

A-351-838
A-533-840
A-570-893
A-549-822
Sunset Reviews
Public Document
ADCVD/2/KJ

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Reviews of the Antidumping Duty Orders on Certain Frozen
Warmwater Shrimp from Brazil, India, the People's Republic of
China, and Thailand

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering certain frozen warmwater shrimp from Brazil, India, the People's Republic of China (PRC), and Thailand.¹ We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Orders

Brazil

On December 23, 2004, the Department of Commerce (the Department) published its final determination in the less-than-fair-value (LTFV) investigation of certain frozen and canned

¹ The sunset review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam will be discussed within a separate Federal Register notice due to the fact that adequate substantive responses were filed by both domestic and respondent interested parties in that review and, as a result, we are conducting a full sunset review in that case.

warmwater shrimp from Brazil.² On February 1, 2005, the Department published the amended final determination and antidumping duty order on certain frozen warmwater shrimp from Brazil.³ The Department found the following antidumping duty margins:

| | |
|--|-------|
| Empresa de Armazenagem Frigorifica Ltda./ Maricultura Netuno S.A. | 7.94 |
| Central de Industrializacao de Distribuicao de Alimentos Ltda./Cia. Exportadora de Produtos do Mar (Produmar) | 4.97 |
| Norte Pesca, S.A. | 67.80 |
| All-Others Rate | 7.05 |

India

On December 23, 2004, the Department published its final determination in the LTFV investigation of certain frozen and canned warmwater shrimp from India.⁴ On February 1, 2005, the Department published the amended final determination and antidumping duty order on certain frozen warmwater shrimp from India.⁵ The Department found the following antidumping duty margins:

| | |
|------------------------|-------|
| Devi Sea Foods Ltd. | 4.94 |
| Hindustan Lever Ltd. | 15.36 |
| Nekkanti Seafoods Ltd. | 9.71 |
| All-Others Rate | 10.17 |

PRC

On December 8, 2004, the Department published its final determination in the LTFV investigation of certain frozen and canned warmwater shrimp from the PRC.⁶ On February 1, 2005, the Department published the amended final determination and antidumping duty order on certain frozen warmwater shrimp from the PRC.⁷ The Department found the following antidumping duty margins:

² 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).

³ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil, 70 FR 5143 (February 1, 2005) (Brazil Duty Order).

⁴ See 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).

⁵ See 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 Duty Order).

⁶ See 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).

⁷ See 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) (PRC Duty Order).

| | |
|--|--------|
| Allied Pacific Group | 80.19 |
| Hilltop International* | 82.27 |
| Shantou Red Garden Foodstuff Co., Ltd. | 27.89 |
| Zhanjiang Guolian Aquatic Products Co., Ltd.** | 0.07 |
| PRC-Wide Rate | 112.81 |
| Separate Rate | 53.68 |

*Hilltop International is the successor-in-interest to Yelin Enterprise Co. Hong Kong.

**Zhanjiang Guolian Aquatic Products Co., Ltd. was excluded from the antidumping duty order because it was found to have a de minimis margin.

Thailand

On December 23, 2004, the Department published its final determination in the LTFV investigation of certain frozen and canned warmwater shrimp from Thailand.⁸ On February 1, 2005, the Department published the amended final determination and antidumping duty order on certain frozen warmwater shrimp from Thailand.⁹ The Department found the following antidumping duty margins:

| | |
|-------------------------------------|------|
| The Rubicon Group | 5.91 |
| Thai I-Mei Frozen Foods Co., Ltd. | 5.29 |
| The Union Frozen Products Co., Ltd. | 6.82 |
| All-Others Rate | 5.95 |

On February 1, 2005, the Department excluded canned warmwater shrimp and prawns from the scope of the orders pertaining to Brazil, India, the PRC, and Thailand to reflect the International Trade Commission's (ITC's) determination that a domestic industry in the United States was not materially injured or threatened with material injury by reason of imports of canned warmwater shrimp and prawns from Brazil, the PRC, or Thailand.¹⁰

Administrative Reviews, New Shipper Reviews, and Section 129 Proceeding

Since the issuance of the antidumping duty orders, the Department has completed two administrative reviews each with respect to certain frozen warmwater shrimp from Brazil and the PRC, and three administrative reviews each with respect to certain frozen warmwater shrimp from India and Thailand. The fourth administrative reviews with respect to certain frozen warmwater shrimp from India, the PRC and Thailand are ongoing.

⁸ See 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 Thailand, 69 FR 76918 (December 23, 2004).

⁹ See 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 Duty Order).

¹⁰ See Certain Frozen or Canned Warmwater Shrimp and Prawns From Brazil, China, Ecuador, India, Thailand and Vietnam, 70 FR 3943 (January 27, 2005); Brazil Duty Order; India Duty Order; PRC Duty Order; Thailand Duty Order.

On November 14, 2008, the Department initiated a Section 129 proceeding to implement the findings of the WTO dispute settlement panel in United States – Measures Relating to Shrimp from Thailand, WT/DS343/R (February 29, 2008). On November 21, 2008, the Department issued its preliminary determination.¹¹ On January 12, 2009, the Department issued its final determination (Section 129 Final Determination).¹² The Section 129 Final Determination resulted in amended LTFV margins and the revocation of the order with respect to two respondents, as shown below.

| | |
|-------------------------------------|---------------|
| The Rubicon Group | 1.94, revoked |
| Thai I-Mei Frozen Foods Co., Ltd. | 1.81, revoked |
| The Union Frozen Products Co., Ltd. | 5.34 |
| All-Others Rate | 5.34 |

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

On January 23, 2007, the Department issued amended orders clarifying that only frozen warmwater shrimp and prawns are subject to the orders.¹³ On October 29, 2009, the Department filed the Final Results of Redetermination Pursuant to Court Remand with the Court of International Trade in which the Department determined that “dusted” shrimp is included within the scope of the investigations.

The Department has conducted changed circumstances reviews with respect to certain frozen warmwater shrimp from the PRC and Thailand. With respect to the PRC, the Department found that Hilltop International was the successor-in-interest to Yelin Enterprise Co. Hong Kong.¹⁴ With respect to Thailand, the Department determined that the Rubicon Group, including Phatthana Frozen Food Co., Ltd. and Sea Wealth Frozen Food Co., Ltd., is the successor-in-interest to the Rubicon Group as it operated during the LTFV investigation.¹⁵ There have been no duty absorption findings concerning certain frozen warmwater shrimp from Brazil, India, or the PRC. We found duty absorption in the second administrative review of certain frozen warmwater shrimp from Thailand.¹⁶

¹¹ See November 21, 2008, Memorandum from Stephen J. Claeys to David M. Spooner entitled, “Calculation of the Weighted-Average Dumping Margins.”

¹² See January 12, 2009, Memorandum from Stephen J. Claeys to David M. Spooner entitled, “Issues and Decision Memorandum for the Final Results.”

¹³ See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People’s Republic of China and the Socialist Republic of Vietnam: Amended Orders, 72 FR 2857 (January 23, 2007).

¹⁴ 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).

¹⁵ 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).

¹⁶ See Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008).

Background

On January 4, 2010, the Department published the notice of initiation of the first sunset review of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand, pursuant to section 751(c) of the Act.¹⁷ The Department received a notice of intent to participate from the Ad Hoc Shrimp Trade Action Committee (petitioner) and the American Shrimp Processors Association (ASPA) within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioner claimed interested party status under section 771(9)(C) of the Act, stating that its individual members are each producers in the United States of a domestic like product. ASPA claimed interested party status under section 771(9)(E) of the Act stating that it is a trade association, the majority of whose members are producers and/or processors of a domestic like product in the United States.

The Department received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the orders on certain frozen warmwater shrimp from Brazil, the PRC, or Thailand, nor was a hearing requested. We received a substantive response from the Seafood Exporters Association of India (SEAI), which is a trade association whose membership consists of Indian producers and exporters of the subject merchandise, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On February 12, 2010, ASPA submitted rebuttal comments to SEAI's substantive response. We determined that SEAI's substantive response was not adequate because it failed to provide the volume and value of its members' exports of subject merchandise to the United States for several specific time periods enumerated in 19 CFR 351.218(d)(3)(iii)(B-E). See the March 2, 2010, memorandum entitled "Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from India." On March 4, 2010, SEAI requested that the Department reconsider its adequacy finding. On March 30, 2010, we notified SEAI that we continued to find that its substantive response was inadequate. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested parties.

¹⁷ See Initiation of Five-Year ("Sunset") Review, 75 FR 103 (January 4, 2010).

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise, as well as material injury to the U.S. industry. See substantive responses of the domestic interested parties for Brazil, India, the PRC, and Thailand (February 3, 2010).

With respect to volume of imports, the domestic interested parties assert that the imposition of the orders has had a dramatic impact on the volume of imports of certain frozen warmwater shrimp from foreign producers and exporters. The domestic interested parties point to the record history of the orders to demonstrate that the discipline of the orders has forced foreign producers of subject merchandise either to increase their prices, to reduce dumping levels or to significantly reduce their volume of sales to the United States. See the February 3, 2010, responses. Nonetheless, the domestic interested parties state that the administrative reviews conducted by the Department reveal that the foreign producers and exporters have continued to sell subject merchandise in the United States at less than fair value. See id.

Citing to the Department's Policy Bulletin, the domestic interested parties conclude that the Department should determine that revocation of an antidumping duty order is inappropriate where dumping continued at any level above de minimis after the issuance of the order.¹⁸ In sum, the domestic interested parties argue that record evidence strongly supports the conclusion that dumping of certain frozen warmwater shrimp by producers, manufacturers, and exporters from Brazil, India, the PRC, and Thailand would be likely to continue or recur if the orders were to be revoked.

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA), H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis.¹⁹ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²⁰ In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

¹⁸ See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871 (April 16, 1998) (Policy Bulletin).

¹⁹ See SAA at 879 and House Report at 56.

²⁰ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

Brazil: The Department examined the ITC data for the relevant periods which show that, subsequent to the imposition of the antidumping duty order, imports of certain frozen warmwater shrimp from Brazil have decreased to nearly zero. See substantive responses of the domestic interested parties for Brazil, India, the PRC, and Thailand (February 3, 2010). The complete withdrawal by the Brazilian respondents from the U.S. market indicates that the Brazilian producers/exporters are not able to sell subject merchandise in any volumes in the U.S. market under the discipline of the order. Accordingly, the Department determines that dumping is likely to recur if the order is revoked.

India: The Department examined the ITC data for the relevant periods which show that imports of certain frozen warmwater shrimp from India decreased after the imposition of the order. See the February 3, 2010, responses. The results of the three administrative reviews conducted as part of this proceeding indicate that Indian producers have continued to dump when selling their product in the U. S. market during the post-order period. Therefore, the Department determines that dumping is likely to continue if the order is revoked.

PRC: The Department examined the ITC data for the relevant periods which show that imports of certain frozen warmwater shrimp from the PRC decreased significantly after the imposition of the order. See the February 3, 2010, responses. The results of the two administrative reviews conducted as part of this proceeding indicate that PRC producers have continued to engage in significant levels of dumping when selling their product in the U. S. market during the post-order period. Therefore, the Department determines that dumping is likely to continue if the order is revoked.

Thailand: The Department examined the ITC data for the relevant periods which show that imports of certain frozen warmwater shrimp from Thailand increased after the imposition of the order. See the February 3, 2010, responses. Given the continued existence of dumping margins for Thai producers after the three administrative reviews of the order, it is unlikely that respondents would be able to sell at pre-order volumes without dumping. Accordingly, the Department determines that dumping is likely to continue if the order was revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the antidumping duty margins that were determined in the investigation, as amended, in accordance with the Policy Bulletin. These rates are set forth in the “History of the Orders” section, above.

Department’s Position:

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “All-Others” rate from the investigation. See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia,*

Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006) (Hot-Rolled), and accompanying Issues and Decision Memorandum at Comment 2. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. See Hot-Rolled at Comment 2. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. See section 752(c)(3) of the Act. See also Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands, 65 FR 65294 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

We find it appropriate to provide the ITC with the amended final determination rates from the LTFV investigations of certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand. Although administrative reviews have been conducted, exports from India and the PRC are significantly below pre-order levels, while exports from Brazil have ceased. These results indicate that the orders have imposed a discipline on exports. With respect to Thailand, while imports have increased since the imposition of the order, the existence of continued dumping margins throughout the life of the order demonstrates that if the order is revoked, it is likely that the Thai producers/exporters would continue dumping and selling in significant volumes. Thus, the amended final determination rates from the LTFV investigations reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. However, with respect to Thailand, the Department will use the investigation rates as recalculated in the Section 129 Final Determination because these rates supersede the original investigation rates. Thus, the Department will report to the ITC the margins listed in the "Final Results of Reviews" section, below.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers | Weighted-Average Margin (percent) |
|--|-----------------------------------|
| <u>Brazil</u> | |
| Netuno Alimentos S.A./Maricultura Netuno S.A./ Netuno USA, Inc. (collectively, Netuno)* | 7.94 |
| Central de Industrializacao de Distribuicao de Alimentos Ltda./Cia. Exportadora de Produtos do Mar (Produmar) | 4.97 |
| Norte Pesca | 67.80 |
| All-Others Rate | 7.05 |

*Netuno is the successor-in-interest to Empresa de Armazenagem

Frigorifica Ltda./Maricultura Netuno S.A.²¹

India

| | |
|------------------------|-------|
| Devi Sea Foods Ltd. | 4.94 |
| Hindustan Lever Ltd. | 15.36 |
| Nekkanti Seafoods Ltd. | 9.71 |
| All-Others Rate | 10.17 |

PRC²²

| | |
|--|--------|
| Allied Pacific Group | 80.19 |
| Hilltop International** | 82.27 |
| Shantou Red Garden Foodstuff Co., Ltd. | 27.89 |
| PRC-Wide Rate | 112.81 |
| Separate Rate | 53.68 |

**Hilltop International is the successor-in-interest to Yelin Enterprise Hong Kong.

Thailand, as amended²³

| | |
|-------------------------------------|------|
| The Union Frozen Products Co., Ltd. | 5.34 |
| All-Others Rate | 5.34 |

²¹ See Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 73 FR 12081 (March 6, 2008), unchanged in Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 39940 (July 11, 2008).

²²Zhanjiang Guolian Aquatic Products Co., Ltd. was excluded from the antidumping duty order because it was found to have a de minimis margin.

²³The LTFV margins for Thailand were amended as a result of 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, 5639 (January 30, 2009). The Rubicon Group, comprised of Andaman Seafood Co., Ltd., Wales & Co. Universe Limited, Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phatthana Seafood Co., Ltd., Phatthana Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., and Sea Wealth Frozen Food Co., Ltd., and Thai I-Mei Frozen Foods Co., Ltd. were revoked from the antidumping duty order effective January 16, 2009, also as a result of this determination. See also 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).

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of sunset reviews in the Federal Register.

Agree_____

Disagree_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date