

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. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classifiable 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 order is dispositive.

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all entries of certain frozen warmwater shrimp from India. CPB shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. CBP shall discontinue the suspension of liquidation on canned shrimp products and refund any cash deposits made or bonds posted with respect to this merchandise. These instructions suspending liquidation will remain in effect until further notice. This amended determination and order is issued and published pursuant to section 735(d) and 736(a) of the Act, and 19 CFR 351.211.

Dated: January 26, 2005.

**Joseph A. Spetrini,**  
Acting Assistant Secretary for Import Administration.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-893]

#### 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<sup>1</sup>

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

**DATES:** *Effective Date:* February 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3208.

#### Amendment to the Final Determination

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("the Act"), on December 8, 2004, the Department of Commerce ("the Department") published its final determination of sales at less than fair value ("LTFV") in the investigation of certain frozen and canned warmwater shrimp from the People's Republic of China ("PRC"). 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) ("*Final Determination*") and corresponding "Issues and Decision Memorandum" dated November 29, 2004; see also *Memorandum from Julia Hancock, Case Analyst, through Alex Villanueva, Program Manager, to James Doyle, Office Director, Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Section A Respondents' Issue Memorandum*, dated November 29, 2004 ("*Section A Respondents Issue Memorandum*").

Between December 7, 2004, and December 13, 2004, the following parties filed timely allegations that the Department made various ministerial errors in the *Final Determination*. On

<sup>1</sup> On January 21, 2005, the International Trade Commission ("ITC") notified the Department of its final determination that two domestic like products exist for the merchandise covered by the Department's investigation: (i) Certain non-canned warmwater shrimp and prawns, as defined above, and (ii) canned warmwater shrimp and prawns. The ITC determined that there is no injury regarding imports of canned warmwater shrimp and prawns from the PRC, therefore, canned warmwater shrimp and prawns will not be covered by the antidumping order.

December 7, 2004, 16 of the 18 Section A Respondents that had been denied a separate rate by the Department in *Final Determination*, filed timely comments alleging ministerial errors in the *Final Determination*: Shantou Sez Xuhao Fastness Freeze Aquatic Factory Co., Ltd., with respect to its denial of a separate rate on the basis of an untranslated sample sales package; ZJ CNF Sea Products Engineering Ltd., Zhoushan Xifeng Aquatic Co., Ltd., Zhejiang Daishan Baofa Aquatic Product Co., Ltd., Zhejiang Taizhou Lingyang Aquatic Products Co., Zhoushan Zhenyang Developing Co., Ltd., Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd., Zhoushan Diciaryan Aquatic Products Co., Ltd., Zhejiang Zhenlong Foodstuffs Co., Ltd., Jinfu Trading Co., Ltd., Taizhou Zhonghuan Industrial Co., Ltd., Zhoushan Haichang Food Co., Zhoushan Putuo Huafa Sea Products Co., Ltd., Zhoushan Industrial Co., Ltd., and Shanghai Linghai Fisheries Economic and Trading Co., with respect to their denial for separate rates on the basis of insufficient evidence of price negotiation; and Zhejiang Evernew Seafood Co., Ltd., with respect to its denial of a separate rate for insufficient evidence of price negotiation and discrepancies with its corporate affiliations.

Also on December 7, 2004, Allied Pacific (H.K.) Co., Ltd., Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd., Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., and King Royal Investments, Ltd. (collectively, "Allied Pacific"), and Yelin Enterprise Co. Hong Kong ("Yelin") filed timely allegations that the Department made ministerial errors in the *Final Determination* in the margin calculation of each respondent. On December 8, 2004, Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden") filed a timely allegation that the Department made ministerial errors in the *Final Determination* with respect to its margin calculation and the use of partial adverse facts available.

From December 7, 2004, to December 14, 2004, the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Shrimp Company (collectively "Petitioners") filed timely allegations that the Department made ministerial errors in the *Final Determination* and rebuttal comments to ministerial error allegations made by the interested parties.

On December 13, 2004, Allied Pacific, Yelin, Red Garden, and Zhanjiang Guolian Aquatic Products Co., Ltd. ("Zhanjiang Guolian"), hereinafter

referred to collectively as “the Mandatory Respondents,” filed rebuttal comments to ministerial error allegations submitted by the Petitioners.

On December 16, 2004, Eastern Fish Company, Inc. (“Eastern Fish”), an importer of frozen shrimp and interested party in these investigations, and Long John Silver’s, Inc. (“LJS”), a purchaser of shrimp imported by Eastern Fish filed reply comments rebutting Petitioners’ ministerial error allegations. On December 17, 2004, Petitioners filed a letter requesting the Department to reject Eastern Fish and LJS’s untimely filing. On December 21, 2004, Eastern Fish and LJS filed additional reply comments to Petitioners’ ministerial error allegations. Eastern Fish and LJS’s December 16, 2004, and the December 21, 2004, submissions were rejected as replies to comments “must be filed within five days after the date on which the comments were filed with the Secretary.” See Section 351.224(c)(3) of the Department’s Regulations. See *Letter from Alex Villanueva, Program Manager, China/NME Unit, Office IX to Eastern Fish and LJS Regarding Ministerial Error Allegation Rebuttal Comments*, dated January 26, 2005.

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Department considers ministerial. See 19 CFR 351.224(f).

After analyzing all interested parties’ comments and rebuttal comments, we have determined, in accordance with 19 CFR 351.224(e), that we made ministerial errors in the calculations we performed for the *Final Determination*. For a detailed discussion of these ministerial errors, as well as the Department’s analysis, see *Antidumping Duty Investigation of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Analysis of Allegations of Ministerial Error from the Mandatory Respondents and Section A Respondents*, dated January 26, 2005. Additionally, in the *Final Determination*, we determined that several companies qualified for a separate-rate. The margin we calculated in the *Final Determination* for these companies was 55.23 percent. Because the rates of the selected Mandatory Respondents have changed since the *Final Determination*, we have recalculated the rate for the Section A Respondents which the Department determined to be entitled to a separate rate. The rate for Section A Respondents is now 53.68 percent. See *Memorandum*

*to the File from John D. A. LaRose through Alex Villanueva Regarding the Calculation of Section A Rate*, dated January 26, 2005.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the *Final Determination* of sales at LTFV in the antidumping duty investigation of certain frozen warmwater shrimp from the PRC. The revised weighted-average dumping margins are in the “Antidumping Duty Order” section, below.

#### Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that certain frozen and canned warmwater shrimp from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Act. See *Final Determination*. On January 21, 2005, the ITC notified the Department of its final determination pursuant to 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from the PRC. In its final determination, however, the ITC determined that two domestic like products exist for the merchandise covered by the Department’s investigation: (i) Certain non-canned warmwater shrimp and prawns, as defined below, and (ii) canned warmwater shrimp and prawns. The ITC determined pursuant to section 735(b)(1) that a domestic industry in the United States is not materially injured or threatened with material injury by reason of imports of canned warmwater shrimp and prawns from the PRC. Therefore, the ITC’s affirmative determination of material injury covered all certain non-canned warmwater shrimp and prawns other than those specifically excluded under the “Scope of the Order” section below. Accordingly, the scope of the antidumping duty order has been amended to reflect the ITC’s distinction between certain non-canned warmwater shrimp and canned prawns warmwater shrimp and prawns. Specifically, canned warmwater shrimp and prawns are excluded from the scope of the order.

In cases where the ITC specifically excludes a product in its final injury determination, the Department may exclude that product from its final margin calculation. See *Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999). However, because the Mandatory Respondents did not export

or sell canned warmwater shrimp and prawns to the United States during the period of investigation (“POI”), no recalculation of the antidumping margins is warranted, and therefore we are not amending the final determination calculations to exclude any sales of canned warmwater shrimp and prawn products.

In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from all producers and exporters from the PRC. Therefore, the Department will instruct U.S. Customs and Border Protection (“CBP”) to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption prior to the date of publication of the preliminary determination in the **Federal Register**. See *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China*, 69 FR 42654 (July 16, 2004) (“*Preliminary Determination*”).

In accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of certain frozen warmwater shrimp from the PRC. These antidumping duties will be assessed on all unliquidated entries of certain frozen warmwater shrimp and prawns from the PRC entered, or withdrawn from the warehouse, for consumption on or after July 16, 2004, the date on which the Department published its *Preliminary Determination*, 69 FR 42672 (July 16, 2004).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of certain frozen and canned warmwater shrimp, we extended the four-month period to no more than six months. See *Preliminary Determination*. In this investigation, the six-month period beginning on the date of the publication

of the *Preliminary Determination* ended on January 12, 2005. Definitive duties are to begin on the date of publication of the ITC's final injury determination. See Section 737 of the Act. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of certain frozen and canned warmwater shrimp from the

PRC entered, or withdrawn from warehouse, for consumption on or after January 12, 2005, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated

duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as listed below. The "PRC-wide" rate applies to all exporters of subject merchandise not listed specifically. Imports of the noted canned warmwater shrimp and prawns will not be covered by this order. We determine that the following percentage weighted-average margins exist for the POI:

## CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM CHINA

Manufacturer/exporter	Weighted-average margin (percent)
<b>Mandatory Respondents</b>	
Allied Pacific Group .....	80.19
Yelin Enterprise Co. Hong Kong .....	82.27
Shantou Red Garden Foodstuff Co., Ltd. ....	27.89
Zhanjiang Guolian Aquatic Products Co., Ltd. ....	0.07
PRC-Wide Margin .....	112.81
<b>Section A—Respondents Receiving Separate Rate</b>	
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
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

### Scope of the Order

The scope of this order 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,<sup>2</sup> 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 this investigation, 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 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 of this investigation. 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 this investigation.

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; (7) canned warmwater shrimp

and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted 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. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation 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

Pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation of all entries of certain frozen warmwater shrimp and prawns from the PRC (except merchandise produced and exported by Zhanjiang Guolian because this company has a *de minimis* margin) entered, or withdrawn from warehouse, for consumption on or after July 16, 2004, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

With regard to canned warmwater shrimp and prawns, CBP shall discontinue suspension of liquidation of all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 16, 2004. All estimated antidumping duties deposited on entries of the canned warmwater shrimp and prawns from the

PRC shall be refunded and the bonds or other security released at the time of liquidation.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

January 26, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–552–802]

### 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<sup>1</sup>

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

**DATES:** *Effective Date:* February 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3208.

### Amendment to the Final Determination

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, (“the Act”) on December 8, 2004, the Department of Commerce (“the Department”) published its final determination of sales at less than fair value (“LTFV”) in the investigation of certain frozen and canned warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”). See *Notice of 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) (“*Final Determination*”). See *Final Determination* and corresponding “Issues and Decision Memorandum”

<sup>1</sup> On January 21, 2005, the International Trade Commission (“ITC”) notified the Department of its final determination that two domestic like products exist for the merchandise covered by the Department’s investigation: (i) Certain non-canned warmwater shrimp and prawns, and (ii) canned warmwater shrimp and prawns. The ITC determined that there is no injury regarding imports of canned warmwater shrimp and prawns from Vietnam, therefore, canned warmwater shrimp and prawns will not be covered by the antidumping order.

<sup>2</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.