imports from Vietnam had the highest average unit values, ranging from \$5.07 per pound to \$5.23 per pound between 2010 and 2012.

⁴ Between 2010 and 2012, U.S. imports of frozen warmwater shrimp from India and Ecuador increased by 118.8 and 24.8 percent, respectively. Over the same period, U.S. imports of frozen warmwater shrimp from: China decreased by 44.1 percent; Malaysia decreased by 3.5 percent; and Vietnam decreased by 17.2 percent. Increases in shrimp production in India can be attributed to the country's switch from Black Tiger to vannamei species, which as proven very adaptable to the climate of India. Hearing transcript, p. 286 (Lunn).

⁵ As noted earlier, shrimp output in subject countries (China, Malaysia, and Vietnam) as well as nonsubject countries (Thailand) have been adversely affected by Early Mortality Syndrome. U.S. imports from Thailand, the single largest source of frozen warmwater shrimp, decreased by 34.1 between 2010 and 2012, and were 23.2 percent lower in interim 2013 than in interim 2012.

Table IV-3
Frozen warmwater shrimp: U.S. imports, by sources, 2010-2012, January-March 2012, and
January-March 2013

Source	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Imports (1,000 pounds)				
China	54,591	42,032	30,537	4,812	3,311
Ecuador	141,620	160,422	176,688	41,827	38,278
India	65,444	104,960	143,163	22,393	38,076
Malaysia	52,721	63,415	50,882	13,327	12,221
Vietnam	100,834	91,503	83,534	16,903	15,882
Subtotal, (subject)	415,210	462,331	484,803	99,263	107,767
Indonesia	126,661	146,747	157,702	41,578	37,350
Thailand	414,954	375,072	273,541	61,975	47,640
All other sources	172,475	174,570	165,568	42,961	32,327
Subtotal, (nonsubject)	714,090	696,389	596,811	146,514	117,318
Total U.S. Imports	1,129,300	1,158,720	1,081,615	245,777	225,085
	Value (\$1,000)¹				
China	174,857	159,147	105,754	18,964	10,896
Ecuador	418,571	540,443	568,268	137,126	133,885
India	308,832	529,412	577,239	101,512	157,218
Malaysia	153,999	212,566	173,098	48,192	39,717
Vietnam	511,515	504,949	436,745	98,746	79,709
Subtotal, (subject)	1,567,773	1,946,517	1,861,103	404,540	421,425
Indonesia	485,466	686,296	660,349	184,404	163,873
Thailand	1,480,787	1,655,821	1,152,011	278,931	201,294
All other sources	638,578	681,566	627,468	171,528	148,175
Subtotal, (nonsubject)	2,604,831	3,023,683	2,439,829	634,863	513,342
Total U.S. Imports	4,172,604	4,970,199	4,300,932	1,039,403	934,767
	Unit value (per pound)				
China	3.20	3.79	3.46	3.94	3.29
Ecuador	2.96	3.37	3.22	3.28	3.50
India	4.72	5.04	4.03	4.53	4.13
Malaysia	2.92	3.35	3.40	3.62	3.25
Vietnam	5.07	5.52	5.23	5.84	5.02
Subtotal, (subject)	3.78	4.21	3.84	4.08	3.91
Indonesia	3.83	4.68	4.19	4.44	4.39
Thailand	3.57	4.41	4.21	4.50	4.23
All other sources	3.70	3.90	3.79	3.99	4.58
Subtotal, (nonsubject)	3.65	4.34	4.09	4.33	4.38
Total U.S. Imports	3.69	4.29	3.98	4.23	4.15

Table continued on the next page.

Table IV-3--Continued

Frozen warmwater shrimp: U.S. imports, by sources, 2010-2012, January-March 2012, and January-March 2013

Source	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Share of volume (percent)				
China	4.8	3.6	2.8	2.0	1.5
Ecuador	12.5	13.8	16.3	17.0	17.0
India	5.8	9.1	13.2	9.1	16.9
Malaysia	4.7	5.5	4.7	5.4	5.4
Vietnam	8.9	7.9	7.7	6.9	7.1
Subtotal, (subject)	36.8	39.9	44.8	40.4	47.9
Indonesia	11.2	12.7	14.6	16.9	16.6
Thailand	36.7	32.4	25.3	25.2	21.2
All other sources	15.3	15.1	15.3	17.5	14.4
Subtotal, (nonsubject)	63.2	60.1	55.2	59.6	52.1
Total U.S. Imports	100.0	100.0	100.0	100.0	100.0
	Share of value (percent)				
China	4.2	3.2	2.5	1.8	1.2
Ecuador	10.0	10.9	13.2	13.2	14.3
India	7.4	10.7	13.4	9.8	16.8
Malaysia	3.7	4.3	4.0	4.6	4.2
Vietnam	12.3	10.2	10.2	9.5	8.5
Subtotal, (subject)	37.6	39.2	43.3	38.9	45.1
Indonesia	11.6	13.8	15.4	17.7	17.5
Thailand	35.5	33.3	26.8	26.8	21.5
All other sources	15.3	13.7	14.6	16.5	15.9
Subtotal, (nonsubject)	62.4	60.8	56.7	61.1	54.9
Total U.S. Imports	100.0	100.0	100.0	100.0	100.0

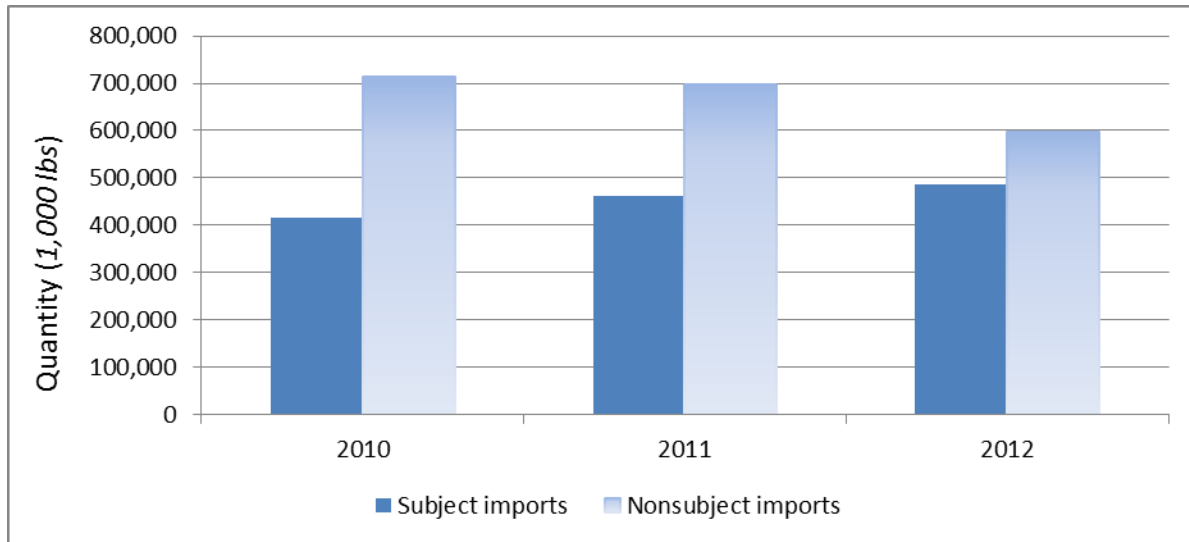
¹ Landed, duty-paid

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

Source: Compiled from official Commerce Statistics, HTS numbers 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 0306.16.0003, 0306.16.0006, 0306.16.0009, 0306.16.0012, 0306.16.0015, 0306.16.0018, 0306.16.0021, 0306.16.0024, 0306.16.0027, 0306.16.0040, 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.20.1010, 1605.20.1030, 1605.21.1030, 1605.29.1010. Prior to 2012, warmwater and coldwater shrimp were both provided for in HS subheading 0306.13. HS subheadings 0306.16 and 0306.17 were created in 2012 to provide separately coldwater and warmwater shrimp. Therefore, while staff recognizes that HS subheading 0306.16 contains out of scope product (coldwater shrimp), it is included in the import data statistics in this report (along with HTS subheadings 0306.13 and 0306.17) to maintain data consistency across the entire period. Import data statistics also include certain residual or "basket" classifications, such as statistical reporting numbers 1605.20.1010, 1605.20.1030, 1605.21.1030, and 1605.29.1010, which may include non-subject merchandise.

Figure IV-1

Frozen warmwater shrimp: U.S. imports, by sources, 2010-2012



Source: Table IV-3

NEGLIGENCE

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.⁶ Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.⁷

⁶ Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

⁷ Section 771(24) of the Act (19 U.S.C. § 1677(24)).

Imports from each subject country and its share of total imports are presented in table IV-4.⁸

Table IV-4
Frozen warmwater shrimp: U.S. imports and shares of total imports, by sources,
December 2011-November 2012

Country	Imports (1,000 pounds)	Share of total imports (percent)
China	32,185	3.2
Ecuador	160,049	15.7
Malaysia	45,129	4.4
Vietnam	84,369	8.3
India	134,488	13.2
Subtotal (subject)	456,220	44.9
Indonesia	154,520	15.2
Thailand	276,900	27.2
All others	129,360	12.7
Subtotal (nonsubject)	560,780	55.1
Total	1,017,000	100.0

Note.-Because of rounding, figures may not add to the totals shown. Data for December 2011 includes coldwater shrimp.

Source: Compiled from official Commerce statistics.

CUMULATION CONSIDERATIONS

In assessing whether imports should be cumulated, the Commission determines whether U.S. imports from the subject countries compete with each other and with the domestic like product and has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical markets, (3) common or similar channels of distribution, and (4) simultaneous presence in the market. Issues concerning fungibility and channels of distribution are addressed in Part II of this report. With regard to geographical markets, official Commerce statistics show that the majority of U.S. imports from China entered the United States through Los Angeles while the majority of imports from Ecuador, India, Malaysia, and Vietnam entered through Los Angeles and New York. Both U.S. producers and U.S. importers reported shipping frozen warmwater shrimp geographically throughout the

⁸ Chinese Respondents argue that Commerce statistics include non-subject merchandise and note that ***. Chinese Respondents' posthearing brief, p. 5. ***. Chinese Respondents also argue that shipment data from Chinese foreign producer questionnaire responses constitute substantial evidence of the actual quantity of subject shipments from China; however, given that questionnaire coverage is incomplete, Commerce statistics have been deemed more reliable.

United States.⁹ Imports from China, Ecuador, India, Malaysia, and Vietnam were present in every month of the period for which data were collected.¹⁰

Petitioners argue that the Commission should cumulate imports from China, Ecuador, India, Malaysia, and Vietnam.¹¹ Respondents take no position on whether imports should be cumulated for the Commission’s injury analysis, but argue that each country be considered individually for the purposes of the Commission’s threat analysis.¹²

APPARENT U.S. CONSUMPTION

Data concerning apparent U.S. consumption of frozen warmwater shrimp are shown in table IV-5. While wild catch landings increased by *** percent between 2010 and 2012,¹³ apparent U.S. consumption decreased by *** percent, which can be attributed to declining imports from EMS-affected countries.¹⁴

Table IV-5
Frozen warmwater shrimp: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, by sources, 2010-2012, January-March 2012, and January-March 2013

Item	Calendar year			January-March ¹	
	2010	2011	2012	2012	2013
	Quantity (1,000 pounds)				
Wild catch landings	198,992	234,196	***	***	(1)
Farmed production ²	2,974	2,192	3,414	100	100
Exports	11,175	19,259	17,432	3,096	2,446
Domestic production	190,791	217,129	***	***	(1)
Converted U.S. shipments ³	120,008	136,574	***	***	(1)

Table continued on the next page.

⁹ See Part II, Table II-2.

¹⁰ Official Commerce statistics.

¹¹ Petitioners’ posthearing brief, p. 2.

¹² Hearing transcript, pp. 284-285 (Connelly); Joint Respondents Answers to Commissioner Questions, p. A-94. In their posthearing brief, Vietnamese Respondents’ argue that imports from Vietnam should be decumulated in the Commission’s threat analysis. Vietnamese Respondents’ posthearing brief, p. 1.

¹³ Fishing grounds were closed during the peak of fishing season in 2010 as a result of the Deepwater Horizon oil spill. Wild catch landings for that year were 22 percent below the annual average. Hearing transcript, pp. 33-34 (Drake).

¹⁴ Hearing transcript, p. 161 (Drake).

Table IV-5-Continued

Frozen warmwater shrimp: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, by sources, 2010-2012, January-March 2012, and January-March 2013

Item	Calendar year			January-March ¹	
	2010	2011	2012	2012	2013
U.S. imports:					
China	54,591	42,032	30,537	4,812	3,311
Ecuador	141,620	160,422	176,688	41,827	38,278
India	65,444	104,960	143,163	22,393	38,076
Malaysia	52,721	63,415	50,882	13,327	12,221
Vietnam	100,834	91,503	83,534	16,903	15,882
Subtotal, (subject)	415,210	462,331	484,803	99,263	107,767
Indonesia	126,661	146,747	157,702	41,578	37,350
Thailand	414,954	375,072	273,541	61,975	47,640
All other sources	172,475	174,570	165,568	42,961	32,327
Subtotal, (nonsubject)	714,090	696,389	596,811	146,514	117,318
Total U.S. Imports	1,129,300	1,158,720	***	***	225,085
Total U.S. consumption	1,249,308	1,295,294	***	***	(¹)
	Value (\$1,000)				
U.S. shipments ⁴	543,754	701,719	***	***	(¹)
U.S. imports:					
China	174,857	159,147	105,754	18,964	10,896
Ecuador	418,571	540,443	568,268	137,126	133,885
India	308,832	529,412	577,239	101,512	157,218
Malaysia	153,999	212,566	173,098	48,192	39,717
Vietnam	511,515	504,949	436,745	98,746	79,709
Subtotal, (subject)	1,567,773	1,946,517	1,861,103	404,540	421,425
Indonesia	485,466	686,296	660,349	184,404	163,873
Thailand	1,480,787	1,655,821	1,152,011	278,931	201,294
All other sources	638,578	681,566	627,468	171,528	148,175
Subtotal, (nonsubject)	2,604,831	3,023,683	2,439,829	634,863	513,342
Total U.S. Imports	4,172,604	4,970,199	4,300,932	1,039,403	934,767
Total U.S. consumption	4,716,358	5,671,919	***	***	(¹)

Footnotes on next page.

¹ Data for wild catch landings from the Gulf region for March 2013 are not yet available; therefore, domestic industry data and apparent U.S. consumption for interim 2013 are not presented in table IV-5 since data between the periods would not be comparable.

² Data for farmed production for the interim periods consist of an estimate of production from indoor facilities, which account for less than 10 percent of the total annual production of outdoor ponds.

³ U.S. production quantities have been converted to pounds of headless shell-on weight using a conversion factor of 0.629.

⁴ U.S. processor shipment values estimated using an average of Urner Berry price series for 6 intermediate sizes of brown and white shrimp.

Source: Wild catch landings data for 2010 and 2011 compiled from National Marine Fisheries Service. Wild catch landings data for 2012, January-March 2012 and 2013 compiled from ***. Farmed production data from staff correspondence with Granvil Treece, Texas A&M. U.S. imports compiled from official import statistics using aforementioned HTS numbers. U.S. exports compiled from official export statistics, using the same HTS numbers as imports in chapter 03. The Schedule B export numbers used for chapter 16 are 1605.20.1010, 1605.20.1025, and 1605.21.1025.

Figure IV-2
Frozen warmwater shrimp: U.S. imports and converted U.S. shipments, 2010-2012

* * * * *

U.S. MARKET SHARES

U.S. consumption and market shares are presented in table IV-6.¹⁵ U.S. shipments' market share, by quantity, increased by *** percentage points between 2010 and 2012. Over the same period, the market share for subject countries increased by *** percentage points and the market share for nonsubject countries decreased *** percentage points.

¹⁵ Data for wild catch landings from the Gulf region for March 2013 are not yet available; therefore, apparent U.S. consumption and market share data for interim 2013 are not presented since data between the periods would not be comparable.

Table IV-6
Frozen warmwater shrimp: U.S. consumption and market shares, 2010-12, January-March 2012,
and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Quantity (1,000 pounds)				
Apparent U.S. consumption	1,249,308	1,295,294	***	***	(¹)
	Value (1,000 dollars)				
Apparent U.S. consumption	4,716,358	5,671,919	***	***	(¹)
	Share of quantity (percent)				
U.S. shipments	9.6	10.5	***	***	(¹)
U.S. imports from:					
China	4.4	3.2	***	***	(¹)
Ecuador	11.3	12.4	***	***	(¹)
India	5.2	8.1	***	***	(¹)
Malaysia	4.2	4.9	***	***	(¹)
Vietnam	8.1	7.1	***	***	(¹)
Subtotal, (subject)	33.2	35.7	***	***	(¹)
Indonesia	10.1	11.3	***	***	(¹)
Thailand	33.2	29.0	***	***	(¹)
All other sources	13.8	13.5	***	***	(¹)
Subtotal, (nonsubject)	57.2	53.8	***	***	(¹)
Total U.S. Imports	90.4	89.5	***	***	(¹)
	Share of value (percent)				
U.S. shipments	11.5	12.4	***	***	(¹)
U.S. imports from:					
China	3.7	2.8	***	***	(¹)
Ecuador	8.9	9.5	***	***	(¹)
India	6.5	9.3	***	***	(¹)
Malaysia	3.3	3.7	***	***	(¹)
Vietnam	10.8	8.9	***	***	(¹)
Subtotal, (subject)	33.2	34.3	***	***	(¹)
Indonesia	10.3	12.1	***	***	(¹)
Thailand	31.4	29.2	***	***	(¹)
All other sources	13.5	12.0	***	***	(¹)
Subtotal, (nonsubject)	55.2	53.3	***	***	(¹)
Total U.S. Imports	88.5	87.6	***	***	(¹)

¹ Data for wild catch landings from the Gulf region for March 2013 are not yet available; therefore, apparent U.S. consumption and market share data for interim 2013 are not presented in table IV-6 since data between the periods would not be comparable.

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

RATIO OF IMPORTS TO U.S. PRODUCTION

Table IV-7 presents data on the ratio of U.S. imports to converted U.S. shipments of frozen warmwater shrimp.¹⁶

Table IV-7
Frozen warmwater shrimp: Ratio of U.S. imports to converted U.S. shipments, 2010-12

Item	Calendar year		
	2010	2011	2012
Ratio of U.S. imports to converted U.S. shipments (percent)			
China	45.5	30.8	***
Ecuador	118.0	117.5	***
India	54.5	76.9	***
Malaysia	43.9	46.4	***
Vietnam	84.0	67.0	***
Subtotal, (subject)	346.0	338.5	***
Indonesia	105.5	107.4	***
Thailand	345.8	274.6	***
All other sources	143.7	127.8	***
Subtotal, (nonsubject)	595.0	509.9	***
Total U.S. Imports	941.0	848.4	***

Note.-Because of rounding, figures may not add to the totals shown. January-March 2012 and 2013 converted production data not presented.

Source: Compiled from National Marine Fisheries Service "Fisheries of the United States" 2010, 2011, and 2012 production data, converted to pounds of headless shell-on weight using a conversion factor of 0.629; and from official Commerce statistics.

¹⁶ U.S. production quantities have been converted to pounds of headless shell-on weight using a conversion factor of 0.629.

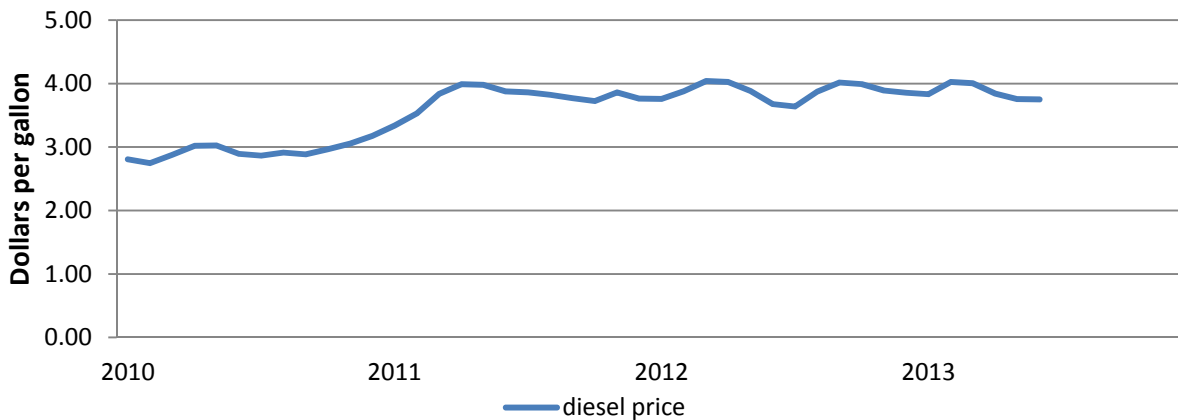
PART V: PRICING DATA

FACTORS AFFECTING PRICES

Production Costs

U.S. processors reported that fuel is the most important cost for fishermen, and with rising fuel costs they need higher prices for shrimp in order to continue fishing.¹ Diesel prices in the Gulf Coast region increased irregularly from about \$3 per gallon to \$4 per gallon from January 2010 to May 2011; and have fluctuated at about that level (\$4) through June 2013 (Figure V-1).

Figure V-1
Cost: Gulf coast diesel price by month, January 2010-June 2013



Source: <http://www.eia.gov/petroleum/gasdiesel/>

U.S. inland transportation costs

Eighteen U.S. processors provided usable U.S. transportation costs data, with costs ranging from 1 to 20 percent of the total delivered cost of their U.S. shipments (14 of these reported transportation costs of 6 percent or less).² Twenty-three importers reported usable U.S. transportation costs, ranging from less than 1 percent to 15 percent. Nineteen firms reported transportation costs at 4 percent or less of total delivered costs.

¹ Conference transcript, p. 39 (Babin).

² Transportation costs reported as 50 percent or higher, or as zero were not used.

PRICING PRACTICES

Pricing methods

Thirty-three U.S. processors reported that they set prices for frozen warmwater shrimp on a transaction-by-transaction basis, 12 reported using price lists, and 6 reported using contracts (table V-1). Thirty importers reported setting prices on a transaction-by-transaction basis, 22 reported using contracts, and 14 reported using price lists. Price lists may be issued as frequently as once per week and may contain different prices for different sizes and species, for the freezing method (block or IQF), and for the extent of peeling.

Table V-1

Frozen warmwater shrimp: U.S. producers and importers reported price setting methods, by number of responding firms¹

Method	U.S. producers	Importers
Transaction-by-transaction	33	30
Contract	6	22
Set price list	12	14
Other	7	1

¹ The sum of responses is larger than the total number of responding firms as each firm was instructed to check all applicable price setting methods employed.

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

Firms were asked what share of their sales were spot sales, short term contracts, and long term contracts.³ Importers were asked for their spot and contract sales by country of origin. U.S. processors reported selling 86.9 percent of their product via spot sales,⁴ 12.4 percent using short-term contracts and 0.7 percent using long-term contracts (table V-2). Importers of Chinese product also sell principally on a spot basis, but for other importers, the majority of sales are made under short-term contracts.

³ Long term contracts were defined as being longer than one year in length. Firms reporting long term contracts of one year or less were included in short term contracts.

⁴ In their posthearing response to Commission questions, respondents stated that domestic processors can only process what the shrimpers catch which means that they are frequently unable to provide assurances to purchasers that they can meet their supply needs. This is the primary reason why processors rely primarily on the spot market for sales. Respondent's Joint Answers to Commission Questions, pp. A-87-A88.

Table V-2**Frozen warmwater shrimp: Reported selling methods, by percent**

Country	Long term contract	Short term contract	Spot sales
United States	0.7	12.4	86.9
China	0.5	25.6	74.0
Ecuador	1.9	49.7	48.4
India	6.2	57.3	36.6
Malaysia	4.4	66.2	29.4
Vietnam	6.9	55.7	37.4
Indonesia ¹	3.6	56.0	40.4
Thailand ¹	9.0	66.6	24.4

¹Nonsubject country.

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

U.S. processors' and importers' short-term contracts were generally three to six months with both price and quantity fixed during the contract period, and did not contain meet-or-release provisions. Two importers that use long-term contracts reported that the length of time for those contracts was two years or less in both cases.⁵

Purchasers were asked to report the frequency of the shrimp purchases. Six purchasers reported that they purchase product daily, 11 purchase weekly, 4 purchase monthly, 2 quarterly; 2 yearly, and others on an as needed basis.⁶

Purchasers were asked for the size of their typical orders. Typical order size ranged widely from *** pounds. Ten of 30 responding purchasers reported that some processors had been unable to provide their typical order. Four of these ten reported that specific sizes or species were sometimes not available. Other purchasers reported that shrimp was in short supply from U.S. processors and processors in Ecuador, Indonesia and Mexico. One reported short supplies from "most overseas packers."

Twenty of 30 responding purchasers reported that their purchasing patterns had not changed since 2010. Nine of the ten reporting changes in their purchase patterns explained the changes. Two purchasers reported difficulty getting supply. The other seven purchasers reported changing suppliers, increasing or reducing purchases, an index program with an importer, an attempt to set up a program with suppliers, and an increasing frequency of

⁵ All three of the importers reporting characteristics of long term contracts, reported that prices and quantities are fixed during the contract period. Two of these importers reported that long term contracts do not allow for renegotiation of prices and two reported that meet-or-release provisions do not apply.

⁶ In addition, one purchaser (***) reported that it generally purchases three times a week, but the quantity varies greatly based on the market. Another purchaser (***) reported purchasing U.S. shrimp on an as needed basis and imported shrimp via ***.

purchases and the diversification of its supply base.⁷ Purchasers reported contacting up to 10 suppliers. Most (22 of 30) purchasers contact 1 to 5 suppliers before making a purchase.

Sales terms and discounts

Frozen warmwater shrimp is most commonly sold on a delivered basis. Among 43 responding processors, 31 sell only on a delivered basis, 11 sell only on a free on board (fob) basis, and one sells on both a delivered and fob basis. Among 31 responding importers, 14 sell only on a delivered basis, 10 sell only on a fob basis, and 7 sell on both a delivered and fob basis. Thirty-five of 43 responding U.S. processors and 24 of 31 responding importers reported sales terms of 30 days.

Overall, 22 of 42 responding U.S. processors, and 21 of 31 responding importers reported offering no discounts or limited discounts. However, 17 U.S. processors and 6 importers reported offering quantity and/or total volume discounts; and 9 U.S. processors and 4 importers offer other types of discounts.⁸

Price leadership

Most purchasers did not report any industry price leaders and no firms were reported to be price leaders by more than one purchaser.

PRICE DATA

The Commission requested U.S. processors and U.S. importers of frozen warmwater shrimp to provide quarterly data for the total quantity and value of frozen warmwater shrimp that was shipped to unrelated customers in the U.S. market by quarters for the period January 2010–March 2013. The products for which pricing data were requested are as follows:

Product 1-- Frozen, raw warmwater shrimp or prawns, all species, 71 to 90 count, headless, peeled (whether or not deveined), tail-off, block frozen (cut or not cut).

Product 2-- Frozen, raw warmwater shrimp or prawns, all species, 41 to 50 count, P&D (peeled and deveined), tail-off, block frozen (cut or not cut).

Product 3-- Frozen, cooked warmwater shrimp or prawns, all species, 26 to 30 count, P&D (peeled and deveined), headless, tail-on or tail-off, IQF (individually quick frozen).

⁷ One purchaser reported changing the amount of the shrimp purchased, not the type of purchase made.

⁸ Four processors and four importers offered both quantity discounts and other discounts.

Product 4-- Frozen, raw warmwater shrimp or prawns, all species, 16 to 20 count, headless, shell on, IFQ (individually quick frozen).

Product 5-- Frozen, raw warmwater shrimp or prawns, all species, 21 to 25 count, headless, shell on, block frozen (cut or not cut).

Product 6-- Frozen, raw warmwater shrimp or prawns, all species, 21 to 25 count, headless P&D (peeled and deveined), headless, tail-on, IQF (individually quick frozen).

Product 7-- Frozen, cooked warmwater shrimp or prawns, all species, 31 to 40 count, headless P&D (peeled and deveined), headless, tail-on or tail off, IQF (individually quick frozen).

Thirty-four U.S. processors⁹ and 27 importers¹⁰ of product from subject countries provided usable price data for sales of the seven products, although not all firms reported prices for all products and all quarters. Reported pricing products represented *** percent of U.S. shipments of U.S.-produced products, 8.0 percent of shipments of imports from China, 14.2 percent for Ecuador, 41.8 percent for India, 15.4 for Malaysia, and 34.5 percent of shipments of imports from Vietnam during January 2010 through March 2013. Among nonsubject countries, pricing products accounted for 25.3 percent of shipments of imports from Indonesia and 24.9 percent of shipments of imports from Thailand during the same period.

Price trends

Quarterly price data and shipments quantities for U.S. processors and importers from subject countries for all seven products are presented in tables V-3-V-9 and figures V-2-V-8 for January 2010 through March 2013. U. S. processor prices and prices of imports from the five subject countries fluctuated during the period, but increased irregularly for the majority of products for all countries except Vietnam during periods where prices were reported.¹¹ Percentage changes in prices by country during the periods where shipments were reported are presented in table V-10.

⁹ Processors providing usable price data were: ***.

¹⁰ Importers providing usable price data were: ***.

¹¹ Prices for the three nonsubject countries, Indonesia, Mexico, and Thailand also increased irregularly for the majority of products as shown in the tables and charts.

Table V-3

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 1¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	2.90	3,796,661	***	***	***	***	***	***
April.-June	3.72	3,295,828	***	***	***	***	***	***
July-Sept.	2.75	5,189,943	***	***	***	3.40	503,816	(23.4)
Oct.-Dec.	2.55	5,393,006	***	***	***	***	***	***
2011:								
Jan.-March	2.47	3,923,424	***	***	***	4.55	376,234	(84.3)
April.-June	2.43	7,096,226	***	***	***	3.88	359,226	(59.7)
July-Sept.	2.71	6,684,072	***	***	***	3.92	320,433	(44.6)
Oct.-Dec.	2.67	5,696,641	***	***	***	3.04	219,529	(13.5)
2012:								
Jan.-March	3.19	3,941,560	***	***	***	3.33	367,748	(4.3)
April.-June	2.76	6,560,537	***	***	***	3.38	446,139	(22.6)
July-Sept.	2.52	7,324,558	***	***	***	3.41	481,036	(35.4)
Oct.-Dec.	2.45	5,805,236	***	***	***	***	***	***
2013:								
Jan.-March	2.69	3,185,532	***	***	***	5.27	243,322	(95.9)
	United States		India			Malaysia		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	2.90	3,796,661	--	--	--	***	***	***
April.-June	3.72	3,295,828	--	--	--	***	***	***
July-Sept.	2.75	5,189,943	--	--	--	***	***	***
Oct.-Dec.	2.55	5,393,006	--	--	--	***	***	***
2011:								
Jan.-March	2.47	3,923,424	--	--	--	***	***	***
April.-June	2.43	7,096,226	--	--	--	***	***	***
July-Sept.	2.71	6,684,072	--	--	--	***	***	***
Oct.-Dec.	2.67	5,696,641	***	***	***	2.93	648,030	(9.4)
2012:								
Jan.-March	3.19	3,941,560	--	--	--	3.12	71,600	2.1
April.-June	2.76	6,560,537	--	--	--	2.88	166,920	(4.2)
July-Sept.	2.52	7,324,558	***	***	***	***	***	***
Oct.-Dec.	2.45	5,805,236	--	--	--	***	***	***
2013:								
Jan.-March	2.69	3,185,532	--	--	--	***	***	***

Table continued on next page.

Table V-3--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 1¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Vietnam			Indonesia	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	2.90	3,796,661	***	***	***	***	***
April.-June	3.72	3,295,828	***	***	***	***	***
July-Sept.	2.75	5,189,943	***	***	***	4.72	2,180,921
Oct.-Dec.	2.55	5,393,006	***	***	***	***	***
2011:							
Jan.-March	2.47	3,923,424	***	***	***	5.12	3,476,762
April.-June	2.43	7,096,226	***	***	***	5.34	2,850,023
July-Sept.	2.71	6,684,072	***	***	***	5.19	3,052,518
Oct.-Dec.	2.67	5,696,641	***	***	***	5.39	2,818,737
2012:							
Jan.-March	3.19	3,941,560	***	***	***	5.16	2,466,588
April.-June	2.76	6,560,537	***	***	***	5.02	2,893,562
July-Sept.	2.52	7,324,558	***	***	***	4.78	2,913,442
Oct.-Dec.	2.45	5,805,236	***	***	***	***	***
2013:							
Jan.-March	2.69	3,185,532	--	0	--	3.93	51,462
	United States		Thailand				
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)			
2010:							
Jan.-March	2.90	3,796,661	***	***			
April.-June	3.72	3,295,828	***	***			
July-Sept.	2.75	5,189,943	***	***			
Oct.-Dec.	2.55	5,393,006	***	***			
2011:							
Jan.-March	2.47	3,923,424	***	***			
April.-June	2.43	7,096,226	***	***			
July-Sept.	2.71	6,684,072	***	***			
Oct.-Dec.	2.67	5,696,641	***	***			
2012:							
Jan.-March	3.19	3,941,560	***	***			
April.-June	2.76	6,560,537	***	***			
July-Sept.	2.52	7,324,558	***	***			
Oct.-Dec.	2.45	5,805,236	--	0			
2013:							
Jan.-March	2.69	3,185,532	***	***			

¹ Product 1.—Frozen, raw warmwater shrimp or prawns, all species, 71 to 90 count, headless, peeled (whether or not deveined), tail-off, block frozen (cut or not cut).

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

Table V-4

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 2¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	3.07	1,517,908	--	--	--	***	***	***
April.-June	3.50	858,309	--	--	--	***	***	***
July-Sept.	3.43	3,102,581	--	--	--	***	***	***
Oct.-Dec.	3.29	2,081,640	--	--	--	***	***	***
2011:								
Jan.-March	3.67	1,589,512	--	--	--	***	***	***
April.-June	3.34	2,429,397	--	--	--	***	***	***
July-Sept.	3.34	5,246,836	--	--	--	***	***	***
Oct.-Dec.	3.92	1,420,857	***	***	***	***	***	***
2012:								
Jan.-March	4.44	826,065	--	--	--	***	***	***
April.-June	4.03	1,661,710	--	--	--	3.24	1,068,599	19.7
July-Sept.	3.80	3,585,598	--	--	--	3.05	826,173	19.6
Oct.-Dec.	3.90	1,736,883	***	***	***	***	***	***
2013:								
Jan.-March	4.06	938,109	***	***	***	***	***	***
	United States		India			Malaysia		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	3.07	1,517,908	--	--	--	***	***	***
April.-June	3.50	858,309	--	--	--	***	***	***
July-Sept.	3.43	3,102,581	--	--	--	***	***	***
Oct.-Dec.	3.29	2,081,640	--	--	--	***	***	***
2011:								
Jan.-March	3.67	1,589,512	--	--	--	***	***	***
April.-June	3.34	2,429,397	--	--	--	***	***	***
July-Sept.	3.34	5,246,836	--	--	--	***	***	***
Oct.-Dec.	3.92	1,420,857	--	--	--	***	***	***
2012:								
Jan.-March	4.44	826,065	--	--	--	***	***	***
April.-June	4.03	1,661,710	***	***	***	***	***	***
July-Sept.	3.80	3,585,598	***	***	***	***	***	***
Oct.-Dec.	3.90	1,736,883	--	--	--	***	***	***
2013:								
Jan.-March	4.06	938,109	***	***	***	***	***	***

Table continued on next page.

Table V-4--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 2¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Vietnam			Indonesia	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	3.07	1,517,908	***	***	***	***	***
April.-June	3.50	858,309	***	***	***	***	***
July-Sept.	3.43	3,102,581	***	***	***	***	***
Oct.-Dec.	3.29	2,081,640	***	***	***	***	***
2011:							
Jan.-March	3.67	1,589,512	***	***	***	***	***
April.-June	3.34	2,429,397	***	***	***	***	***
July-Sept.	3.34	5,246,836	***	***	***	6.16	88,927
Oct.-Dec.	3.92	1,420,857	***	***	***	9.41	86,330
2012:							
Jan.-March	4.44	826,065	***	***	***	***	***
April.-June	4.03	1,661,710	***	***	***	***	***
July-Sept.	3.80	3,585,598	***	***	***	4.88	30,316
Oct.-Dec.	3.90	1,736,883	***	***	***	***	***
2013:							
Jan.-March	4.06	938,109	***	***	***	***	***
	United States		Mexico			Thailand	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	
2010:							
Jan.-March	3.07	1,517,908	***	***	***	***	***
April.-June	3.50	858,309	***	***	***	***	***
July-Sept.	3.43	3,102,581	--	--	***	***	***
Oct.-Dec.	3.29	2,081,640	--	--	***	***	***
2011:							
Jan.-March	3.67	1,589,512	--	--	***	***	***
April.-June	3.34	2,429,397	***	***	***	***	***
July-Sept.	3.34	5,246,836	***	***	***	***	***
Oct.-Dec.	3.92	1,420,857	***	***	***	***	***
2012:							
Jan.-March	4.44	826,065	***	***	***	***	***
April.-June	4.03	1,661,710	***	***	***	***	***
July-Sept.	3.80	3,585,598	--	--	***	***	***
Oct.-Dec.	3.90	1,736,883	--	--	--	--	--
2013:							
Jan.-March	4.06	938,109	--	--	***	***	***

¹ Product 2.—Frozen, raw warmwater shrimp or prawns, all species, 41 to 50 count, P&D (peeled and deveined), tail-off, block frozen (cut or not cut).

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

Table V-5
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 3¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	5.50	292,031	***	***	***	***	***	***
April.-June	6.27	324,909	--	--	--	***	***	***
July-Sept.	6.40	306,362	***	***	***	***	***	***
Oct.-Dec.	6.88	460,704	***	***	***	***	***	***
2011:								
Jan.-March	7.00	223,720	***	***	***	***	***	***
April.-June	7.77	332,159	--	--	--	***	***	***
July-Sept.	6.81	449,946	--	--	--	***	***	***
Oct.-Dec.	***	***	***	***	***	***	***	***
2012:								
Jan.-March	6.18	191,711	***	***	***	***	***	***
April.-June	5.93	234,095	***	***	***	***	***	***
July-Sept.	5.67	341,113	***	***	***	4.33	406,625	23.6
Oct.-Dec.	5.94	245,356	***	***	***	--	-	--
2013:								
Jan.-March	6.16	244,736	***	***	***	***	***	***
	United States		India			Malaysia		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	5.50	292,031	4.02	84,290	26.9	--	0	--
April.-June	6.27	324,909	***	***	***	--	0	--
July-Sept.	6.40	306,362	***	***	***	***	***	***
Oct.-Dec.	6.88	460,704	5.15	155,530	25.2	***	***	***
2011:								
Jan.-March	7.00	223,720	***	***	***	***	***	***
April.-June	7.77	332,159	5.86	223,535	24.5	***	***	***
July-Sept.	6.81	449,946	6.17	226,350	9.5	***	***	***
Oct.-Dec.	***	***	5.74	298,691	***	--	0	--
2012:								
Jan.-March	6.18	191,711	6.74	274,049	(9.0)	***	***	***
April.-June	5.93	234,095	6.17	178,597	(3.9)	***	***	***
July-Sept.	5.67	341,113	5.72	191,048	(1.0)	***	***	***
Oct.-Dec.	5.94	245,356	5.40	337,663	9.2	--	--	--
2013:								
Jan.-March	6.16	244,736	6.39	260,652	(3.9)	***	***	***

Table continued on next page.

Table V-5--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 3¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Vietnam			Indonesia	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	5.50	292,031	5.01	139,668	9.0	3.54	470,190
April.-June	6.27	324,909	4.93	120,936	21.4	3.52	564,223
July-Sept.	6.40	306,362	5.83	122,585	8.9	***	***
Oct.-Dec.	6.88	460,704	5.84	198,764	15.2	***	***
2011:							
Jan.-March	7.00	223,720	***	***	***	4.58	660,135
April.-June	7.77	332,159	5.93	146,057	23.6	4.90	696,132
July-Sept.	6.81	449,946	7.00	63,543	(2.7)	4.59	681,345
Oct.-Dec.	***	***	6.75	157,317	***	6.04	546,853
2012:							
Jan.-March	6.18	191,711	7.16	61,030	(15.7)	4.26	769,828
April.-June	5.93	234,095	6.76	85,609	(13.9)	3.96	801,002
July-Sept.	5.67	341,113	6.16	102,326	(8.7)	4.07	1,096,425
Oct.-Dec.	5.94	245,356	6.57	55,953	(10.6)	***	***
2013:							
Jan.-March	6.16	244,736	6.43	72,524	(4.4)	5.29	236,916
	United States		Mexico			Thailand	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)		Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	5.50	292,031	--	--	--	4.78	1,900,162
April.-June	6.27	324,909	--	--	--	5.03	2,564,758
July-Sept.	6.40	306,362	--	--	--	4.80	2,450,219
Oct.-Dec.	6.88	460,704	--	--	--	5.91	3,463,292
2011:							
Jan.-March	7.00	223,720	--	--	--	6.14	1,540,184
April.-June	7.77	332,159	--	--	--	6.63	1,658,773
July-Sept.	6.81	449,946	***	***	***	6.69	702,202
Oct.-Dec.	***	***	--	--	--	6.95	2,335,737
2012:							
Jan.-March	6.18	191,711	--	--	--	6.84	1,198,598
April.-June	5.93	234,095	--	--	--	6.84	1,260,260
July-Sept.	5.67	341,113	--	--	--	6.41	1,350,237
Oct.-Dec.	5.94	245,356	--	--	--	5.93	1,515,601
2013:							
Jan.-March	6.16	244,736	--	--	--	5.92	1,405,915

¹ Product 3.— Frozen, cooked warmwater shrimp or prawns, all species, 26 to 30 count, P&D (peeled and deveined), headless, tail-on or tail-off, IQF (individually quick frozen).

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

Table V-6

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 4¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	5.11	1,144,010	--	--	--	--	--	--
April.-June	5.59	1,087,118	--	--	--	--	--	--
July-Sept.	5.53	1,341,902	--	--	--	--	--	--
Oct.-Dec.	5.00	1,391,042	--	--	--	***	***	***
2011:								
Jan.-March	6.54	840,468	--	--	--	***	***	***
April.-June	6.40	1,269,257	--	--	--	--	--	--
July-Sept.	5.76	1,925,918	--	--	--	--	--	--
Oct.-Dec.	4.75	1,865,850	--	--	--	***	***	***
2012:								
Jan.-March	6.24	1,112,630	--	--	--	***	***	***
April.-June	5.82	1,174,548	***	***	***	--	--	--
July-Sept.	5.43	1,825,203	***	***	***	--	--	--
Oct.-Dec.	4.76	1,910,107	***	***	***	--	--	--
2013:								
Jan.-March	6.32	1,115,164	***	***	***	--	--	--
	United States		India			Malaysia		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	5.11	1,144,010	***	***	***	--	--	--
April.-June	5.59	1,087,118	--	--	--	--	--	--
July-Sept.	5.53	1,341,902	***	***	***	--	--	--
Oct.-Dec.	5.00	1,391,042	***	***	***	--	--	--
2011:								
Jan.-March	6.54	840,468	***	***	***	--	--	--
April.-June	6.40	1,269,257	***	***	***	--	--	--
July-Sept.	5.76	1,925,918	***	***	***	--	--	--
Oct.-Dec.	4.75	1,865,850	***	***	***	--	--	--
2012:								
Jan.-March	6.24	1,112,630	***	***	***	***	***	***
April.-June	5.82	1,174,548	***	***	***	--	--	--
July-Sept.	5.43	1,825,203	***	***	***	--	--	--
Oct.-Dec.	4.76	1,910,107	***	***	***	--	--	--
2013:								
Jan.-March	6.32	1,115,164	4.75	223,488	24.9	--	--	--

Table continued on next page.

Table V-6--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 4¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Vietnam			Indonesia	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	5.11	1,144,010	***	***	***	***	***
April.-June	5.59	1,087,118	***	***	***	4.91	56,430
July-Sept.	5.53	1,341,902	***	***	***	5.01	76,465
Oct.-Dec.	5.00	1,391,042	--	--	--	***	***
2011:							
Jan.-March	6.54	840,468	--	--	--	***	***
April.-June	6.40	1,269,257	--	--	--	***	***
July-Sept.	5.76	1,925,918	--	--	--	***	***
Oct.-Dec.	4.75	1,865,850	--	--	--	***	***
2012:							
Jan.-March	6.24	1,112,630	***	***	***	***	***
April.-June	5.82	1,174,548	***	***	***	5.16	419,399
July-Sept.	5.43	1,825,203	***	***	***	***	***
Oct.-Dec.	4.76	1,910,107	***	***	***	4.26	1,493,072
2013:							
Jan.-March	6.32	1,115,164	--	0	--	4.81	276,372
	United States		Mexico			Thailand	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)		Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	5.11	1,144,010	--	--		4.59	567,600
April.-June	5.59	1,087,118	***	***		5.03	495,380
July-Sept.	5.53	1,341,902	***	***		***	***
Oct.-Dec.	5.00	1,391,042	***	***		***	***
2011:							
Jan.-March	6.54	840,468	--	--		6.24	250,153
April.-June	6.40	1,269,257	--	--		***	***
July-Sept.	5.76	1,925,918	--	--		***	***
Oct.-Dec.	4.75	1,865,850	--	--		***	***
2012:							
Jan.-March	6.24	1,112,630	--	--		***	***
April.-June	5.82	1,174,548	--	--		***	***
July-Sept.	5.43	1,825,203	--	--		5.95	62,131
Oct.-Dec.	4.76	1,910,107	--	--		***	***
2013:							
Jan.-March	6.32	1,115,164	***	***		4.69	141,830

¹ Product 4.— Frozen, raw warmwater shrimp or prawns, all species, 16 to 20 count, headless, shell on, IFQ (individually quick frozen).

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

Table V-7

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 5¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	4.22	1,254,911	--	--	--	***	***	***
April.-June	5.36	1,167,221	--	--	--	***	***	***
July-Sept.	5.23	1,021,119	--	--	--	***	***	***
Oct.-Dec.	5.30	1,487,722	--	--	--	5.83	293,870	(9.9)
2011:								
Jan.-March	5.87	724,504	--	--	--	6.18	503,695	(5.2)
April.-June	5.41	960,808	--	--	--	5.46	768,803	(1.0)
July-Sept.	5.30	1,204,763	--	--	--	5.28	715,660	0.3
Oct.-Dec.	5.53	1,249,367	--	--	--	5.05	356,087	8.6
2012:								
Jan.-March	5.68	690,870	--	--	--	4.75	653,860	16.4
April.-June	5.34	1,072,361	--	--	--	4.55	778,090	14.6
July-Sept.	4.96	1,460,066	***	***	***	4.05	1,004,645	18.3
Oct.-Dec.	4.65	1,317,813	***	***	***	4.94	250,230	(6.2)
2013:								
Jan.-March	5.61	1,076,604	***	***	***	6.27	460,405	(11.8)
	United States		India			Malaysia		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	4.22	1,254,911	***	***	***	***	***	***
April.-June	5.36	1,167,221	***	***	***	***	***	***
July-Sept.	5.23	1,021,119	5.60	362,812	(7.0)	***	***	***
Oct.-Dec.	5.30	1,487,722	5.51	603,560	(3.9)	***	***	***
2011:								
Jan.-March	5.87	724,504	5.43	852,404	7.4	***	***	***
April.-June	5.41	960,808	5.41	916,448	0.0	***	***	***
July-Sept.	5.30	1,204,763	5.20	898,760	1.9	***	***	***
Oct.-Dec.	5.53	1,249,367	2.91	1,516,327	47.4	***	***	***
2012:								
Jan.-March	5.68	690,870	4.50	1,315,664	20.9	***	***	***
April.-June	5.34	1,072,361	4.40	1,169,811	17.6	***	***	***
July-Sept.	4.96	1,460,066	4.09	1,412,032	17.6	4.21	58,320	15.2
Oct.-Dec.	4.65	1,317,813	3.95	1,641,455	14.9	***	***	***
2013:								
Jan.-March	5.61	1,076,604	4.75	2,078,460	15.4	***	***	***

Table continued on next page.

Table V-7--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 5¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Vietnam			Indonesia	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	4.22	1,254,911	***	***	***	3.91	124,896
April.-June	5.36	1,167,221	***	***	***	4.28	145,212
July-Sept.	5.23	1,021,119	***	***	***	5.17	55,584
Oct.-Dec.	5.30	1,487,722	***	***	***	5.43	190,312
2011:							
Jan.-March	5.87	724,504	5.80	83,688	1.3	5.41	180,876
April.-June	5.41	960,808	***	***	***	***	***
July-Sept.	5.30	1,204,763	***	***	***	4.83	120,696
Oct.-Dec.	5.53	1,249,367	7.36	26,136	(33.2)	5.01	32,424
2012:							
Jan.-March	5.68	690,870	***	***	***	4.51	93,716
April.-June	5.34	1,072,361	***	***	***	4.10	171,736
July-Sept.	4.96	1,460,066	***	***	***	4.23	79,884
Oct.-Dec.	4.65	1,317,813	***	***	***	4.10	20,496
2013:							
Jan.-March	5.61	1,076,604	***	***	***	***	***
	United States		Mexico			Thailand	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	
2010:							
Jan.-March	4.22	1,254,911	***	***	3.77	1,060,608	
April.-June	5.36	1,167,221	***	***	4.43	464,632	
July-Sept.	5.23	1,021,119	***	***	4.99	825,336	
Oct.-Dec.	5.30	1,487,722	***	***	5.18	1,020,351	
2011:							
Jan.-March	5.87	724,504	***	***	5.22	629,878	
April.-June	5.41	960,808	***	***	5.43	307,540	
July-Sept.	5.30	1,204,763	***	***	5.44	254,102	
Oct.-Dec.	5.53	1,249,367	***	***	***	***	
2012:							
Jan.-March	5.68	690,870	***	***	***	***	
April.-June	5.34	1,072,361	***	***	***	***	
July-Sept.	4.96	1,460,066	***	***	4.50	151,532	
Oct.-Dec.	4.65	1,317,813	***	***	4.51	150,356	
2013:							
Jan.-March	5.61	1,076,604	***	***	4.76	112,408	

¹ Product 5.— Frozen, raw warmwater shrimp or prawns, all species, 21 to 25 count, headless, shell on, block frozen (cut or not cut).

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

Table V-8

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 6¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	4.40	1,363,634	--	0	--	--	--	--
April.-June	4.61	1,074,651	--	0	--	***	***	***
July-Sept.	4.36	1,122,505	--	0	--	***	***	***
Oct.-Dec.	4.65	955,888	***	***	***	***	***	***
2011:								
Jan.-March	5.53	529,106	***	***	***	***	***	***
April.-June	***	***	--	0	--	***	***	***
July-Sept.	4.70	955,986	--	0	--	***	***	***
Oct.-Dec.	5.23	899,285	***	***	***	***	***	***
2012:								
Jan.-March	5.15	635,496	--	0	--	***	***	***
April.-June	5.11	820,541	--	0	--	***	***	***
July-Sept.	4.32	1,125,316	--	0	--	***	***	***
Oct.-Dec.	4.84	1,115,571	--	0	--	***	***	***
2013:								
Jan.-March	6.00	530,729	--	0	--	***	***	***
	United States		India			Vietnam		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	4.40	1,363,634	***	***	***	6.23	457,541	(41.5)
April.-June	4.61	1,074,651	***	***	***	6.42	529,924	(39.1)
July-Sept.	4.36	1,122,505	5.41	521,570	(24.0)	6.82	384,412	(56.2)
Oct.-Dec.	4.65	955,888	5.88	355,354	(26.6)	7.37	483,760	(58.7)
2011:								
Jan.-March	5.53	529,106	4.83	620,559	12.7	7.34	296,350	(32.8)
April.-June	***	***	6.10	650,254	***	7.38	358,140	***
July-Sept.	4.70	955,986	6.14	830,443	(30.7)	8.08	378,968	(71.9)
Oct.-Dec.	5.23	899,285	6.10	825,426	(16.6)	7.74	467,261	(48.1)
2012:								
Jan.-March	5.15	635,496	5.69	782,131	(10.7)	6.56	356,169	(27.6)
April.-June	5.11	820,541	5.46	785,160	(6.9)	6.28	407,204	(23.0)
July-Sept.	4.32	1,125,316	5.18	877,978	(19.9)	6.06	381,766	(40.4)
Oct.-Dec.	4.84	1,115,571	4.83	1,011,903	0.2	5.62	391,639	(16.1)
2013:								
Jan.-March	6.00	530,729	4.98	1,444,350	17.0	5.91	452,362	1.6

Table continued on next page.

Table V-8--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 6¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Indonesia		Mexico	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)
2010:						
Jan.-March	4.40	1,363,634	4.90	471,212	***	***
April.-June	4.61	1,074,651	5.06	557,179	***	***
July-Sept.	4.36	1,122,505	5.62	440,620	***	***
Oct.-Dec.	4.65	955,888	5.83	351,544	***	***
2011:						
Jan.-March	5.53	529,106	6.01	393,440	***	***
April.-June	***	***	6.07	633,196	***	***
July-Sept.	4.70	955,986	6.13	771,780	***	***
Oct.-Dec.	5.23	899,285	6.04	650,340	***	***
2012:						
Jan.-March	5.15	635,496	5.45	495,107	***	***
April.-June	5.11	820,541	6.18	766,365	***	***
July-Sept.	4.32	1,125,316	4.96	689,635	***	***
Oct.-Dec.	4.84	1,115,571	4.72	517,989	***	***
2013:						
Jan.-March	6.00	530,729	5.16	512,063	***	***
	United States		Thailand			
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)		
2010:						
Jan.-March	4.40	1,363,634	4.98	1,475,288		
April.-June	4.61	1,074,651	5.78	1,223,592		
July-Sept.	4.36	1,122,505	6.19	857,489		
Oct.-Dec.	4.65	955,888	6.90	944,666		
2011:						
Jan.-March	5.53	529,106	***	***		
April.-June	***	***	***	***		
July-Sept.	4.70	955,986	***	***		
Oct.-Dec.	5.23	899,285	***	***		
2012:						
Jan.-March	5.15	635,496	***	***		
April.-June	5.11	820,541	***	***		
July-Sept.	4.32	1,125,316	***	***		
Oct.-Dec.	4.84	1,115,571	***	***		
2013:						
Jan.-March	6.00	530,729	***	***		

¹ Product 6.— Frozen, raw warmwater shrimp or prawns, all species, 21 to 25 count, headless P&D (peeled and deveined), headless, tail-on, IQF (individually quick frozen)..

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

Table V-9
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 7¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		China			Ecuador		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	***	***	***	***	***	--	0	--
April.-June	***	***	--	0	--	***	***	***
July-Sept.	***	***	***	***	***	--	0	--
Oct.-Dec.	***	***	***	***	***	--	0	--
2011:								
Jan.-March	***	***	***	***	***	***	***	***
April.-June	***	***	--	0	--	***	***	***
July-Sept.	***	***	--	0	--	***	***	***
Oct.-Dec.	***	***	***	***	***	***	***	***
2012:								
Jan.-March	***	***	***	***	***	***	***	***
April.-June	***	***	***	***	***	***	***	***
July-Sept.	***	***	--	0	--	***	***	***
Oct.-Dec.	***	***	--	0	--	***	***	***
2013:								
Jan.-March	***	***	--	0	--	***	***	***
	United States		India			Malaysia		
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)	Margin
2010:								
Jan.-March	***	***	***	***	***	***	***	***
April.-June	***	***	***	***	***	***	***	***
July-Sept.	***	***	***	***	***	***	***	***
Oct.-Dec.	***	***	***	***	***	4.71	106,022	***
2011:								
Jan.-March	***	***	4.27	261,215	***	***	***	***
April.-June	***	***	4.70	257,144	***	***	***	***
July-Sept.	***	***	4.80	269,613	***	***	***	***
Oct.-Dec.	***	***	4.70	338,889	***	--	0	--
2012:								
Jan.-March	***	***	4.62	204,446	***	***	***	***
April.-June	***	***	4.87	262,732	***	***	***	***
July-Sept.	***	***	4.46	352,000	***	***	***	***
Oct.-Dec.	***	***	4.71	498,408	***	***	***	***
2013:								
Jan.-March	***	***	4.78	595,385	***	***	***	***

Table continued on next page.

Table V-9--Continued

Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 7,¹ and margins of underselling/(overselling), by quarter, January 2010-March 2013

Period	United States		Vietnam			Indonesia	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)	Margin	Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	***	***	4.21	54,220	***	4.32	922,581
April.-June	***	***	4.70	75,440	***	4.37	883,529
July-Sept.	***	***	5.19	123,660	***	4.68	312,991
Oct.-Dec.	***	***	***	***	***	5.44	283,791
2011:							
Jan.-March	***	***	***	***	***	5.51	309,702
April.-June	***	***	5.43	107,744	***	5.11	1,213,408
July-Sept.	***	***	***	***	***	5.39	1,169,523
Oct.-Dec.	***	***	5.23	696,220	***	5.84	713,412
2012:							
Jan.-March	***	***	***	***	***	5.26	360,426
April.-June	***	***	***	***	***	5.12	413,840
July-Sept.	***	***	5.95	374,564	***	5.52	444,003
Oct.-Dec.	***	***	***	***	***	5.07	443,921
2013:							
Jan.-March	***	***	5.83	185,560	***	5.28	690,526
	United States		Mexico			Thailand	
	Price (dollars per pound)	Quantity (pounds)	Price (dollars per pound)	Quantity (pounds)		Price (dollars per pound)	Quantity (pounds)
2010:							
Jan.-March	***	***	***	***	***	4.69	3,747,936
April.-June	***	***	***	***	***	4.88	3,463,480
July-Sept.	***	***	***	***	***	4.99	2,650,770
Oct.-Dec.	***	***	***	***	***	4.83	6,638,229
2011:							
Jan.-March	***	***	***	***	***	5.39	2,895,893
April.-June	***	***	***	***	***	5.67	3,984,806
July-Sept.	***	***	***	***	***	6.44	2,481,482
Oct.-Dec.	***	***	***	***	***	6.47	5,160,908
2012:							
Jan.-March	***	***	***	***	***	6.39	2,858,061
April.-June	***	***	***	***	***	6.50	3,217,706
July-Sept.	***	***	***	***	***	6.19	2,742,659
Oct.-Dec.	***	***	***	***	***	6.03	4,668,448
2013:							
Jan.-March	***	***	***	***	***	6.08	2,672,398

¹ Product 7.— Frozen, cooked warmwater shrimp or prawns, all species, 31 to 40 count, headless P&D (peeled and deveined), headless, tail-on or tail off, IQF (individually quick frozen).

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

Figure V-2
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, by quarter, January 2010-March 2013

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Figure V-3
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 2, by quarter, January 2010-March 2013

* * * * *

Figure V-4
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 3, by quarter, January 2010-March 2013

* * * * *

Figure V-5
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 4, by quarter, January 2010-March 2013

* * * * *

Figure V-6
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 5, by quarter, January 2010-March 2013

* * * * *

Figure V-7
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 6, by quarter, January 2010-March 2013

* * * * *

Figure V-8
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 7, by quarter, January 2010-March 2013

* * * * *

Table V-10

Frozen warmwater shrimp: Summary of weighted-average f.o.b. prices for products 1 through 7 from the United States and subject countries

Item	Number of Quarters	Low price (per pound)	High price (per pound)	Change in price ¹ (percent)
Product 1				
United States	13	\$2.43	\$3.72	(7.2)
China	13	3.14	4.18	***
Ecuador	13	2.71	5.27	***
India	2	***	***	***
Malaysia	13	2.23	3.22	***
Vietnam	12	3.65	6.07	***
Product 2				
United States	13	3.07	4.44	32.4
China	3	***	***	***
Ecuador	13	2.74	3.39	23.7
India	3	***	***	***
Malaysia	13	2.62	5.25	***
Vietnam	12	2.00	8.90	***
Product 3				
United States	13	5.50	7.77	11.8
China	10	3.52	4.65	***
Ecuador	12	3.34	4.55	5.5
India	13	3.94	6.74	***
Malaysia	9	3.78	7.73	***
Vietnam	13	4.93	7.16	***
Product 4				
United States	13	4.75	6.54	23.7
China	4	***	***	***
Ecuador	4	***	***	***
India	10	4.26	6.55	***
Malaysia	1	***	***	***
Vietnam	7	3.17	5.44	***
Product 5				
United States	13	4.22	5.87	33.1
China	3	***	***	***
Ecuador	13	3.49	6.27	53.8
India	13	2.91	5.60	***
Malaysia	13	3.84	5.50	***
Vietnam	13	4.82	7.36	***
Product 6				
United States	13	4.32	6.00	36.3
China	3	***	***	***
Ecuador	12	7.40	9.03	11.5
India	13	4.83	6.14	***
Vietnam	13	5.62	8.08	***
Product 7				
United States	13	3.85	6.75	***
China	7	3.33	4.14	***
Ecuador	10	3.61	4.90	***
India	13	3.78	4.87	***
Malaysia	12	3.95	6.40	***
Vietnam	13	4.21	5.95	***

¹ Percentage change is based on unrounded data.

² Changes are not reported for products for which data were not available in both the first and last year of the period.

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

Price comparisons

As shown in table V-11, there were 333 instances where prices for domestic warmwater shrimp and imports from subject countries could be compared. Overall, subject imports were priced lower than domestic product in 168 of the possible comparisons; the average margin of underselling was 18.8 percent. Subject import prices were higher than domestic prices in 165 comparisons; the average margin of overselling was 34.0 percent. Data by country are provided in table V-12.

Table V-11
Frozen warmwater shrimp: Total instances of underselling/overselling¹ and the range and average margins, January 2010-March 2013

Product	Underselling			Overselling		
	Number of Instances	Range (percent)	Average margin (percent)	Number of Instances	Range (percent)	Average margin (percent)
1	8	1.6-40.0	12.8	45	(42.7-127.1)	(48.3)
2	27	2.4-42.7	17.1	17	(0.1-130.8)	(61.4)
3	42	2.3-56.0	29.2	15	(0.3-35.5)	(11.8)
4	21	2.0-42.7	15.1	7	(0.6-31.0)	(13.6)
5	35	0.0-47.4	14.2	20	(1.0-33.2)	(9.8)
6	7	0.2-19.6	8.6	34	(6.9-105.2)	(45.4)
7	28	0.9-45.0	17.9	27	(0.3-41.3)	(14.4)
Total	168	0.0-56.0	18.8	165	(0.1-130.8)	(34.0)

¹ Countries included in the comparisons were China, Ecuador, India, Malaysia, and Vietnam.

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

Table V-12
Frozen warmwater shrimp: Instances of underselling/overselling and the range and average margin by country, January 2010-March 2013

Product	Underselling			Overselling		
	Number of Instances	Range (percent)	Average margin (percent)	Number of Instances	Range (percent)	Average margin (percent)
China						
1	0	--	--	13	(8.2-60.4)	(32.8)
2	1	***	4.8	2	(3.0-13.8)	(8.4)
3	10	(25.1-39.1)	34.4	0	--	--
4	4	***	17.3	0	--	--
5	3	***	36.0	0	--	--
6	3	***	9.5	0	--	--
7	7	(11.0-45.0)	25.1	0	--	--
Total	28	(4.2-45.0)	26.1	15	(3.0-60.4)	29.6
Ecuador						
1	2	6.4-27.2	16.8	11	(4.3-95.9)	(41.4)
2	13	2.4-29.9	14.6	0	--	--
3	12	23.6-56.0	41.5	0	--	--
4	1	2.8-2.8	2.8	3	(0.6-25.0)	(10.8)
5	7	0.9-35.5	13.8	6	(1.0-13.1)	(7.9)
6	0	--	--	12	(37.5-105.2)	(68.2)
7	7	7.3-21.4	14.7	3	(0.6-19.6)	(8.0)
Total	42	0.9-56.0	22.0	35	(0.6-105.2)	(39.4)
India						
1	0	--	--	2	(19.2-112.9)	(66.1)
2	0	--	--	3	(2.0-44.9)	(23.6)
3	9	(9.2-37.1)	22.8	4	(1.0-9.0)	(4.5)
4	9	(2.0-24.9)	10.7	3	(3.7-31.0)	(18.8)
5	10	(0.0-47.4)	14.8	3	(3.9-9.1)	(6.7)
6	3	(0.2-17.0)	10.0	10	(6.9-38.6)	(20.1)
7	8	(0.9-38.9)	16.8	5	(0.3-22.1)	(8.3)
Total	39	(0.0-49.0)	15.7	30	(0.3-112.9)	(18.0)
Malaysia						
1	6	(1.6-40.0)	11.5	7	(4.2-21.7)	(10.4)
2	11	(7.0-28.2)	17.1	2	(0.1-29.3)	(14.7)
3	4	(5.4-41.0)	18.3	5	(0.7-35.5)	(20.6)
4	1	***	25.2	0	--	--
5	11	(1.5-21.2)	11.3	2	(2.3-2.8)	(2.5)
6	0	--	--	0	--	--
7	4	(1.9-30.3)	13.1	8	(0.8-33.2)	(16.9)
Total	37	(1.5-41.0)	14.4	24	(0.1-35.5)	(14.4)
Vietnam						
1	0	--	--	12	(36.7-127.1)	(90.3)
2	2	(36.2-42.7)	39.5	10	(1.1-130.8)	(92.7)
3	7	(2.3-25.9)	15.2	6	(2.7-15.7)	(9.3)
4	6	(5.1-42.7)	20.5	1	(6.4-6.4)	(6.4)
5	4	(1.3-6.5)	4.6	9	(4.7-33.2)	(13.6)
6	1	(1.6-1.6)	1.6	12	(16.1-71.9)	(43.6)
7	2	(13.7-22.6)	18.1	11	(1.1-41.3)	(17.0)
Total	22	(1.2-42.7)	16.6	61	(1.1-130.8)	(47.6)

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

Nonsubject Prices

Prices for imported shrimp from Indonesia, Mexico, and Thailand combined were lower than prices for U.S.-produced shrimp in 95 of 231 comparisons and higher than U.S.-produced product in 136 comparisons for the 7 products (Table V-13).

Table V-13

Frozen warmwater shrimp: Price comparisons between U.S.-produced shrimp and combined nonsubject imports from Indonesia, Mexico, and Thailand

Product	Number of quarters	
	Lower ¹	Higher
1	0	25
2	8	24
3	22	5
4	20	10
5	33	6
6	5	34
7	7	32
Total	95	136

¹ "Lower" signifies that the import price was lower than the U.S. price.

Source: Compiled from data presented in tables V-3 through V-9.

In price comparisons between subject countries and the combined nonsubject countries, subject countries as a group were priced lower than nonsubject countries in 515 out of 844 comparisons (table V-14).

Table V-14

Frozen warmwater shrimp: Price comparisons between imports from subject countries and combined nonsubject imports from Indonesia, Mexico, and Thailand

Subject Country	Number of quarters		
	Lower ¹	Higher	Total
China	89	10	99
Ecuador	120	76	196
India	116	66	182
Malaysia	113	40	153
Vietnam	77	137	214
Grand Total	515	329	844

¹ "Lower" signifies that the subject country price was lower than the nonsubject country price.

Source: Compiled from data presented in tables V-3 through V-9.

LOST SALES LOST REVENUES

U.S. processors provided 11 lost sales and 5 lost revenues allegations due to imports of frozen warmwater shrimp from China, Ecuador, India, Malaysia, and Vietnam (table V-15). Processors were unable to provide the price that was rejected in most of the lost sales, therefore purchasers were asked to provide quantities and prices.¹² The total volume of reported lost sales ranges from 57,500 to 674,400 pounds. The value of those lost sales for which the producers gave necessary information was \$106,442. One purchaser responded and a summary of the information obtained follows.¹³

Table V-15

Frozen warmwater shrimp: U.S. producers' lost sales allegations

* * * * *

Table V-16

Frozen warmwater shrimp: U.S. producers' lost revenue allegations

* * * * *

¹² Purchasers were requested to provide the prices they paid for imported product if they purchased imported product because its price was lower than U.S. prices. Therefore the price they report is a lower bound on what the U.S. price could have been during the period. This price was requested because it would be relatively easy to report. Purchasers were also requested to report the actual quantities of subject imports purchased.

¹³ Staff attempted to contact purchasers by fax, but the fax numbers provided in the petition were not usable. Staff then sent purchasers letters via Fedex. Allegations received in final investigation questionnaires had usable fax numbers and purchasers were contacted by fax.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Forty one domestic firms provided usable financial results on their operations related to processing frozen warmwater shrimp.¹ Commercial sales make up the majority of revenue reported by processors with relatively small amounts of revenue separately classified as transfers or internal consumption.² Accordingly, a single line item for revenue is presented in the relevant tables below. Most processors reported their financial results for calendar-year periods using generally accepted accounting principles (GAAP) with the remaining processors reporting their financial results on either a cash or tax basis.³ While also reflecting primarily calendar-year periods, most fishermen reported their financial results on a tax or cash basis.⁴

The scale of individual processing operations represents a relatively wide range in terms of company-specific share of overall sales volume. A little over half of the U.S. processors (22 out of 41) had company-specific shares of total sales volumes ranging from *** percent, while twelve processors had shares of total sales volume ranging from *** percent.⁵ The remaining seven producers, collectively accounting for 45.3 percent of total sales volume, had company-specific shares ranging from *** percent of total sales volume.

With respect to those processors whose financial results are presented in the staff report, the majority of relevant processing operations were focused entirely, or almost entirely, on frozen warmwater shrimp. Companies that also processed other products generally indicated that frozen warmwater shrimp was still the majority, or close to the majority, of their

¹ In the absence of correction/clarification, the following processors are excluded from the industry's financial results: ***. USITC auditor notes (final phase). ***. Ibid.

² ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. Transfers, in some instances, were also a default category to report tolling volume and value. *** to USITC auditor.

³ *** specified the use of "accrual" accounting, as opposed to GAAP.

In order to support the company-specific financial results reported to the Commission and in response to a staff request, the following five U.S. processors provided corroborating financial information: ***. These and other relevant revisions are reflected in the industry's financial results. August 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. USITC auditor notes (final phase).

⁴ Information on the warmwater shrimp operations of fisherman, including reported financial results, is presented in appendix D. Fishermen questionnaire responses which were not filed in a timely manner and/or otherwise determined to be incomplete are not included in appendix D. USITC auditor notes (final phase).

⁵ As indicated in Part III of this report, *** its processing operations during the period examined.

overall processing operations.⁶ Only a few processors reported that frozen warmwater shrimp was effectively the minority of their processing operations.^{7 8}

PROCESSING OPERATIONS ON FROZEN WARMWATER SHRIMP

Income-and-loss data for the industry's operations on frozen warmwater shrimp are presented in table V1-1. A variance analysis of the industry's overall financial results is presented in table VI-2.⁹ Given the large number of processors, selected company-specific financial information is presented separately in appendix G.

Sales volume

During the full-year period, ten processors, including *** reported consecutive declines in annual sales volume. In contrast, nine processors reported consecutive annual increases in sales volume during the full-year period with *** among this group. As shown in appendix G, while most processors reported increases in sales volume between 2010-11 followed by decreases in sales volume between 2011-12, there was less uniformity during the interim period; i.e., only a somewhat larger number of processors reported higher sales volume in interim 2013 compared to those reporting lower sales volume. While some processors reported notable differences (positive and negative) between their interim 2012 and interim 2013 sales

⁶ ***. July 10, 2013 e-mail from *** to USITC auditor.

⁷ ***.

***.

⁸ ***.

⁹ The Commission's variance analysis is calculated in three parts: sales variance, COGS variance, and SG&A expenses variance. Each part consists of a price variance (in the case of the sales variance) or a cost/expense variance (in the case of the COGS and SG&A variances) and a corresponding volume (quantity) variance. The sales or cost/expense variance is calculated as the change in unit price/cost times the new volume, while the volume variance is calculated as the change in volume times the old unit price/cost. Summarized at the bottom of the variance analysis table, the price variance is from sales, the net cost/expense variance is the sum of those items from COGS and SG&A, respectively, and the net volume variance is the sum of the sales, COGS, and SG&A volume variances.

In general, the Commission's variance analysis is more meaningful when period-to-period product mix is unchanged. With this in mind and in addition to changes in company-specific product mix, it should be noted that changes in the industry's overall average values (sales, COGS, and SG&A expenses) to some extent also reflect changes in company-specific market share.

Table VI-1

Frozen warmwater shrimp: Results of processors' operations, calendar years 2010-2012, January-March 2012, January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Quantity (1,000 pounds)				
Total net sales quantity	156,098	169,282	158,225	28,463	30,807
	Value (\$1,000)				
Total net sales value	576,391	628,472	603,802	117,721	124,143
Total cost of goods sold ¹	530,817	578,381	564,122	106,113	112,759
Gross profit	45,574	50,091	39,680	11,608	11,384
Total SG&A expenses ²	40,546	44,733	60,930	11,030	12,614
Operating income or (loss)	5,028	5,358	(21,250)	578	(1,230)
Interest expense	3,848	3,633	3,459	870	825
Other expenses	9,355	17,432	17,399	3,471	2,415
Other income items ³	21,407	44,610	95,834	27,267	3,298
Net income or (loss)	13,232	28,903	53,726	23,504	(1,172)
Depreciation/amortization	5,721	6,687	7,070	1,235	1,312
Estimated cash flow	18,953	35,590	60,796	24,739	140
	Ratio to net sales (percent)				
Cost of goods sold ¹	92.1	92.0	93.4	90.1	90.8
Gross profit	7.9	8.0	6.6	9.9	9.2
SG&A expenses ²	7.0	7.1	10.1	9.4	10.2
Operating income or (loss)	0.9	0.9	(3.5)	0.5	(1.0)
Net income or (loss)	2.3	4.6	8.9	20.0	(0.9)
	Unit value (dollars per pound)				
Total net sales	3.69	3.71	3.82	4.14	4.03
Total cost of goods sold ¹	3.40	3.42	3.57	3.73	3.66
Gross profit	0.29	0.30	0.25	0.41	0.37
SG&A expenses ²	0.26	0.26	0.39	0.39	0.41
Operating income or (loss)	0.03	0.03	(0.13)	0.02	(0.04)
	Number of processors reporting				
Operating losses	21	19	24	17	20
Data	41	41	41	39	39

¹ While some processors reported the specific cost components requested in the Commission's questionnaire, a number of processors effectively reported all relevant costs in a single line item; e.g., cost of "shrimp and prawns (domestic)." USITC auditor notes (preliminary phase). Accordingly and in order to avoid presenting potentially misleading cost trends, a single line item for COGS is presented in this table.

² See the *SG&A expenses* section of this part of the staff report.

³ See the *Other income* section of this part of the staff report.

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

Table VI-2

Frozen warmwater shrimp: Variance analysis of processors' operations on frozen warmwater shrimp, calendar years 2010-2012, January-March 2012, and January-March 2013

Item	Calendar year			Jan.-March
	2010-12	2010-11	2011-12	2012-13
	Value (\$1,000)			
Total net sales:				
Price variance	19,557	3,399	16,380	(3,273)
Volume variance	7,854	48,682	(41,050)	9,695
Total net sales variance	27,411	52,081	(24,670)	6,422
Cost of sales:				
Net cost of sales:				
Cost variance	(26,072)	(2,731)	(23,519)	2,093
Volume variance	(7,233)	(44,833)	37,778	(8,739)
Total net cost of sales variance	(33,305)	(47,564)	14,259	(6,646)
Gross profit variance	(5,894)	4,517	(10,411)	(224)
SG&A expenses:				
Expense variance	(19,832)	(762)	(19,119)	(676)
Volume variance	(552)	(3,425)	2,922	(908)
Total SG&A variance	(20,384)	(4,187)	(16,197)	(1,584)
Operating income variance	(26,278)	330	(26,608)	(1,808)
Summarized as:				
Price variance	19,557	3,399	16,380	(3,273)
Net cost/expense variance	(45,904)	(3,494)	(42,638)	1,417
Net volume variance	69	425	(350)	48

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

volume, others reported sales volumes which were about the same in both interim periods.^{10 11}
 12 13 14 15 16 17 18

¹⁰ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

¹¹ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

¹² ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

¹³ ***. July 18, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

¹⁴ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

¹⁵ ***. July 12, 2013 e-mail with attachments from *** to USITC auditor.

¹⁶ U.S. processors also indicated that lower company-specific sales volume in interim 2013 compared to interim 2012 reflected an inability to generate adequate profit margins. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. July 16, 2013 e-mail with

In general, U.S. processors indicated that, while some processing takes place during the shrimping offseason, inventory is usually maintained year round in order to facilitate sales, especially during the first quarter when there is limited production.^{19 20} For some companies, inventory is maintained in public freezers, as opposed to company-owned freezers, which reportedly impacts the volume that can be processed and amount subsequently held in inventory.²¹ The amount of inventory that can be held is to some extent also limited by lines of credit.²²

Sales value

As shown in the table VI-2 variance analysis, period-to-period changes in total revenue were largely a function of sales volume, as opposed to changes in average sales value. Table VI-1 shows that the industry's average sales value increased in each annual period, but was somewhat lower in interim 2013 compared to interim 2012. With respect to the higher average sales value in interim 2012, as compared to full-year 2012, this appears to reflect, at least in part, the effect of normal seasonal reductions in shrimp supply in the first quarter.²³

The relatively wide range of company-specific average sales values, as presented in appendix G, appears to be generally consistent with differences in underlying product characteristics. The presence of tolling activity also impacts the comparability of company-specific average sales value to some extent. Notwithstanding these differences, the same directional trend in average sales value was reported by the majority of processors: period-to-period increases in full-year average sales value followed by lower averages sales value in interim 2013 compared to interim 2012.

attachment from Stewart and Stewart on behalf of *** to USITC auditor. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

Modulating sales volume, however, was not limited to the interim period. For example and as described by ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

¹⁷ ***. July 16, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

¹⁸ ***. July 12, 2013 e-mail with attachments from *** to USITC auditor.

¹⁹ ***. July 12, 2013 e-mail with attachment from *** to USITC auditor. ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

²⁰ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

***. July 12, 2013 e-mail with attachments from *** to USITC auditor.

²¹ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

²² July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

²³ July 12, 2013 e-mail with attachment from *** to USITC auditor.

Cost of goods sold

While the components of COGS are not presented separately (see note to table VI-1), the more detailed cost information reported to the Commission confirmed that the primary input was domestic shrimp which for the full-year period ranged from a low of 84.2 percent of COGS in 2010 to a high of 86.8 percent of COGS in 2011.²⁴

In addition to the primary domestic shrimp input, several processors also reported processing imported shrimp.²⁵ Other inputs (all other raw materials, direct labor, and other factory costs) as a share of total COGS generally remained within a narrow range throughout the period. The notable exception was other factory costs which reached 7.8 percent and 10.2 percent of total COGS in interim 2012 and interim 2013, respectively. This pattern is largely explained by ***.²⁶ The share of “all other raw materials” to total COGS increased to a lesser degree and was ***.²⁷

The majority of processors reported the same directional trend of higher full-year average COGS between 2010-11 and 2011-12, followed by lower average COGS in interim 2013 compared to interim 2012. As noted previously, processing is generally limited in the first quarter with most sales being made from inventory. While variable costs decline as a result, costs such as freezing and fixed or semi-fixed overhead reportedly remain at about the same level regardless of reduced production.²⁸

Gross profit or (loss)

Higher average sales value entirely offset higher average COGS between 2010-11, but only partially offset higher average COGS between 2011-12. As a result, the COGS-to-sales ratio was essentially the same in 2010 and 2011 but increased in 2012 (see table VI-1). While the majority of processors generated positive gross profit in each full-year period, somewhat over

²⁴ USITC auditor notes (final phase). While processors may be integrated to some extent with respect to the domestic shrimp input, this was described as being the exception rather than the rule. Conference transcript, p. 59 (Drake). ***. July 16, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. ***. July 25, 2013 e-mail with attachment from *** to USITC auditor.

²⁵ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

²⁶ July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor. ***.

²⁷ July 8, 2013 e-mail with attachment to *** from USITC auditor.

²⁸ July 16, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. July 16, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

half of the U.S. processors (24 of the 41) reported a lower gross profit ratio in 2012 compared to 2010 (see appendix G). Somewhat less than half (18 out of 39 reporting interim financial results) reported a lower gross profit ratio in interim 2013 compared to interim 2012.

Company-specific explanations regarding the pattern of gross profitability usually noted the difference between primary input costs and prevailing market price, with the level of import prices often referenced as a critical factor.^{29 30 31 32} In at least one instance, gross profitability was also negatively impacted by a shift in product mix.³³

As noted above, the majority of U.S. processors generated gross profit throughout the full-year period, albeit of varying magnitudes. In contrast, ***.³⁴ ***.³⁵

SG&A expenses

With respect to the full-year period, the industry's SG&A expense ratio (total SG&A expenses divided by total sales value) moved within a relatively narrow range between 2010-11 and then increased notably in 2012 to a high of 10.2 percent. As shown in table VI-1, the industry's SG&A expenses were \$16.2 million higher in 2012 compared to 2011. While all companies reported some period-to-period variation in their SG&A expenses, which would normally be expected, the source of the above-referenced increase is ***.

***.³⁶ ***.³⁷ ***.³⁸ ***.³⁹ ***.^{40 41}

²⁹ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

³⁰ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

³¹ ***. July 12, 2013 e-mail with attachment from *** to USITC auditor.

³² ***. July 12, 2013 e-mail with attachments from *** to USITC auditor. ***.

³³ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

³⁴ ***. July 22, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

***. July 12, 2013 e-mail with attachments from *** to USITC auditor.

***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

***. July 25, 2013 e-mail with attachment from *** to USITC auditor.

³⁵ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

***. As shown in table VI-1, ***, the industry's 2012 COGS-to-sales ratio and gross profit ratio were 93.4 percent and 6.6 percent, respectively. ***. USITC auditor notes (final phase).

³⁶ ***. January 31, 2013 e-mail from *** to USITC auditor.

***. Since non-recurring items by definition introduce a level of ambiguity in terms of how to interpret reported financial results, it is fair to say that they require careful consideration regardless of income statement classification. This statement applies equally to other relevant non-recurring items impacting the industry's financial results.

³⁷ July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor. ***. July 23, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

In some instances, reductions in SG&A expenses in part explain relative improvements in company-specific operating results. ***.⁴²

Operating income or (loss)

In addition to the processors noted above that reported gross losses throughout the full-year period and thereby also reported consecutive operating losses, eleven other processors reported operating losses of varying magnitude throughout the full-year period. In some instances, processors reporting consistent operating losses generated gross profit ratios which appeared relatively high on a nominal basis, while others generated gross profit ratios which were too low to recover an average level SG&A expenses (see appendix G). In terms of explaining this pattern, most processors reporting consistent operating losses focused on factors directly impacting gross results (i.e., sales values and primary input costs), as well as the negative impact of being unable to recover lost sales volume.^{43 44}

As shown in appendix G, twelve processors reported operating profit throughout the full-year period. In most instances and similar to processors reporting consistent operating losses, company-specific explanations regarding the pattern of consistent operating profitability generally focused on factors impacting gross profit.^{45 46}

Other income

As shown in table VI-1, “other income” ranged from a low of \$21.4 million in 2010 to a high of \$95.8 million in full-year 2012. While “other income” includes various company-specific

³⁸ July 22, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

³⁹ July 22, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

⁴⁰ July 22, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

***. See footnote 3.

⁴¹ As shown in table VI-1, the industry’s SG&A expense ratio and operating loss ratio in 2012 were 10.1 percent and (3.5) percent, respectively. Removing the above-referenced company-specific increases from the industry’s overall SG&A expenses in 2012 would yield, on a pro-forma basis, an SG&A expense ratio of 7.5 percent and a corresponding operating loss ratio of (0.9) percent. USITC auditor notes (final phase).

⁴² July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

⁴³ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

⁴⁴ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

⁴⁵ ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

⁴⁶ ***. July 15, 2013 e-mail with attachment from Stewart and Stewart on behalf of *** to USITC auditor.

items, the largest components identified were Gulf oil spill compensation from BP and CDSOA receipts.⁴⁷ At the staff conference and hearing, petitioners took the position that the impact of all disbursements related to the Gulf oil spill should be considered a non-operating item in terms of evaluating the industry's financial results. In contrast, respondents generally asserted that the Commission's analysis should take into account the positive impact of Gulf oil spill compensation from BP and CDSOA receipts and consider these items to be functional equivalents of operating income.⁴⁸

To the extent that some expense items included in operating results are connected to "other income" reported below operating results (see *SG&A expenses* section), the Commission's traditional division between "operating" and non-operating "other" categories may be somewhat less meaningful. As described above (see footnote 36), a relatively large share of the total increase in 2012 SG&A expenses, from a funding perspective, was acknowledged to be related to the availability of Gulf oil spill compensation from BP. While classification as part of SG&A expenses is not incorrect from an accounting perspective, the item's non-recurring nature, as well as its acknowledged connection to Gulf oil spill compensation from BP, appear to be relevant when evaluating the industry's reported financial

⁴⁷ For each category and with respect to U.S. processors whose financial results are presented in the staff report, the following total amounts were reported: Gulf oil spill compensation from BP \$14.8 million in 2010; \$22.6 million in 2011; \$70.6 million in 2012 (full-year period); \$22.4 million in interim 2012; and zero in interim 2013. CDSOA receipts \$5.8 million in 2010; \$17.7 million in 2011; \$17.0 million in 2012 (full-year period); \$716 thousand in interim 2012; and \$1.4 million in interim 2013. USITC auditor notes (final phase).

The Commission's questionnaire requested that U.S. processors also report the amount of prospective payments for CDSOA receipts and/or Gulf oil spill compensation from BP. With respect to the U.S. processors whose financial results are included in the industry total, the majority indicated that they anticipated payments in the future but in most cases could not estimate specific amounts. USITC auditor notes (final phase). In several instances, processors did not respond to the question.

⁴⁸ With respect to Gulf oil spill compensation from BP and CDSOA receipts, the Commission's final-phase questionnaire did not specify income statement classification. As indicated in the preliminary-phase staff report and in the context of the Commission's standard income statement format for reviews, CDSOA receipts have traditionally been classified below operating results. While parties have presented different arguments regarding how the Commission should evaluate the financial impact of Gulf oil spill compensation from BP and CDSOA receipts, the corroborating financial information requested and reviewed by Commission staff (see footnote 3) generally indicated that Gulf oil spill compensation from BP and CDSOA receipts were both reported below operating results – either identified separately as part of "other revenue" (or similar term) or as a stand-alone item. As part of "income from continuing operations," which in general encompasses the Commission's standard income statement through net income before taxes, this treatment is consistent with material "revenues . . . not related to the central operations of the company" which are also "unusual or infrequent" (Wiley GAAP 2012, p. 67). In the context of GAAP, the designation "extraordinary" (i.e., "unusual and infrequent") would require an item to be presented below income from continuing operations and net of tax (Wiley GAAP 2012, pp. 73-74). With respect to this industry and BP Gulf oil spill compensation and/or CDSOA receipts, "extraordinary" designation does not appear to be applicable. Respondents' posthearing brief (Vietnam and India), exhibits 2-4.

results. The same statement would also generally apply to the other non-recurring items which impacted the industry's financial results during the period.

Capital expenditures

The responding processors' combined data on capital expenditures are shown in table VI-3.^{49 50} Company-specific capital expenditures are presented in appendix G.

Table VI-3
Frozen warmwater shrimp: Processors' capital expenditures, calendar years 2010-2012, January-March 2012, and January-March 2013

Item	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Value (\$1,000)				
Capital expenditures	10,006	10,294	13,996	3,217	1,675

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

While some processors reported relatively consistent levels of capital expenditures throughout the period, others reported sporadic capital expenditures or none at all (see appendix G). While several processors reported capital expenditures in a similar range, ***.⁵¹

Based on testimony at the staff conference and while there is reportedly no industry-specific strategy/plan to use CDSOA funds for reinvestment, at least some of the reported capital expenditures during the period examined reflect the reinvestment of CDSOA funds.⁵² As also described by industry witnesses at the staff conference, company-specific capital expenditures were reportedly limited to some extent by low relative profitability and reduced access to financing.⁵³ A comparison of table VI-3 and table VI-1 shows that the total amount of reported capital expenditures (\$35.9 million) during the period examined was somewhat higher compared to total depreciation expense (\$20.8 million).

⁴⁹ The following processors reported R&D expenses during the period: ***. July 15, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

⁵⁰ Total assets are not presented in table VI-3 due to staff concerns regarding the completeness and/or consistency of this information.

⁵¹ ***. July 22, 2013 e-mail with attachments from Stewart and Stewart on behalf of *** to USITC auditor.

⁵² Conference transcript p. 56 (Drake).

⁵³ Conference transcript p. 40 (Babin), pp. 46-47 (Gibson).

Capital and investment

The Commission requested that U.S. processors and fishermen describe any actual or anticipated negative effects on their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of frozen warmwater shrimp and prawns from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. The comments/responses of U.S. processors and fishermen, respectively, that reported usable financial results information to the Commission are presented in appendix E and appendix F.

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that—

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors¹--

- (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,*
- (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,*
- (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,*
- (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,*
- (V) inventories of the subject merchandise,*

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

- (VI) 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,*
- (VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),*
- (VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and*
- (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).²*

Information on the nature of the subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in *Parts IV and V*; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in *Part VI*. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries.

Generally speaking, the vast majority of the imported frozen warmwater shrimp from the subject countries came from farmed, rather than wild-caught, inputs; there were limited home markets; and the largest export markets included the United States, the EU, and Japan.³ Several countries subject to these investigations (China, Malaysia, and Vietnam) and one that is not subject (Thailand) have been adversely affected by EMS, which have reduced the shrimp

² Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

³ Canada, Australia, New Zealand, and Pacific Rim countries were other frequently cited markets.

output in these countries. Opinions differ as to how quickly production levels in these countries will recover.

In total, 70 foreign producer questionnaires from subject countries were used to assemble the following data.⁴ The vast majority of producers/exporters did not have product shifting and two firms reported inventories in the United States.⁵ The most commonly reported constraints on production included: live shrimp supply, labor availability, and freezing capacity. The vast majority of firms did not anticipate any changes in operations in the future.

THE INDUSTRY IN CHINA

Table VII-1 presents data provided by producers/exporters with respect to their warmwater shrimp operations in China. Five firms, three of which reported exports to the United States, provided usable data. Exports to the United States reported by firms in China were equivalent to *** percent of subject U.S. imports from China in 2012.

As noted earlier, China's shrimp production has been adversely affected as a result of the outbreak of EMS. Responding Chinese producers reported that shrimp production in China decreased by *** percent between 2010 and 2012. Over the same period, reported exports to the United States decreased by *** percent, while exports to all other markets increased by *** percent. Export shipments accounted for between *** percent and *** percent of total shipments from China between 2010 and 2012. Chinese producers projected that shrimp production in 2014 would be ***.

THE INDUSTRY IN ECUADOR

Table VII-2 presents data provided by producers/exporters with respect to their warmwater shrimp operations in Ecuador. Nine firms, all of which reported exports to the United States provided usable data. Exports to the United States reported by firms in Ecuador were equivalent to 60.8 percent of subject U.S. imports from Ecuador in 2012.

Between 2010 and 2012, reported shrimp production in Ecuador increased by 49.2 percent; exports to the United States increased by 27.0 percent; and exports to all other markets increased by 63.3 percent. Responding producers from Ecuador reported that export shipments accounted for at least 96.4 percent of total shipments from Ecuador between 2010 and 2012. Producers from Ecuador projected that shrimp production in 2014 will be 58.7 percent higher than levels reported in 2010.

⁴ The Commission received responses from 72 firms from subject countries. Two firms *** certified that they had not produced or exported frozen warmwater shrimp since 2010.

⁵ The total for these two firms is as follows (in *1,000 pounds*): *** in 2010; *** in 2011; *** in 2012; *** in January-March 2012; and *** in January-March 2013.

Table VII-1
Frozen warmwater shrimp: Data for producers in China, 2010-2012, January-March 2012, and January-March 2013, and projected 2013-14

* * * * *

Table VII-2
Frozen warmwater shrimp: Data for producers in Ecuador, 2010-2012, January-March 2012, and January-March 2013, and projected 2013-14

Items	Actual experience					Projections	
	Calendar year			January-March		Calendar year	
	2010	2011	2012	2012	2013	2013	2014
	Quantity (1,000 pounds)						
Capacity	505,895	540,408	628,145	172,781	176,189	641,914	649,808
Production	206,957	284,190	308,754	72,315	70,375	304,350	328,425
End-of-period inventories	8,466	13,494	14,053	12,745	14,015	16,375	12,321
Shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to:							
United States	84,569	107,613	107,430	28,175	22,040	97,135	106,986
All other markets	114,244	157,658	186,560	41,258	45,390	192,510	210,624
Total exports	198,813	265,271	293,990	69,433	67,430	289,645	317,610
Total shipments	205,276	275,135	303,377	71,857	73,867	296,970	327,165
	Ratios and shares (percent)						
Capacity utilization	40.9	52.6	49.2	41.9	39.9	47.4	50.5
Inventories/production	4.1	4.7	4.6	4.4	5.0	5.4	3.8
Inventories/total shipments	4.1	4.9	4.6	4.4	4.7	5.5	3.8
Share of total shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to:							
United States	41.2	39.1	35.4	39.2	29.8	32.7	32.7
All other markets	55.7	57.3	61.5	57.4	61.4	64.8	64.4
Total exports	96.9	96.4	96.9	96.6	91.3	97.5	97.1

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

THE INDUSTRY IN INDIA

Table VII-3 presents data provided by producers/exporters with respect to their warmwater shrimp operations in India. Twenty-eight firms, 27 of which reported exports to the United States, provided usable data. Exports to the United States reported by firms in India were equivalent to 79.0 percent of subject U.S. imports from India in 2012.

Between 2010 and 2012, reported shrimp production in India increased by 70.5 percent and exports to the United States increased by 110.7 percent. Increases in shrimp production in India can be attributed to the country's switch from Black Tiger to vannamei species, which has proven very adaptable to the climate in India.⁶ Responding producers from India reported that exports accounted for at least 99.7 percent of total shipments from India between 2010 and 2012. Producers from India projected that shrimp production in 2014 would be 105.1 percent higher than levels reported in 2010.

THE INDUSTRY IN MALAYSIA

Table VII-4 presents data provided by producers/exporters with respect to their warmwater shrimp operations in Malaysia. Two firms, both of which reported exports to the United States, provided usable data. Exports to the United States reported by these firms in Malaysia were equivalent to *** percent of subject U.S. imports from Malaysia in 2012.

THE INDUSTRY IN VIETNAM

Table VII-5 presents data provided by producers/exporters with respect to their warmwater shrimp operations in Vietnam. Twenty-six firms, all of which reported exports to the United States, provided usable data. Exports to the United States reported by firms in Vietnam were equivalent to 89.0 percent of subject U.S. imports from Vietnam in 2012.

⁶ Hearing transcript, p. 286 (Lunn).

Table VII-3
Frozen warmwater shrimp: Data for producers in India, 2010-2012, January-March 2012, and
January-March 2013, and projected 2013-14

Items	Actual experience					Projections	
	Calendar year			January-March		Calendar year	
	2010	2011	2012	2012	2013	2013	2014
	Quantity (1,000 pounds)						
Capacity	641,907	674,690	752,968	194,614	205,148	784,289	788,937
Production	123,428	166,415	210,401	36,255	47,715	229,263	253,090
End-of-period inventories	16,666	18,258	26,399	19,044	25,865	28,904	33,900
Shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to:							
United States	53,660	86,099	113,035	16,129	27,488	125,623	136,656
All other markets	65,287	78,525	87,963	19,158	21,225	105,335	116,650
Total exports	118,947	164,624	200,998	35,287	48,713	230,958	253,306
Total shipments	119,318	164,827	201,332	35,540	48,745	231,124	253,539
	Ratios and shares (percent)						
Capacity utilization	19.2	24.7	27.9	18.6	23.3	29.2	32.1
Inventories/production	13.5	11.0	12.5	13.1	13.6	12.6	13.4
Inventories/total shipments	14.0	11.1	13.1	13.4	13.3	12.5	13.4
Share of total shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to:							
United States	45.0	52.2	56.1	45.4	56.4	54.4	53.9
All other markets	54.7	47.6	43.7	53.9	43.5	45.6	46.0
Total exports	99.7	99.9	99.8	99.3	99.9	99.9	99.9

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

Table VII-4

Frozen warmwater shrimp: Data for producers in Malaysia, 2010-2012, January-March 2012, and January-March 2013, and projected 2013-14

* * * * *

Table VII-5

Frozen warmwater shrimp: Data for producers in Vietnam, 2010-2012, January-March 2012, and January-March 2013, and projected 2013-14

Items	Actual experience					Projections	
	Calendar year			January-March		Calendar year	
	2010	2011	2012	2012	2013	2013	2014
	Quantity (1,000 pounds)						
Capacity	409,447	455,983	444,227	177,335	178,230	456,113	482,966
Production	314,151	311,723	255,915	44,573	45,352	295,836	331,055
End-of-period inventories	58,441	64,150	60,644	54,981	55,957	69,432	74,665
Shipments:							
Internal consumption/ transfers	36,809	39,603	27,464	8,868	8,794	26,983	25,207
Home market	12,399	8,176	5,329	1,360	1,896	4,857	5,345
Exports to:							
United States	93,318	80,748	74,386	12,328	12,960	88,211	98,826
All other markets	162,736	175,881	148,271	26,546	23,845	172,843	194,682
Total exports	256,054	256,629	222,657	38,874	36,805	261,054	293,508
Total shipments	305,262	304,408	255,450	49,102	47,495	292,894	324,060
	Ratios and shares (percent)						
Capacity utilization	76.7	68.4	57.6	25.1	25.4	64.9	68.5
Inventories/production	18.6	20.6	23.7	30.8	30.8	23.5	22.6
Inventories/total shipments	19.1	21.1	23.7	28.0	29.5	23.7	23.0
Share of total shipments:							
Internal consumption/ transfers	12.1	13.0	10.8	18.1	18.5	9.2	7.8
Home market	4.1	2.7	2.1	2.8	4.0	1.7	1.6
Exports to:							
United States	30.6	26.5	29.1	25.1	27.3	30.1	30.5
All other markets	53.3	57.8	58.0	54.1	50.2	59.0	60.1
Total exports	83.9	84.3	87.2	79.2	77.5	89.1	90.6

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

THE INDUSTRY IN THE FIVE SUBJECT COUNTRIES

Table VII-6 presents the combined data provided by foreign producers. In aggregate, shrimp production in the five subject countries, decreased by 13.7 percent between 2010 and

2012. Over the same period, exports to the United States accounted for between 37.2 and 38.4 percent, and exports to all other markets accounted for between 51.5 and 54.8 percent. When combining exports to the United States and all other markets, export shipments from these five countries accounted for between 89.8 and 93.2 percent of total shipments between 2010 and 2012.

Table VII-6
Frozen warmwater shrimp: Combined data from foreign producers in China, Ecuador, India, Malaysia, and Vietnam, 2010-2012, January-March 2012, and January-March 2013, and projected 2013-14

Items	Actual experience					Projections	
	Calendar year			January-March		Calendar year	
	2010	2011	2012	2012	2013	2013	2014
	Quantity (1,000 pounds)						
Capacity	1,821,848	1,948,177	2,106,643	615,710	625,390	2,111,227	2,149,922
Production	748,334	873,090	851,160	162,863	171,181	925,788	1,027,715
End-of-period inventories	119,245	144,930	138,399	131,464	124,847	149,373	152,903
Shipments:							
Internal consumption/ transfers	39,591	43,034	30,602	9,644	14,183	30,580	29,345
Home market	33,959	31,585	27,123	5,766	6,720	28,841	40,968
Exports to:							
United States	277,351	313,018	325,715	61,132	68,839	338,719	375,718
All other markets	373,260	454,211	464,573	94,009	96,260	521,837	576,273
Total exports	650,611	767,229	790,288	155,141	165,099	860,556	951,991
Total shipments	724,161	841,848	848,013	170,551	186,002	919,977	1,022,304
	Ratios and shares (percent)						
Capacity utilization	41.1	44.8	40.4	26.5	27.4	43.9	47.8
Inventories/production	15.9	16.6	16.3	20.2	18.2	16.1	14.9
Inventories/total shipments	16.5	17.2	16.3	19.3	16.8	16.2	15.0
Share of total shipments:							
Internal consumption/ transfers	5.5	5.1	3.6	5.7	7.6	3.3	2.9
Home market	4.7	3.8	3.2	3.4	3.6	3.1	4.0
Exports to:							
United States	38.3	37.2	38.4	35.8	37.0	36.8	36.8
All other markets	51.5	54.0	54.8	55.1	51.8	56.7	56.4
Total exports	89.8	91.1	93.2	91.0	88.8	93.5	93.1

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

Freezing capacities

Table VII-7 presents foreign producers' reported totals and allocated freezing capacity for freeze-processed products since 2010.

Table VII-7
Frozen warmwater shrimp: Freezing capacity, 2010-2012, January-March 2012, and January-March 2013

Items	Calendar year			January-March	
	2010	2011	2012	2012	2013
	Quantity (1,000 pounds)				
Total potential freezing capacity	2,050,758	2,224,579	2,395,314	694,779	716,657
of which allocated frozen warmwater shrimp	1,750,783	1,910,829	2,119,616	574,101	590,377
Block freezing capacity	975,998	1,040,020	1,073,443	300,544	306,477
IQF freezing capacity	1,000,101	1,105,672	1,213,099	357,546	366,611
Other freezing capacity	125,157	123,156	142,284	41,591	46,691

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

U.S. INVENTORIES OF FROZEN WARMWATER SHRIMP

As discussed earlier, only two foreign producers reported U.S. inventories, accounting for less than 0.5 percent of subject imports.

U.S. IMPORTERS' OUTSTANDING ORDERS

The Commission requested importers to indicate whether they imported or arranged for the importation of frozen warmwater shrimp from subject and nonsubject countries after March 31, 2013. Table VII-8 presents reported arranged imports by 25 importers.

Table VII-8
Frozen warmwater shrimp: Arranged imports after March 31, 2013

Source	April-June 2013	July-September 2013	October-December 2013	January-March 2014	April 2013-March 2014
	Quantity (1,000 pounds)				
China	4,893,818	5,480,207	5,615,000	5,600,000	21,589,025
Ecuador	10,133,390	4,641,560	3,106,000	3,106,000	20,986,950
India	12,640,691	19,242,255	4,133,830	4,236,750	40,253,526
Malaysia	1,402,808	0	0	0	1,402,808
Vietnam	8,849,108	19,029,138	3,232,792	2,245,165	33,356,203
Subtotal, (subject)	37,919,815	48,393,160	16,087,622	15,187,915	117,588,512

Table continued on next page.

Table VII-8--Continued
Frozen warmwater shrimp: Arranged imports after March 31, 2013

Source	April-June 2013	July- September 2013	October- December 2013	January- March 2014	April 2013- March 2014
Indonesia	17,141,406	20,641,212	1,303,753	506,175	39,592,546
Thailand	16,135,955	16,339,081	1,809,336	480,165	34,764,537
All other sources	6,155,905	2,347,179	1,252,099	1,490,499	11,245,682
Subtotal, (nonsubject)	39,433,266	39,327,472	4,365,188	2,476,839	85,602,765
Total U.S. Imports	77,353,081	87,720,632	20,452,810	17,664,754	203,191,277

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

ANTIDUMPING OR COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

According to the World Bank's Global Antidumping Database, which covers most countries through 2012, there are no other antidumping or countervailing orders concerning shrimp.

INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) 'to ensure that it is not attributing injury from other sources to the subject imports.'"⁷

Thailand, Indonesia, and Mexico are the largest nonsubject sources of U.S. frozen shrimp imports. While imports of warmwater shrimp from Thailand and Indonesia are farmed, imports from Mexico are available as farmed and wild-caught, with the wild-caught subject to the same seasonal supply surge as U.S. production. Other nonsubject sources, primarily for farmed shrimp, include Bangladesh, Honduras, and Peru.

THE INDUSTRY IN INDONESIA

Table VII-9 presents data provided by producers/exporters with respect to their warmwater shrimp operations in Indonesia. Seventeen firms, all of which reported exports to

⁷ *Mittal Steel Point Lisas Ltd. v. United States*, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369 (Fed. Cir. 2006).

the United States, provided usable data. Exports to the United States reported by firms in Indonesia were equivalent to 85.9 percent of subject U.S. imports from Indonesia in 2012.

THE INDUSTRY IN THAILAND

Table VII-10 presents data provided by producers/exporters with respect to their warmwater shrimp operations in Thailand. Twenty-nine firms, 28 of which reported exports to the United States, provided usable data. Exports to the United States reported by firms in Thailand were equivalent to 82.7 percent of subject U.S. imports from Thailand in 2012.

Table VII-9
Frozen warmwater shrimp: Data for producers in Indonesia, 2010-2012, January-March 2012, and January-March 2013, and projected 2013-14

Items	Actual experience					Projections	
	Calendar year			January-March		Calendar year	
	2010	2011	2012	2012	2013	2013	2014
	Quantity (1,000 pounds)						
Capacity	332,860	336,274	318,333	78,799	79,697	322,341	325,257
Production	151,603	189,054	190,045	50,110	45,636	176,841	190,310
End-of-period inventories	15,823	23,710	21,729	25,603	21,226	18,071	15,141
Shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to:							
United States	92,837	123,243	135,415	33,825	31,869	126,439	132,625
All other markets	54,491	49,295	47,697	12,330	12,496	51,401	57,822
Total exports	147,328	172,538	183,112	46,155	44,365	177,840	190,447
Total shipments	153,548	178,817	187,244	47,624	44,866	180,502	193,244
	Ratios and shares (percent)						
Capacity utilization	45.5	56.2	59.7	63.6	57.3	54.9	58.5
Inventories/production	10.4	12.5	11.4	12.8	11.6	10.2	8.0
Inventories/total shipments	10.3	13.3	11.6	13.4	11.8	10.0	7.8
Share of total shipments:							
Internal consumption/ transfers	***	***	***	***	***	***	***
Home market	***	***	***	***	***	***	***
Exports to:							
United States	60.5	68.9	72.3	71.0	71.0	70.0	68.6
All other markets	35.5	27.6	25.5	25.9	27.9	28.5	29.9
Total exports	95.9	96.5	97.8	96.9	98.9	98.5	98.6

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

Table VII-10
Frozen warmwater shrimp: Data for producers in Thailand, 2010-2012, January-March 2012, and
January-March 2013, and projected 2013-14

Items	Actual experience					Projections	
	Calendar year			January-March		Calendar year	
	2010	2011	2012	2012	2013	2013	2014
	Quantity (1,000 pounds)						
Capacity	1,006,024	1,056,237	1,049,041	307,367	309,743	936,950	952,450
Production	679,274	644,849	550,183	113,194	71,347	374,848	420,774
End-of-period inventories	124,704	129,616	134,049	139,512	117,884	107,930	94,942
Shipments:							
Internal consumption/ transfers	15,166	8,637	16,241	6,071	2,968	10,747	10,088
Home market	38,180	30,592	30,440	8,918	7,238	27,717	30,966
Exports to:							
United States	348,879	315,721	226,095	40,789	29,328	168,186	182,515
All other markets	292,521	284,887	272,674	54,628	44,776	187,644	209,762
Total exports	641,400	600,608	498,769	95,417	74,104	355,830	392,277
Total shipments	694,746	639,837	545,450	110,406	84,310	394,294	433,331
	Ratios and shares (percent)						
Capacity utilization	67.5	61.1	52.4	36.8	23.0	40.0	44.2
Inventories/production	18.4	20.1	24.4	30.8	41.3	28.8	22.6
Inventories/total shipments	17.9	20.3	24.6	31.6	35.0	27.4	21.9
Share of total shipments:							
Internal consumption/ transfers	2.2	1.3	3.0	5.5	3.5	2.7	2.3
Home market	5.5	4.8	5.6	8.1	8.6	7.0	7.1
Exports to:							
United States	50.2	49.3	41.5	36.9	34.8	42.7	42.1
All other markets	42.1	44.5	50.0	49.5	53.1	47.6	48.4
Total exports	92.3	93.9	91.4	86.4	87.9	90.2	90.5

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

APPENDIX A

FEDERAL REGISTER NOTICES

The Commission makes available notices relevant to its investigations and reviews on its website, www.usitc.gov. In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

Citation	Title	Link
78 FR 33342	<i>Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13237.pdf
78 FR 33344	<i>Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13205.pdf
78 FR 33345	<i>Certain Frozen Warmwater Shrimp From Malaysia: Preliminary Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13229.pdf
78 FR 33346	<i>Certain Frozen Warmwater Shrimp From China: Preliminary Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13231.pdf
78 FR 33347	<i>Certain Frozen Warmwater Shrimp From Ecuador: Preliminary Negative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13235.pdf
78 FR 33349	<i>Certain Frozen Warmwater Shrimp From Indonesia: Preliminary Negative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13234.pdf
78 FR 33350	<i>Certain Frozen Warmwater Shrimp From Thailand: Preliminary Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13202.pdf
78 FR 35643	<i>Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam Scheduling of the Final Phase of Countervailing Duty Investigations</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-06-13/pdf/2013-14010.pdf

Table continued on next page.

Citation	Title	Link
78 FR 50379	<i>Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20166.pdf
78 FR 50381	<i>Certain Frozen Warmwater Shrimp From Malaysia: Final Affirmative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20168.pdf
78 FR 50383	<i>Certain Frozen Warmwater Shrimp From Indonesia: Final Negative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20164.pdf
78 FR 50385	<i>Certain Frozen Warmwater Shrimp From India: Final Affirmative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20167.pdf
78 FR 50387	<i>Certain Frozen Warmwater Shrimp From Vietnam: Final Affirmative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20172.pdf
78 FR 50389	<i>Certain Frozen Warmwater Shrimp From Ecuador: Final Affirmative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20169.pdf
78 FR 50391	<i>Certain Frozen Warmwater Shrimp From China: Final Affirmative Countervailing Duty Determination</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-20170.pdf
78 FR 54912	<i>Frozen Warmwater Shrimp from Indonesia and Thailand: Termination of Investigations</i>	http://www.gpo.gov/fdsys/pkg/FR-2013-09-06/pdf/2013-21725.pdf

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam

Inv. Nos.: 701-TA-491-497 (Final)

Date and Time: August 13, 2013 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

STATE GOVERNMENT WITNESSES:

The Honorable Jay Dardenne, Lieutenant Governor, State of Louisiana

The Honorable Sean Tindell, State Senator, State of Mississippi

The Honorable Jeffrey S. Guice, State Representative, State of Mississippi

The Honorable Joseph A. Harrison, State Representative, State of Louisiana

EMBASSY WITNESS:

**Royal Thai Embassy
Washington, D.C.**

Perapat Uthaisri, Minister-Counsellor (Commerical)

OPENING REMARKS:

Petitioner (**Elizabeth J. Drake**, Stewart and Stewart)

Respondents (**Warren E. Connelly**, Akin Gump Strauss, Hauer & Feld LLP)

In Support of the Imposition of the Countervailing Duty Orders:

Stewart and Stewart
Washington, D.C.
on behalf of

and

Leake and Anderson, LLP
New Orleans, LA
on behalf of

Coalition of Shrimp Industries (“COGSI”)

C. David Veal, Executive Director, COGSI
Carson Kimbrough, President, Carson & Co., Inc.
Alan Gibson, President and Owner, Tideland Seafood Co., Inc.
E. Richard Gollott, Sr., Vice President, Golden Gulf Coast Pkg. Co., Inc.
Lance Authement, Vice President, Hi Seas of Dulac Inc.
Chef John D. Folse, Chef John Folse & Company and Chef
John Folse & Company Manufacturing, Chair Louisiana
Seafood Promotion and Marketing Board

Terence P. Stewart)
Elizabeth J. Drake)
Philip A. Butler) – OF COUNSEL
Jennifer M. Smith)
Jessica Jie Wang)
Edward T. Hayes)

In Opposition to the Imposition of the Countervailing Duty Orders:

Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.
on behalf of

Chicken of the Sea Frozen Foods
Eastern Fish Company, Inc.
Mazzetta Company, LLC
Ore-Cal Corporation
Sea Port Products Corporation
Seafood Exchange of Florida
Stavis Seafoods, Inc.

Guy Pizzuti, Category Manager – Seafood, Publix Super Markets, Inc.
Deen Kaplan, Counsel for Publix Super Markets, Inc., Hogan Lovells LLP
Darby Sorber, General Merchandise Manager for Food and Sundries, Costco
Wholesale Corporation, Northeast Region
Dino Ortolan, Frozen Food Buyer, Costco Wholesale Corporation, Northeast
Region
Jeff Stern, Vice President of Purchasing, Central Seaway Company, Inc.
Eric Buckner, Senior Director of Category Management –Seafood, Sysco
Corporation

Warren E. Connelly)
) – OF COUNSEL
Jarrod M. Goldfeder)

**In Opposition to the Imposition of the
Countervailing Duty Orders (continued):**

SNR Denton US LLP
Washington, D.C.
on behalf of

Seafood Exporters Association of India (“SEAI”)

James Dougan, Senior Economist, Economic Consulting Services LLC
Cara Groden, Research Assistant Economic Consulting Services LLC

Mark P. Lunn) – OF COUNSEL

Trade Pacific PLLC
Washington, D.C.
on behalf of

Zhanjiang Guolian Aquatic Products Co., Ltd. (“Guolian”)

Jonathan M. Freed) – OF COUNSEL

White & Case LLP
Washington, D.C.
on behalf of

The Royal Thai Government

Walter J. Spak) – OF COUNSEL

Hughes Hubbard & Reed LLP
Washington, D.C.
on behalf of

Vietnamese Association of Seafood Exporters and Producers (“VASEP”)

Matthew R. Nicely) – OF COUNSEL

REBUTTAL/CLOSING REMARKS:

Petitioner (**Elizabeth J. Drake**, Stewart and Stewart)
Respondents (**Mark Lunn**, SNR Denton US LLP)

APPENDIX C
SUMMARY DATA

Table C-1

Frozen warmwater shrimp: Summary data concerning the U.S. market, 2010-12, January-March 2012, and January-March 2013

(Quantity=1,000 pounds; Value=1,000 dollars, Unit values, Unit labor costs, and unit expenses=dollars per pound; Period changes=percent--exceptions noted)

Item	Reported data					Period changes			
	2010	2011	2012	January-March		2010-12	2010-11	2011-12	January-March
				2012	2013				2012-13
U.S. consumption quantity:									
Amount	1,249,308	1,295,294	***	***	(1)	***	3.7	***	(1)
Producers' share (2)	9.6	10.5	***	***	(1)	***	0.9	***	(1)
Importers' share (2):									
China	4.4	3.2	***	***	(1)	***	-1.1	***	(1)
Ecuador	11.3	12.4	***	***	(1)	***	1.0	***	(1)
India	5.2	8.1	***	***	(1)	***	2.9	***	(1)
Malaysia	4.2	4.9	***	***	(1)	***	0.7	***	(1)
Vietnam	8.1	7.1	***	***	(1)	***	-1.0	***	(1)
Subtotal, (subject)	33.2	35.7	***	***	(1)	***	2.5	***	(1)
Indonesia	10.1	11.3	***	***	(1)	***	1.2	***	(1)
Thailand	33.2	29.0	***	***	(1)	***	-4.3	***	(1)
All other sources	13.8	13.5	***	***	(1)	***	-0.3	***	(1)
Subtotal, (nonsubject)	57.2	53.8	***	***	(1)	***	-3.4	***	(1)
Total Imports	90.4	89.5	***	***	(1)	***	-0.9	***	(1)
U.S. consumption value:									
Amount	4,716,358	5,671,919	***	***	(1)	***	20.3	***	(1)
Producers' share (2)	11.5	12.4	***	***	(1)	***	0.8	***	(1)
Importers' share (2):									
China	3.7	2.8	***	***	(1)	***	-0.9	***	(1)
Ecuador	8.9	9.5	***	***	(1)	***	0.7	***	(1)
India	6.5	9.3	***	***	(1)	***	2.8	***	(1)
Malaysia	3.3	3.7	***	***	(1)	***	0.5	***	(1)
Vietnam	10.8	8.9	***	***	(1)	***	-1.9	***	(1)
Subtotal, (subject)	33.2	34.3	***	***	(1)	***	1.1	***	(1)
Indonesia	10.3	12.1	***	***	(1)	***	1.8	***	(1)
Thailand	31.4	29.2	***	***	(1)	***	-2.2	***	(1)
All other sources	13.5	12.0	***	***	(1)	***	-1.5	***	(1)
Subtotal, (nonsubject)	55.2	53.3	***	***	(1)	***	-1.9	***	(1)
Total Imports	88.5	87.6	***	***	(1)	***	-0.8	***	(1)
U.S. imports from:									
China:									
Quantity	54,591	42,032	30,537	4,812	3,311	-44.1	-23.0	-27.3	-31.2
Value	174,857	159,147	105,754	18,964	10,896	-39.5	-9.0	-33.5	-42.5
Unit value	\$3.20	\$3.79	\$3.46	\$3.94	\$3.29	8.1	18.2	-8.5	-16.5
Ending inventory quantity	***	***	***	***	***	***	-31.8	***	(1)
Ecuador:									
Quantity	141,620	160,422	176,688	41,827	38,278	24.8	13.3	10.1	-8.5
Value	418,571	540,443	568,268	137,126	133,885	35.8	29.1	5.1	-2.4
Unit value	\$2.96	\$3.37	\$3.22	\$3.28	\$3.50	8.8	14.0	-4.5	6.7
Ending inventory quantity	4,290	10,008	3,749	4,549	3,691	-12.6	133.3	-62.5	-18.9
India:									
Quantity	65,444	104,960	143,163	22,393	38,076	118.8	60.4	36.4	70.0
Value	308,832	529,412	577,239	101,512	157,218	86.9	71.4	9.0	54.9
Unit value	\$4.72	\$5.04	\$4.03	\$4.53	\$4.13	-14.6	6.9	-20.1	-8.9
Ending inventory quantity	5,602	11,950	13,910	9,906	11,318	148.3	113.3	16.4	14.3
Malaysia:									
Quantity	52,721	63,415	50,882	13,327	12,221	-3.5	20.3	-19.8	-8.3
Value	153,999	212,566	173,098	48,192	39,717	12.4	38.0	-18.6	-17.6
Unit value	\$2.92	\$3.35	\$3.40	\$3.62	\$3.25	16.5	14.8	1.5	-10.1
Ending inventory quantity	944	2,960	1,396	1,993	613	47.9	213.6	-52.8	-69.2
Vietnam:									
Quantity	100,834	91,503	83,534	16,903	15,882	-17.2	-9.3	-8.7	-6.0
Value	511,515	504,949	436,745	98,746	79,709	-14.6	-1.3	-13.5	-19.3
Unit value	\$5.07	\$5.52	\$5.23	\$5.84	\$5.02	3.1	8.8	-5.3	-14.1
Ending inventory quantity	***	***	***	***	***	***	4.0	***	(1)
Subtotal, (subject)									
Quantity	415,210	462,331	484,803	99,263	107,767	16.8	11.3	4.9	8.6
Value	1,567,773	1,946,517	1,861,103	404,540	421,425	18.7	24.2	-4.4	4.2
Unit value	\$3.78	\$4.21	\$3.84	\$4.08	\$3.91	1.7	11.5	-8.8	-4.0
Ending inventory quantity	31,202	44,930	48,002	37,427	39,137	53.8	44.0	6.8	4.6
Indonesia:									
Quantity	126,661	146,747	157,702	41,578	37,350	24.5	15.9	7.5	-10.2
Value	485,466	686,296	660,349	184,404	163,873	36.0	41.4	-3.8	-11.1
Unit value	\$3.83	\$4.68	\$4.19	\$4.44	\$4.39	9.2	22.0	-10.5	-1.1
Ending inventory quantity	8,273	13,404	13,883	14,973	11,801	67.8	62.0	3.6	-21.2
Thailand:									
Quantity	414,954	375,072	273,541	61,975	47,640	-34.1	-9.6	-27.1	-23.1
Value	1,480,787	1,655,821	1,152,011	278,931	201,294	-22.2	11.8	-30.4	-27.8
Unit value	\$3.57	\$4.41	\$4.21	\$4.50	\$4.23	18.0	23.7	-4.6	-6.1
Ending inventory quantity	35,601	49,125	33,798	38,599	25,252	-5.1	38.0	-31.2	-34.6
All Other Sources:									
Quantity	172,475	174,570	165,568	42,961	32,327	-4.0	1.2	-5.2	-24.8
Value	638,578	681,566	627,468	171,528	148,175	-1.7	6.7	-7.9	-13.6
Unit value	\$3.70	\$3.90	\$3.79	\$3.99	\$4.58	2.4	5.5	-2.9	14.8
Ending inventory quantity	2,015	1,526	1,799	1,599	1,691	-10.7	-24.3	17.9	5.8
Subtotal, (nonsubject):									
Quantity	714,090	696,389	596,811	146,514	117,318	-16.4	-2.5	-14.3	-19.9
Value	2,604,831	3,023,683	2,439,829	634,863	513,342	-6.3	16.1	-19.3	-19.1
Unit value	\$3.65	\$4.34	\$4.09	\$4.33	\$4.38	12.1	19.0	-5.8	1.0
Ending inventory quantity	45,889	64,055	49,480	55,171	38,744	7.8	39.6	-22.8	-29.8
All sources:									
Quantity	1,129,300	1,158,720	1,081,615	245,777	225,085	-4.2	2.6	-6.7	-8.4
Value	4,172,604	4,970,199	4,309,932	1,039,403	934,767	3.1	19.1	-13.5	-10.1
Unit value	\$3.69	\$4.29	\$3.98	\$4.23	\$4.15	7.6	16.1	-7.3	-1.8
Ending inventory quantity	77,091	108,985	97,482	92,598	77,881	26.5	41.4	-10.6	-15.9

Table C-1--Continued

Frozen warmwater shrimp: Summary data concerning the U.S. market, 2010-12, January-March 2012, and January-March 2013

(Quantity=1,000 pounds; Value=1,000 dollars; Unit values, Unit labor costs, and unit expenses=dollars per pound; Period changes=percent--exceptions noted)

Item	Reported data					Period changes			
	2010	2011	2012	January-March		2010-12	2010-11	2011-12	January-March 2012-13
				2012	2013				
U.S. producers:									
Average capacity quantity	571,040	598,385	617,340	151,477	152,487	8.1	4.8	3.2	0.7
Production quantity	145,175	165,957	164,063	20,189	15,437	13.0	14.3	-1.1	-23.5
Capacity utilization (2)	25.4	27.7	26.6	13.3	10.1	1.2	2.3	-1.2	-3.2
U.S. shipments:									
Quantity	158,317	168,710	158,586	28,219	30,942	0.2	6.6	-6.0	9.6
Value	561,157	616,996	588,976	114,077	119,787	5.0	10.0	-4.5	5.0
Unit value	\$3.54	\$3.66	\$3.71	\$4.04	\$3.87	4.8	3.2	1.6	-4.2
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	32,103	31,207	42,192	22,345	25,651	31.4	-2.8	35.2	14.8
Inventories/total shipments (2)	20.2	18.4	26.5	19.7	20.7	6.3	-1.8	8.1	0.9
Production workers	1,980	2,055	2,050	1,649	1,583	3.5	3.8	-0.2	-4.0
Hours worked (1,000 hours)	3,827	3,939	4,202	891	1,197	9.8	2.9	6.7	34.4
Wages paid (\$1,000)	43,449	47,889	50,605	10,176	11,709	16.5	10.2	5.7	15.1
Hourly wages	\$11.31	\$12.11	\$11.98	\$11.25	\$9.70	5.9	7.0	-1.0	-13.8
Productivity (pounds per hour)	37.3	41.6	38.3	21.0	11.9	2.9	11.6	-7.8	-43.4
Unit labor costs (per pound)	\$0.30	\$0.29	\$0.31	\$0.50	\$0.76	3.1	-3.6	6.9	50.5
Net sales:									
Quantity	156,098	169,282	158,225	28,463	30,807	1.4	8.4	-6.5	8.2
Value	576,391	628,472	603,802	117,721	124,143	4.8	9.0	-3.9	5.5
Unit value	\$3.69	\$3.71	\$3.82	\$4.14	\$4.03	3.5	0.5	3.0	-2.7
Cost of goods sold (COGS)	530,817	578,381	564,122	106,113	112,759	6.3	9.0	-2.5	6.3
Gross profit or (loss)	45,574	50,091	39,680	11,608	11,384	-12.9	9.9	-20.8	-1.9
SG&A expenses	40,546	44,733	60,930	11,030	12,614	50.3	10.3	36.2	14.4
Operating income or (loss)	5,028	5,358	-21,250	578	-1,230	(3)	6.6	(3)	(3)
Capital expenditures	10,006	10,294	13,996	3,217	1,675	39.9	2.9	36.0	-47.9
Unit COGS	\$3.40	\$3.42	\$3.57	\$3.73	\$3.66	5.0	0.6	4.4	-1.9
Unit SG&A expenses	\$0.26	\$0.26	\$0.39	\$0.39	\$0.41	50.0	0.0	50.0	5.1
Unit operating income or (loss)	\$0.03	\$0.03	-\$0.13	\$0.02	-\$0.04	(3)	0.0	(3)	(3)
COGS/sales (2)	92.1	92.0	93.4	90.1	90.8	1.3	-0.1	1.4	0.7
Operating income or (loss)/sales (2)	0.9	0.9	-3.5	0.5	-1.0	-4.4	0.0	-4.4	-1.5

(1) Data for wild catch landings from the Gulf region for March 2013 are not available; therefore, apparent U.S. consumption and market share data for interim 2013 are not presented.

(2) "Reported data" are in percent and "period changes" are in percentage points.

(3) Undefined.

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.

Note.--Import data are based on official Commerce statistics. U.S. industry data presented on page C-4 are based on questionnaire responses from U.S. processors.

Apparent U.S. consumption totals presented on page C-3 are based on U.S. industry data provided by NMFS, Granville Treece, Texas A&M, and official Commerce import statistics.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

APPENDIX D
U.S. FISHERMEN DATA

Table D-1**Frozen warmwater shrimp: U.S. fishermen, position on petition, location, quantity of harvest in 2012, and share of reported harvest**

* * * * *

Table D-2**Frozen warmwater shrimp: U.S. fishermen's shipments, by type, 2010-12, January-March 2012, and January-March 2013**

Item	Calendar Year			January-March	
	2010	2011	2012	2012	2013
U.S Shipments (<i>pounds</i>)	9,448,712	10,863,455	9,738,446	1,115,689	686,019
U.S Shipments (<i>dollars</i>)	34,298,355	41,326,127	36,718,207	4,822,577	2,835,899
U.S Shipments (<i>per pound</i>)	\$3.63	\$3.80	\$3.77	\$4.32	\$4.13

Source: Compiled from data submitted in response to Commission questionnaires.**Table D-3****Frozen warmwater shrimp: U.S. fishermen's quantity harvested and employment-related data 2010-12, January-March 2012, and January-March 2013**

Item	Calendar Year			January-March	
	2010	2011	2012	2012	2013
Warmwater shrimp harvested (<i>pounds</i>)	9,214,744	10,620,214	9,564,250	1,079,015	644,208
Production and related workers (PRWs)	22,079	20,599	21,344	4,253	2,366
Hours worked by PRWs (<i>thousands</i>)	251,536	238,366	211,166	35,364	22,940
Wage paid to PRWs (<i>dollars</i>)	8,116,998	9,937,056	8,713,666	1,270,325	618,443
Days boat at sea	19,108	19,081	18,201	3,404	2,434

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

APPENDIX E

ALLEGED EFFECTS OF IMPORTS ON U.S. PROCESSORS

The Commission requested that U.S. processors describe any actual or anticipated negative effects since January 1, 2010 on their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of frozen warmwater shrimp and prawns from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Unless specifically noted, the processors did not distinguish between China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam in their comments. The responses of those processors that provided useable financial results data are as follows:

Actual Negative Effects

Bama	***.
Bayou Shrimp	***.
Biloxi Freezing	***.
Bluewater Shrimp	***.
Bon Secour	***.
Cape Canaveral	***.
Carson	***.
CF Gollott	***.
David Chauvin	***.
Dominick's	***.
DoRan	***.
Dubberly's	***.
Fisherman's Reef	***.
Fulton Seafood	***.
Golden Gulf	***.
Gulf Crown	***.
Gulf Fish	***.
Gulf Island	***.
Gulf Pride	***.
Hi Seas	***.
Indian Ridge	***.
Int. Oceanic Ent.	***.
JBS Packing	***.
Lafitte	***.
Lighthouse	***.
Livingston's	***.
Ocean Harvest	***.
Pamlico	***.
Paul Piazza	***.
Penguin	***.
Philly Seafood	***.
RA Lesso	***.
Seabrook	***.
Sea Gold	***.

Sea Pearl	***.
Tampa Bay	***.
Texas Gulf	***.
Tidelands	***.
Tommy's Seafood	***.
Vincent Piazza	***.
Wood's Fisheries	***.

Anticipated Negative Effects

Bama	***.
Bayou Shrimp	***.
Biloxi Freezing	***.
Bluewater Shrimp	***.
Bon Secour	***.
Cape Canaveral	***.
Carson	***.
CF Gollott	***.
David Chauvin	***.
Dominick's	***.
DoRan	***.
Dubberly's	***.
Fisherman's Reef	***.
Fulton Seafood	***.
Golden Gulf	***.
Gulf Crown	***.
Gulf Fish	***.
Gulf Island	***.
Gulf Pride	***.
Hi Seas	***.
Indian Ridge	***.
Int. Oceanic Ent.	***.
JBS Packing	***.
Lafitte	***.
Lighthouse	***.
Livingston's	***.
Ocean Harvest	***.
Pamlico	***.
Paul Piazza	***.
Penguin	***.
Philly Seafood	***.
RA Lesso	***.
Seabrook	***.
Sea Gold	***.

Sea Pearl	***.
Tampa Bay	***.
Texas Gulf	***.
Tidelands	***.
Tommy's Seafood	***.
Vincent Piazza	***.
Wood's Fisheries	***.

APPENDIX F

ALLEGED EFFECTS OF IMPORTS ON U.S. FISHERMEN

The Commission requested that U.S. fishermen describe any actual or anticipated negative effects since January 1, 2010, on their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of frozen warmwater shrimp and prawns from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Unless specifically noted, fishermen did not distinguish between China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam in their comments. A summary/tabulation of the responses of those fishermen questionnaire responses that provided useable financial results data is presented below.

Actual and Anticipated Negative Effects

One hundred two U.S. fishermen questionnaire responses reported experiencing actual negative effects, while 23 fishermen questionnaire responses reported experiencing no actual negative effects. With respect to those fishermen questionnaire responses reporting actual negative effects, the impact was classified as follows: cancellations, postponement, or rejection of expansion project (36); denial or rejection of investment proposal (24), reduction in the size of capital investments (38); rejection of bank loans (29); lowering of credit rating (14); and “other” (55).¹

One hundred thirty one U.S. fishermen questionnaire responses reported anticipated negative effects, while 2 reported that they anticipated no negative effects.

¹ The total number of fishermen questionnaire responses reporting usable financial information, 133, is greater than the total number reporting the extent of actual negative effects, 125. This difference generally reflects the fact that not all of the fishermen questionnaires which reported usable financial results responded to the above-referenced question regarding actual negative effects.

APPENDIX G

U.S. PROCESSORS: SELECTED COMPANY-SPECIFIC FINANCIAL INFORMATION

Table G-1

Frozen warmwater shrimp: Results of processors' operations, by firms, calendar years 2010-2012, January-March 2012, January-March 2013

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