

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-351-838, A-533-840, A-570-893, A-549-822, A-552-802]

Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less Than Fair Value Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: September 2, 2010.

SUMMARY: On April 14, 2010, the United States Court of International Trade ("CIT") sustained the remand redetermination¹ issued by the Department of Commerce ("Department") pursuant to the CIT's remand order involving the antidumping duty investigations of certain frozen warmwater shrimp from Brazil, Ecuador, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam.² In Ad Hoc IV, the CIT sustained the Department's finding that dusted shrimp should be included within the scope of these investigations. The Department is therefore now issuing amended final determinations that include dusted shrimp within the scope of the investigations.

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SUPPLEMENTARY INFORMATION: Ad Hoc IV arose out of the Department's final determinations³ and amended final

¹ See Final Results of Redetermination Pursuant to Court Remand, Court No. 05-00192, (October 29, 2009) ("Final Redetermination"), found at <http://ia.ita.doc.gov/remands/09-69.pdf>.

² See Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company v. United States, Slip Op. 10-39 (CIT 2010) ("Ad Hoc IV").

³ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) ("Brazil Final Determination"); Notice of Final Determination of Sales at Less Than

determinations⁴ in the original investigations of certain frozen warmwater shrimp. In *Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company v. United States*, Consol. Court No. 05–00192 (July 1, 2009) (“Remand Opinion and Order”), the CIT remanded the issue of the Department’s decision to exclude dusted shrimp from the scope of the antidumping duty investigations on certain frozen and canned warmwater shrimp.⁵ In the Final Redetermination submitted in response to the Remand Opinion and Order, the Department found that dusted shrimp should be included within the scope of the investigations. On April 14, 2010, the CIT affirmed all aspects of the Department’s remand redetermination. Ad Hoc IV represents a final and conclusive court decision. As noted in

Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) (“Ecuador Final Determination”); Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004) (“India Final Determination”); Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 70997 (December 8, 2004) (“China Final Determination”); Notice of Final Determination of Sales at Less Than Fair Value, Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004) (“Thailand Final Determination”); Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) (“Vietnam Final Determination”); collectively the “Shrimp AD Final Determinations.”

⁴ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warm water Shrimp from Brazil, 70 FR 5143 (February 1, 2005) (“Brazil Amended Final Determination & Order”); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 FR 5156 (February 1, 2005) (“Ecuador Amended Final Determination & Order”); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (February 1, 2005) (“India Amended Final Determination & Order”); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People’s Republic of China, 70 FR 5149 (February 1, 2005) (“China Amended Final Determination & Order”); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (February 1, 2005) (“Thailand Amended Final Determination & Order”); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005) (“Vietnam Amended Final Determination & Order”); collectively, the “Shrimp AD Amended Finals and Orders.”

⁵ See Remand Opinion and Order at 27.

the Final Redetermination, it is unnecessary to recalculate any Notice of antidumping duty margins for these amended final determinations.⁶

We note that prior to Ad Hoc IV, the Department revoked the antidumping duty order with respect to Ecuador.⁷ Thus, we are not including Ecuador in these amended final determinations pursuant to court order. Also prior to Ad Hoc IV, the Department revoked the antidumping duty order with respect to Thai I–Mei Frozen Foods Co., Ltd.⁸ and the Rubicon Group⁹ in Shrimp from Thailand. Subsequent to Ad Hoc IV but prior to these amended final determinations, the Department also revoked the antidumping duty order with respect to Devi Seafoods Ltd.¹⁰ in Shrimp from India. Accordingly, we are not including these companies in these final determinations pursuant to court order.

Amendment to the Final Determinations

As we now find that dusted shrimp is within the scope of the investigations, we have included revised scope language below. We note that the original shrimp investigations also included canned warmwater shrimp. However, given that the U.S.

⁶ See Final Redetermination at 18, stating that across the investigations for all countries, only one respondent reported sales of dusted shrimp and that these sales had been inadvertently included in the antidumping duty calculation.

⁷ See 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 17, 2007).

⁸ See Implementation of the Findings of the WTO Panel in United States—Antidumping Measure on Shrimp From Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Thailand, 74 FR 5638 (January 30 2009).

⁹ See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part, 74 FR 52452 (October 13, 2009) (Shrimp from Thailand). The Rubicon Group consists of the following companies: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd. (the successor in interest to Y2K Frozen Food Co., Ltd.), Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., Wales & Co. Universe Limited, and Sea Wealth Frozen Food Co. Therefore, we have not listed any of the Rubicon Group companies in the amended final rates section below.

¹⁰ See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part, 75 FR 41813 (July 19, 2010) (Shrimp from India).

International Trade Commission (“ITC”) failed to find injury with respect to canned warmwater shrimp and that the subsequent Shrimp AD Amended Finals and Orders did not include canned warmwater shrimp, we are similarly not including any reference to canned warmwater shrimp in the revised scope language. While the Department finds that dusted shrimp are no longer excluded from the scope of the investigations, it has retained the five-step definition of the dusting process, as dusting is a necessary precursor for producing battered shrimp, which remain outside the scope.

Scope of the Investigations

The scope of these investigations includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹¹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

The products described above maybe 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 of these investigations. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that

¹¹ “Tails” in this context means the tail fan, which includes the telson and the uropods.

contain more than 20 percent by weight of shrimp or prawn are also included in the scope of these investigations.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (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 (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce;¹² (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (8) certain battered shrimp. 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.

The products covered by these investigations are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Continuation of Suspension of Liquidation

Currently, liquidation is suspended and cash deposits are required for all entries of subject merchandise except for dusted shrimp. With respect to dusted shrimp, in accordance with section 735(c)(1)(B)(ii) of the Tariff Act of 1930, as amended ("the Act") and Ad Hoc IV, we will instruct U.S. Customs and Border Protection ("CBP") to require cash deposits or the posting of a bond equal to the estimated amount by which

the normal value exceeds the U.S. price. Suspension of liquidation is ordered to begin effective the date of publication of these amended final determinations.

During the course of the original investigations, the Department only excluded dusted shrimp at the final determination. Thus, a portion of the original 180-day period for the provisional measures still applies to dusted shrimp (i.e., the difference between the date of the final determination and the date on which the provisional measures expired in the original investigation). Thus, for China and Vietnam, the Department will order CBP to suspend entries for 35 days starting the date of publication of these amended final determinations in the **Federal Register**. For Brazil, India and Thailand, the Department will order CBP to suspend entries for 39 days starting the date of publication of these amended final determinations in the **Federal Register**. Absent an affirmative injury determination by the ITC the Department will lift the suspension of liquidation at the end of this time period. The applicable rates for dusted shrimp are the rates calculated during the investigation of sales at less than fair value ("LTFV"), as outlined by the charts below.

Manufacturer/exporter	Margin (percent)
Brazil:	
Maricultura Netuno S.A./Empresa de Armazenagem Frigorifica Ltda.	7.94
Cia. Exportadora de Produtos do Mar (Produmar)/Central de Industrialização e Distribuição de Alimentos Ltda.	4.97
Norte Pesca, S.A.	67.80
All Others	7.05
India:	
Hindustan Lever Ltd.	15.36
Nekkanti Seafoods Ltd.	9.71
All Others	10.17
Thailand:	
The Union Frozen Products Co., Ltd.	5.34
All Others	5.34
The People's Republic of China:	
Allied Pacific Group	80.19
Yelin Enterprise Co. Hong Kong ¹³	82.27
Shantou Red Garden Foodstuff Co., Ltd.	27.89
Asian Seafoods (Zhanjiang) Co., Ltd.	53.68
Beihai Zhengwu Industry Co., Ltd.	53.68
Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng)	53.68
Chenghai Nichi Lan Food Co., Ltd.	53.68
Dalian Ftz Sea-Rich International Trading Co., Ltd.	53.68
Dongri Aquatic Products Freezing Plants	53.68
Fuqing Dongwei Aquatic Products Industry Co., Ltd.	53.68
Gallant Ocean (Liangjiang) Co., Ltd.	53.68
Hainan Fruit Vegetable Food Allocation Co., Ltd.	53.68
Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatic Products Co., Ltd.	53.68
Jinfu Trading Co., Ltd.	53.68
Kaifeng Ocean Sky Industry Co., Ltd.	53.68
Leizhou Zhulian Frozen Food Co., Ltd.	53.68
Pingyang Xinye Aquatic Products Co., Ltd.	53.68
Savvy Seafood Inc.	53.68

¹² The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the PRC case.

Manufacturer/exporter	Margin (percent)
Shanghai Taoen International Trading Co., Ltd.	53.68
Shantou Wanya Food Factory Co., Ltd.	53.68
Shantou Jinyuan District Mingfeng Quick-Frozen Factory	53.68
Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.)	53.68
Shantou Ocean Freezing Industry and Trade General Corporation	53.68
Shantou Shengping Oceanstar Business Co., Ltd.	53.68
Shantou Yuexing Enterprise Company	53.68
Shantou Ruiyuan Industry Co., Ltd.	53.68
Shantou Freezing Aquatic Product Food Stuffs Co.	53.68
Shantou Jinhang Aquatic Industry Co., Ltd.	53.68
Xuwen Hailang Breeding Co., Ltd.	53.68
Yantai Wei-Cheng Food Co., Ltd.	53.68
Zhangjiang Bobogo Ocean Co., Ltd.	53.68
Zhangjiang Newpro Food Co., Ltd.	53.68
Zhanjiang Go-Harvest Aquatic Products Co., Ltd.	53.68
Zhanjiang Runhai Foods Co., Ltd.	53.68
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.	53.68
Zhanjiang Universal Seafood Corp.	53.68
Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.	53.68
Zhoushan Xifeng Aquatic Co., Ltd.	53.68
Zhoushan Huading Seafood Co., Ltd.	53.68
Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.	53.68
Zhoushan Lizhou Fishery Co., Ltd.	53.68
Zhoushan Diciyuan Aquatic Products Co., Ltd.	53.68
PRC-Wide Rate	112.81
Vietnam: ¹⁴	
Camau Frozen Seafood Processing Import Export Corporation ¹⁵	55.24
Kim Anh Company Limited ¹⁶	25.76
Minh Phu Seafood Corporation ¹⁷	74.38
Minh Hai Joint Stock Seafoods Processing Company ¹⁸	84.30
Amanda Foods (Vietnam) Ltd. ¹⁹	4.57
Aquatic Products Trading Company ²⁰	4.57
Bac Lieu Fisheries Company Limited ²¹	4.57
Coastal Fisheries Development Corporation ²²	4.57
Cai Doi Vam Seafood Import-Export Company ²³	4.57
Cam Ranh Seafoods Processing Enterprise Company ²⁴	4.57
Can Tho Agriculture and Animal Products Import Export Company ²⁵	4.57
Cantho Animal Fisheries Product Processing Export Enterprise ²⁶	4.57
Vietnam-Wide Rate	25.76

International Trade Commission Notification

As the CIT in Ad Hoc IV has upheld our finding that dusted shrimp should be within the scope of the investigations, we have notified the ITC of our amended final determinations of sales at LTFV. If the ITC determines that material injury or threat of material

injury does not exist, the proceeding will be terminated, and all securities posted will be refunded or canceled, with regard to dusted shrimp. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

We are issuing and publishing these amended final determinations of sales at less than fair value and notice in accordance with sections 516A(a)(B)(i) and 777(i) of the Act.

Dated: August 19, 2010.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

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¹³ The Department has determined that Hilltop International is the successor-in-interest to Yelin Enterprise Co. Hong Kong. See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447 (June 18, 2007).

¹⁴ The Department has determined that Bac Lieu Fisheries Joint Stock Company ("Bac Lieu JSC"), Cadovimex Seafood Import-Export and Processing Joint Stock Company ("Cadovimex Vietnam"), Soc Trang Seafood Joint Stock Company ("STAPIMEX JSC"), Thuan Phuoc Seafoods and Trading Corporation ("Thuan Phuoc JSC"), and UTXI Aquatic Products Processing Corporation ("UTXI Corp.") are successors-in-interest, respectively, to Bac Lieu Fisheries Company Limited ("Bac Lieu Limited"), Cai Doi Vam Seafood Import-Export Company ("Cadovimex"), Soc Trang Aquatic Products and General Import Export Company ("STAPIMEX"), Thuan Phuoc Seafoods and Trading Corporation ("Thuan Phuoc SOE"), and UTXI Aquatic Products Processing Company ("UTXI"). See Frozen Warmwater Shrimp from Vietnam. Notice of Final Results of Antidumping Duty Changed Circumstances Reviews, 74 FR 42050 (August 20, 2009).

¹⁵ Also known as Camimex and Camau Seafood Factory No. 4.

¹⁶ Not a separate rate.

¹⁷ Also known as Minh Phu Seafood Export-Import Corporation, Minh Phu, Minh Phu Seafood

Pte., Minh Qui Seafood Co. Ltd., Minh Qui, Minh Phat Seafood Co. Ltd. and Minh Phat.

¹⁸ Also known as Seaprodux Minh Hai.

¹⁹ Also known as Amanda VN and Amanda.

²⁰ Also known as APT and A.P.T. Co.

²¹ Also known as Bac Lieu, BACLIEUFIS, Bac Lieu Fis, Bac Lieu Fisheries Co. Ltd., Bac Lieu Fisheries Limited Company and Bac Lieu Fisheries Company Ltd.

²² Also known as COFIDEC.

²³ Also known as Cadovimex.

²⁴ Also known as Cam Ranh.

²⁵ Also known as Cataco, Duyen Hai Foodstuffs Processing Factory, Caseafod, Coseafex and Cantho Seafood Export.

²⁶ Also known as Cafatex, Cafatex Vietnam, Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, CAS, CAS Branch, Cafatex Saigon, Cafatex Fishery Joint Stock Corporation, Cafatex Corporation and Taydo Seafood Enterprise.