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September 5, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Frozen Warmwater Shrimp from the People's Republic of
China: Decision Memorandum for the Preliminary Results of the
2013-2014 Administrative Review

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") initiated an antidumping duty ("AD") order on certain frozen warmwater shrimp from the People's Republic of China ("PRC") for the period of review ("POR") February 1, 2013, through January 31, 2014. Two companies that had a prior separate rate submitted "no shipment certifications," and we preliminarily determine that they had no shipments. One company that submitted a "no shipment certification" did not have a prior separate rate, thus for these preliminary results we continue to treat it as part of the PRC-wide entity. No company submitted a certification or application to claim eligibility for a separate rate. As such, we are preliminarily treating 58 companies as part of the PRC-wide entity.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1920, as amended (the "Act"), unless that time period is extended.



Background

On April 1, 2014, the Department initiated an administrative review of certain frozen warmwater shrimp from the PRC for the period of February 1, 2013, through January 31, 2014.¹ The Department initiated an administrative review of 60 exporters of subject merchandise.² In a memorandum to the file dated April 1, 2014, we stated that our review of the CBP database showed no entries of certain frozen warmwater shrimp originating in the PRC, subject to ADs, during the POR covering those exporters for which we initiated the review.³ We released this memorandum to interested parties and invited comment on the CBP data. We received no comments on the CBP data.

On April 2, 2014, the Department received a “no shipment certification” from Shantou Yuexing Enterprise Company (“SYEC”). SYEC received a separate rate in the last review in which it was involved.⁴ In its certification, SYEC also requested that the Department rescind the review with respect to SYEC, pursuant to 19 CFR 351.213(d)(3).⁵ On April 9, 2014, the Department received a “no shipment certification” from Rizhao Smart Foods Co., Ltd. (“Smart Foods”).⁶ On June 2, 2014, the Department received a “no shipment certification” from Zhanjiang Regal Integrated Marine Resources Co., Ltd. (“Regal”),⁷ which specified that Regal had no sales, exports, or shipments to the United States during the POR and did not enter into the United States subject merchandise manufactured by any other entity.⁸

Scope of the Order

The scope of the order 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,⁹ 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 the order, regardless of definitions in the Harmonized Tariff Schedule (“HTS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

¹ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 79 FR 18262 (April 1, 2014) (“Initiation Notice”).

² Id.

³ See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V “Release of Customs and Border Protection (“CBP”) Data” (April 1, 2014).

⁴ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results of Administrative Review; 2011-2012, 78 FR 56209 (September 12, 2013); see also Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010).

⁵ See Letter to the Secretary of Commerce from Shantou Yuexing “Shantou Yuexing Enterprise Company’s Request for rescinding an Administrative Review” (April 2, 2014).

⁶ See Letter to the Secretary of Commerce from Rizhao Smart Foods Co., Ltd. “Certificate of No Sales” (April 9, 2014).

⁷ See Letter to the Secretary of Commerce from Zhanjiang Regal Integrated Marine Resources Co., Ltd. “No Shipments Statement of Zhanjiang Regal Integrated Marine Resources Co., Ltd.” (June 2, 2014).

⁸ In the Initiation Notice, we said that because the order was revoked with respect to subject merchandise produced and exported by Regal that this administrative review covers all subject merchandise exported by Regal and manufactured by any company other than Regal. See Initiation Notice 79 FR at 18275 at footnote 5.

⁹ “Tails” in this context means the tail fan, which includes the telson and the uropods.

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, white-leg 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 the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (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 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce;¹⁰ (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); 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 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 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 orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of these orders is dispositive.¹¹

¹⁰ The specific exclusion for Lee Kum Kee’s shrimp sauce applies only to the scope in the PRC case.

¹¹ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the CIT decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010), and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011) (“Order”); see also Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (“NME”) country.¹² In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Preliminary Determination of No Shipments

As discussed in the Background section above, Smart Foods, SYEC and Regal filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. On June 20, 2014, the Department sent an inquiry to CBP to determine whether CBP entry data are consistent with the no shipment certification SYEC and Regal provided¹³ and received no information contrary to those statements. Because CBP only responds to the Department’s inquiry when there are records of shipments from the company in question¹⁴ and because no party submitted comments, we preliminarily determine that SYEC and Regal had no shipments during the POR. Based on SYEC’s and Regal’s certifications, and our analysis of the CBP information, we preliminarily determine that SYEC and Regal did not have any reviewable entries during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in this circumstance.¹⁵ The Department’s policy is to conduct administrative reviews only where there exists at least one POR entry of subject merchandise, because duties cannot be assessed where there are no suspended entries.¹⁶ Because there cannot be a review where there are no entries, companies that certify to no shipments retain their most recently-determined separate rate, provided that no information contrary to those claims is presented to, or obtained by, the Department. As a result, SYEC and Regal retain their most recently-determined separate rate status and we preliminarily determine that neither company had shipments during the POR.

¹² See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

¹³ The Department did not inquire to determine if CBP data was consistent with Smart Foods’ no shipment certification because Smart Foods had not previously been granted a separate rate.

¹⁴ See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review, 75 FR 65453, 65454 (October 25, 2010); Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review, 74 FR 3559, 3560 (January 21, 2009); and Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review, 73 FR 9292, 9293 (February 20, 2008).

¹⁵ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

¹⁶ See, e.g., Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review, 77 FR 65532 (October 29, 2012) and accompanying memorandum at Issue 2.

Smart Foods has been found to be part of the PRC-wide entity in recent administrative reviews of the Order.¹⁷ Absent reviewable sales or entries in this review, Smart Foods cannot demonstrate eligibility for a separate rate. Thus, we are not making a determination of no shipments with respect to Smart Foods for this preliminary determination.

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single AD rate.¹⁸ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁹ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a NME country under the test established in Sparklers,²⁰ as amplified by Silicon Carbide.²¹ However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.²²

As noted above, the Department initiated this review with respect to 60 exporters/producers of subject merchandise, and received three certifications of no shipments on behalf of three companies and no applications or certifications for a separate rate. As a result of our preliminary determination of no shipments for SYEC and Regal, these companies retain their most recently-determined separate rate. Because Smart Foods did not demonstrate its eligibility for separate rate status, Smart Foods continues to be part of the PRC-wide entity. Thus, the Department preliminarily determines that 58 exporters did not demonstrate their eligibility for separate rate

¹⁷ See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012) at Appendix II; see also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011-2012, 78 FR 56209 (September 12, 2013).

¹⁸ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

¹⁹ See Initiation Notice, 78 FR at 19198.

²⁰ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers").

²¹ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

²² See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

status in this review.²³ As a result the Department is preliminarily treating these 58 PRC exporters as part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.²⁴ Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change. Further, as explained in the policy notice, the Department preliminarily finds that the 58 companies for which a review was requested that do not qualify for a separate rate are part of the PRC-wide entity.

CONCLUSION

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 SEPTEMBER 2014
(Date)

²³ Those companies are: Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Angbang Seafood Co., Ltd., Beihai Boston Frozen Food Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Taiyang Aquatic Products Co., Ltd., Eimskip Logistics (Qingdao) Co., Ltd., EZ Logistics Inc., EZ Logistics LLC (Qingdao Branch), Fujian Chaohui International Trading, Fujian Rongjiang Import and Export Co., Ltd., Fujian Tea Import & Export Co., Ltd., Fujian Zhaoan Haili Aquatic Co., Ltd., Fuqing Dongwei Aquatic Products Ind., Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Guangdong Foodstuffs Import & Export (Group) Corporation, Guangdong Gourmet Aquatic Products Co., Ltd., Guangdong Jinhang Food Co., Ltd., Guangdong Jinhang Foods Co., Ltd., Guangdong Wanshida Holding Corp., Guangdong Wanya Foods Fty. Co., Ltd., Guangzhou Shi Runjin Trading Development Co., Ltd., Haida Seafood Co., Ltd., HaiLi Aquatic Product Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hua Yang (Dalian), International Transportation Service Co., Huazhou XinHai Aquatic Products Co. Ltd., Jiazhou Foods Industry Co., Ltd., Longhai Gelin Foods Co., Ltd., Longhai Gelin Seafoods Co., Ltd., Maoming Xinzhou Seafood Co., Ltd., North Seafood Group Co., Panwin International Logistics Co., Ltd., Pingye Foreign Transportation Corp. Ltd of Shantou, SE.Z., Rizhao Smart Foods Company Limited, Savvy Seafood Inc., Shanghai Lingpu Aquatic Products Co., Ltd., Shanghai Smiling Food Co., Ltd., Shantou Freezing Aquatic Product Foodstuffs Co., Shantou Jiazhou Food Industrial Co., Ltd., Shantou Jin Cheng Food Co., Ltd., Shantou Jintai Aquatic Product Industrial Co., Ltd., Shantou Li An Plastic Products Co. Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Wanya Foods Fty. Co., Ltd., Thai Royal Frozen Food Zhanjiang Co., Ltd., Yangjiang Anyang Food Co., Ltd., Yangjiang City Haida Seafood Company Ltd., Yangjiang City Hongwai Seafood Company, Ltd., Zhangzhou Xinwanya Aquatic Product Co., Ltd., Zhangzhou Yanfeng Aquatic Product, Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Universal Seafood Corp., Zhanjiang Newpro Foods Co., Ltd., Zhaoan Yangli Aquatic Co., Ltd.

²⁴ Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013).