

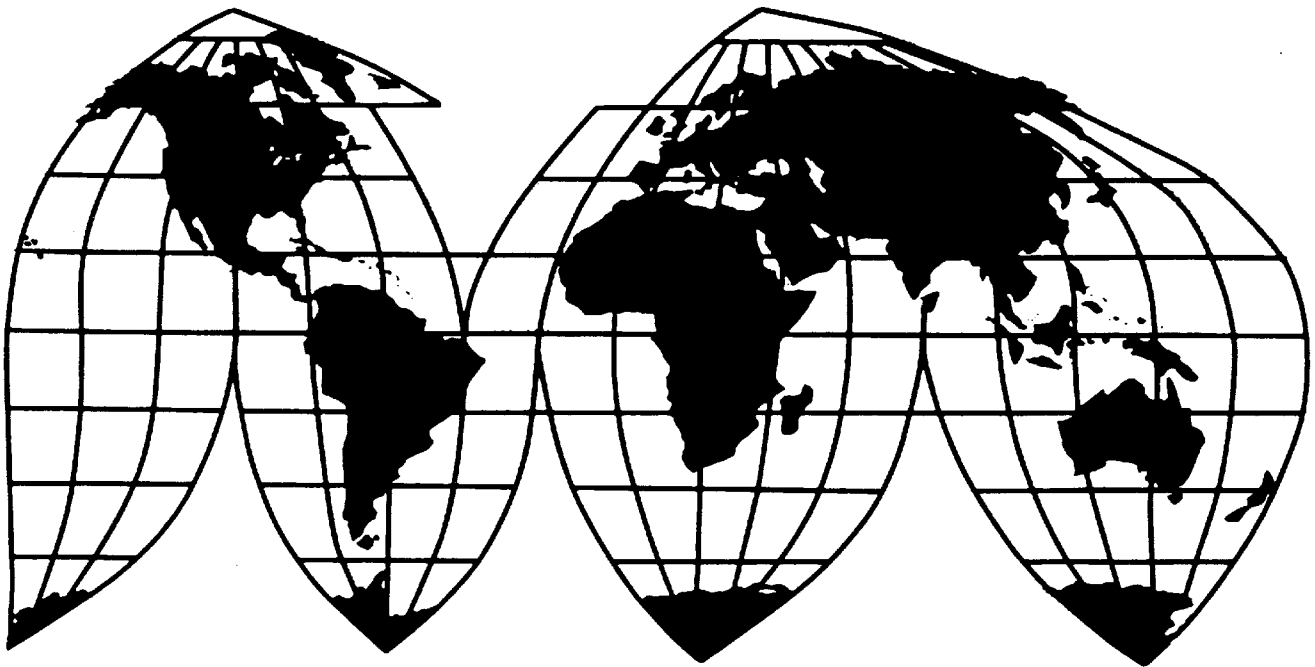
Certain Frozen or Canned Warmwater Shrimp and Prawns From Brazil, China, Ecuador, India, Thailand, and Vietnam

Investigations Nos. 731-TA-1063-1068 (Final)

Publication 3748

January 2005

U.S. International Trade Commission



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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-1063-1068 (Final)

CERTAIN FROZEN OR CANNED WARMWATER SHRIMP AND PRAWNS FROM BRAZIL, CHINA, ECUADOR, INDIA, THAILAND, 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 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil, China, Ecuador, India, Thailand, and Vietnam of certain non-canned warmwater shrimp and prawns, provided for in subheadings 0306.13.00 and 1605.20.10 of the Harmonized Tariff Schedule of the United States (HTSUS), that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).²

The Commission further determines that an industry in the United States is not materially injured by reason of imports from China, Thailand, and Vietnam of canned warmwater shrimp and prawns, provided for in subheading 1605.20.10 of the HTSUS, that have been found by Commerce to be sold in the United States at LTFV.³ The Commission also determines that imports from Brazil, Ecuador, and India of canned warmwater shrimp and prawns are negligible.

BACKGROUND

The Commission instituted these investigations effective 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 Versaggi Shrimp Corp., Tampa, FL; and the Indian River Shrimp Co., Chauvin, LA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). 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. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 19, 2004 (69 FR 51472). The hearing was held in Washington, DC, on December 1, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 The Commission further determines that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to the affirmative critical circumstances determination by the Department of Commerce.

³ Chairman Koplman and Commissioner Lane determine that an industry in the United States is materially injured by reason of imports of certain frozen or canned warmwater shrimp or prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam that were found by Commerce to be sold in the United States at LTFV.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States producing certain warmwater shrimp and prawns other than canned warmwater shrimp and prawns is materially injured by reason of imports of subject merchandise from Brazil, China, Ecuador, India, Thailand, and Vietnam that are sold in the United States at less than fair value (“LTFV”). We find that critical circumstances do not exist with respect to the subject merchandise from China.¹

We further determine that an industry in the United States producing canned warmwater shrimp and prawns is not materially injured or threatened with material injury by reason of imports of subject merchandise from China, Thailand, or Vietnam that are sold in the United States at LTFV. We determine that imports of canned warmwater shrimp and prawns from Brazil, Ecuador, and India are negligible.

I. BACKGROUND

The subject product includes certain warmwater shrimp and prawns, whether frozen or canned, 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 or canned form. Warmwater shrimp are generally classified in, but are not limited to, the *Penaeidae* family. Over 90 percent of warmwater shrimp harvested in the United States is wild-caught in the Gulf of Mexico or the Southeastern Atlantic Ocean. After harvesting, the overwhelming majority of warmwater shrimp is sold to processors and frozen.

The petitions were filed by the Ad Hoc Shrimp Trade Action Committee. Domestic production of warmwater shrimp accounted for less than 16 percent of the U.S. market during the period examined. The largest source of warmwater shrimp was imports from subject countries, which gained over 7 percentage points of market share between 2001 and 2003. Also present in the market were imports of warmwater shrimp from nonsubject sources. Apparent U.S. consumption of warmwater shrimp grew steadily over the period examined.

When the Commission conducted its vote in these investigations, it stated that it was concerned about the possible impact of the December 26, 2004, tsunami on the shrimping industries of India and Thailand. The tsunami occurred prior to the closing of the record in these investigations on December 27, 2004. At the time the record closed, however, factual information as to any impact of the tsunami on the ability of producers in India or Thailand to produce and export shrimp was not available. We intend to collect information as to whether the tsunami's impact on the affected countries' industries warrants the Commission self-initiating a changed circumstances review under 19 U.S.C. § 1675(b). This provision allows the Commission to address situations in which changed circumstances warrant review of a final affirmative determination that has resulted in the issuance of an antidumping order. If the Commission decides to conduct a review under 19 U.S.C. § 1675(b), it shall determine whether revocation of the order is likely to lead to continuation or recurrence of material injury.² A decision as to whether a changed circumstance review will be initiated as to India and/or Thailand will be made following the collection

¹ Chairman Koplan and Commissioner Lane determine that an industry in the United States is materially injured by reason of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam that are sold in the United States at LTFV. See Concurring and Dissenting Views of Chairman Koplan and Commissioner Lane. They join sections I, II.A., II.B.1, II.B.2, and III of this opinion.

² Chairman Koplan notes the statute provides that in the absence of good cause shown, the Commission may not review such a determination less than 24 months after the date of publication or notice of that determination. Therefore, he believes that it is incumbent on the interested parties to show good cause why the Commission should review this determination less than 24 months after the date of publication of notice of its affirmative determination. In his view, the Commission will not be in a position to determine whether a changed circumstance review should be initiated without such information.

and analysis of information submitted. A request for information as well as a timetable for the consideration of any such information will be published following issuance of this opinion.

II. DOMESTIC LIKE PRODUCT

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole 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.”⁴ In turn, the 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.”⁵

The decision regarding the appropriate domestic like product(s) 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.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise sold at less than fair value, the Commission determines what domestic product is like the imported articles that Commerce has identified.⁹

A. Product Definition

In its final determinations, Commerce defined the imported merchandise within the scope of investigation as:

³ 19 U.S.C. § 1677(4)(A).

⁴ Id.

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., 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: (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).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic 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”).

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

certain warmwater shrimp and prawns, whether frozen or canned, 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 or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 the investigations. 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 investigations.

Excluded from the scope are (1) breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

Commerce has additionally excluded shrimp sauce, certain dusted shrimp, and certain battered shrimp from the scope definition.¹⁰

B. Analysis and Finding

1. The Preliminary Determination

In the preliminary determination, the Commission considered six separate domestic like product arguments raised by the parties. Four of the arguments sought to divide the articles within the scope definition: one on the basis of processing (“value added shrimp” v. “primary processed shrimp”), one on the basis of size (pertaining to “salad shrimp”), one on the basis of species (pertaining to “giant freshwater

¹⁰ See 69 Fed. Reg. 70997, 71000-01 (Dec. 8, 2004) (China), 69 Fed. Reg. 71005, 71007-08 (Dec. 8, 2004) (Vietnam); 69 Fed. Reg. 76910, 76911 (Dec. 23, 2004) (Brazil); 69 Fed. Reg. 76913, 76914 (Dec. 23, 2004) (Ecuador); 69 Fed. Reg. 76916, 76916-17 (Dec. 23, 2004) (India), 69 Fed. Reg. 76918, 76919 (Dec. 23, 2004) (Thailand).

prawns”) and one on the basis of packaging (pertaining to canned shrimp). The Commission did not accept any of these arguments, but stated it would again in any final phase investigations examine whether it was appropriate to define canned shrimp as a separate domestic like product.¹¹ In the final phase, the parties have asserted two domestic like product arguments that seek to divide articles within the scope. One concerns a product called “shrimp scampi,” which was not discussed in the preliminary determination. The second concerns canned shrimp.

The Commission also considered in the preliminary determination whether to include breaded shrimp, a further-processed product that Commerce has expressly excluded from the scope, in the domestic like product. The Commission declined to do so,¹² and no party has argued in the final phase that breaded shrimp should be included in the domestic like product.

In the preliminary determination, the Commission accepted the argument that the domestic like product should be defined more broadly to encompass fresh warmwater shrimp, an item excluded from the scope. In evaluating this argument, the Commission used the “semifinished products” like product analysis, because fresh shrimp is overwhelmingly used as an input in the production of the frozen product. It found that fresh warmwater shrimp should be included in the same domestic like product as the frozen article because it “is overwhelmingly sold in a processed form, and 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.”¹³ There were no new arguments in the final phase of the investigations concerning the inclusion of fresh warmwater shrimp in the domestic like product,¹⁴ and the record concerning fresh warmwater shrimp has not changed since the preliminary determination. Consequently, we again find fresh warmwater shrimp to be part of the domestic like product for the reasons stated in the preliminary determination.

2. “Shrimp Scampi”

Xian-Ning Seafood Co. (“Xian-Ning”), an exporter of subject merchandise from Thailand, argues that the Commission should define “shrimp scampi” as a distinct domestic like product. Xian-Ning describes the product as a battered product which contains a coating typically consisting of a mixture of soybean oil, seasoned dry ingredients, and a liquid butter alternative. Petitioner opposes defining “shrimp scampi” as a separate domestic like product. We examine Xian-Ning’s arguments concerning “shrimp scampi” using the “traditional” like product analysis.¹⁵

Physical Characteristics and End Uses. One basic problem with Xian-Ning’s proposed “shrimp scampi” domestic like product is its failure to provide any meaningful definition of the product. It characterizes the product as a coated product that “typically consists of a mixture of soybean oil, seasoned

¹¹ 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 6-13 (Feb. 2004) (“Preliminary Determination”).

¹² Preliminary Determination, USITC Pub. 3672 at 14-15.

¹³ Preliminary Determination, USITC Pub. 3672 at 14.

¹⁴ Petitioner agrees with the analysis of fresh shrimp provided in the preliminary determination. Petitioner Prehearing Brief at 20-23. The American Seafood Distributors Ass’n (ASDA), the sole respondent to address the issue, has stated that it does not challenge the Commission’s analysis in its preliminary determination that fresh shrimp should be included in the domestic like product. ASDA Posthearing Brief at A-57.

¹⁵ The Commission did not collect pricing data for a “shrimp scampi” product, or for other types of flavored or prepared shrimp products within the scope. The argument that “shrimp scampi” should be a separate domestic like product was first presented to the Commission in a prehearing brief, several months after the questionnaires had been circulated.

dry ingredients, and a liquid butter alternative,” and states that shrimp scampi can have “*up to 28 ingredients,*” but does not indicate what ingredients other than shrimp are essential to making a food preparation “shrimp scampi.”¹⁶ Xian-Ning asserts that other shrimp within the scope is distinct from “shrimp scampi” because it has no added flavor ingredients.¹⁷ This is incorrect, because products within the scope such as marinated shrimp would also have flavor ingredients.

According to Xian-Ning, “shrimp scampi” is used in food preparations, most often as an entree.¹⁸ This does not distinguish “shrimp scampi” from other types of frozen shrimp within the scope.

Interchangeability. Xian-Ning contends that “shrimp scampi” can be consumed by the end-user without preparation, while other types of frozen shrimp within the scope can be used in a greater range of meal preparations.¹⁹ Xian-Ning does not contend that a home cook, or a restaurateur, could not use other types of frozen shrimp within the scope to make “shrimp scampi.” Moreover, other products within the scope such as marinated shrimp cannot be used in the same range of meal preparations as can a frozen, unseasoned product.

Channels of Distribution. Xian-Ning states that “shrimp scampi” is sold exclusively to retail outlets and is not sold to food service distributors or restaurants.²⁰ We have reason to doubt the accuracy of this assertion, which is unsupported by any data.²¹ In any event, Xian-Ning has not submitted any probative information indicating that “shrimp scampi” has channels of distribution that differ from other shrimp products within the scope.

Production Processes and Facilities. Xian-Ning has submitted a diagram of its own “shrimp scampi” production process, which we assume *arguendo* would be typical of that of a domestic producer. The production process is the same as that for other types of frozen shrimp, except for a final step in which the product is applied with the scampi batter.²²

Producer and Customer Perceptions. Xian-Ning’s failure to define what constitutes “shrimp scampi” suggests that the industry has no standard definition for the product. This was confirmed by a petitioner industry witness.²³ Xian-Ning admits that “shrimp scampi” would be carried in the freezer section of a grocery store adjacent to other varieties of frozen shrimp.²⁴ King & Prince, which Xian-Ning

¹⁶ Xian-Ning Prehearing Brief at 4 (emphasis added). Xian-Ning apparently defined “shrimp scampi” no more precisely in its unsuccessful attempt to get Commerce to exclude the product from the scope definition. See Memorandum from Edward C. Yang, Senior Enforcement Coordinator, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, on Scope Clarification: Shrimp Scampi at 3-4, 7-8 (Nov. 29, 2004).

¹⁷ Xian-Ning Prehearing Brief at 4.

¹⁸ Xian-Ning Prehearing Brief at 9.

¹⁹ Xian-Ning Prehearing Brief at 9.

²⁰ Xian-Ning Prehearing Brief, Ex. 5, ¶ 5.

²¹ Xian-Ning identifies King & Prince Seafood as a domestic producer of “shrimp scampi.” Xian-Ning Prehearing Brief, Ex. 5, ¶ 7. King & Prince (which was not providing testimony on this issue) stated at the Commission hearing that it sold its value-added products to restaurants and food service distributors. Tr. at 239 (Mentzer). King & Prince’s website indicates that it sells “shrimp scampi” products to both distributors and consumers. See http://www.kpseafood.com/Distributor/ProductDetail.aspx?product_id=71 (visited and printed Dec. 16, 2004) (distributor product); <http://www.kpseafood.com/Consumer/ProductDetail.aspx?productid=295> (visited and printed Dec. 16, 2004) (consumer product).

²² Xian-Ning Prehearing Brief, Ex. 4.

²³ Hearing Transcript (“Tr.”) at 173 (Appelbaum).

²⁴ Xian-Ning Prehearing Brief at 10.

identifies as a domestic producer of “shrimp scampi,” lists “shrimp scampi” on its website among a group of sauced and battered frozen shrimp products.²⁵

Conclusion. The pertinent question for the Commission’s analysis concerns whether “shrimp scampi” is different from the other domestically produced products *within* the scope definition, and not its degree of similarity to a product outside the scope, as Xian-Ning has argued. For the reasons stated above, we can discern no clear distinctions between “shrimp scampi” and other domestic products described by the scope. Accordingly, we find that “shrimp scampi” is not a separate domestic like product.²⁶

3. Canned Warmwater Shrimp

Chicken of the Sea, International, and Seatech Corp., both of which are importers of subject merchandise, argue that the Commission should define canned warmwater shrimp to be a separate domestic like product. Petitioner has argued against separate like product treatment for canned shrimp. For purposes of the discussion below, we will use the term “canned shrimp” to refer to the domestic like product sought by Seatech and Chicken of the Sea, which encompasses warmwater shrimp packaged in an airtight container which can be stored at room temperature.²⁷ For purposes of this section of the opinion, we will use the term “frozen shrimp” to refer to all other articles that would be within the domestic like product. As explained above, this would include both fresh warmwater shrimp and the other types of frozen warmwater shrimp within the scope.²⁸ In the preliminary determination, the Commission used a “traditional” like product analysis in determining whether canned shrimp should be considered a separate domestic like product.²⁹ The parties have not disputed use of this analysis, which we apply below.

Physical Characteristics and End Uses. The salient feature of the domestically-produced canned shrimp product proposed by Chicken of the Sea and Seatech is that it is sold in a can, which generally contains four to six ounces of product and is shelf-stable. Thus, it does not require refrigeration or freezing, in contrast to the other types of warmwater shrimp under consideration.³⁰ Shrimp used for canning are always cooked and peeled.³¹ They are typically much smaller than shrimp that are sold in frozen form. Bumble Bee’s questionnaire response indicated that ***³² Questionnaire data indicate that

²⁵ See <http://www.kpseafood.com/Distributor/productLine.aspx> (visited and printed Dec. 16, 2004).

²⁶ Chairman Koplán and Commissioner Lane do not join the remainder of section II of the opinion. See Concurring and Dissenting Views of Chairman Koplán and Commissioner Lane.

²⁷ There is a domestically-produced canned product which cannot be stored at room temperature and must be stored frozen. Tr. at 146 (Blanchard). Chicken of the Sea and Seatech argued to not include this product in their proposed domestic like product. Chicken of the Sea Posthearing Brief at A-1; Seatech Posthearing Brief at 3. We do not include frozen canned shrimp in the shelf-stable canned warmwater shrimp domestic like product we define below.

²⁸ Because fresh warmwater shrimp is the semifinished form of the frozen product, and fresh warmwater shrimp would typically be frozen before it arrives at a canning facility, see Petitioner Posthearing Brief, Ex. 49, ¶ 4, its inclusion in the same domestic like product as frozen shrimp does not affect the analysis below.

²⁹ Preliminary Determination, USITC Pub. 3672 at 11.

³⁰ Chicken of the Sea Prehearing Brief, Ex. 1; Tr. at 162 (Cook) (Bumble Bee does not sell canned shrimp in large food-service sizes).

³¹ See Petitioner Prehearing Brief, Ex. 2, Cook Declaration, ¶ 3.

³² See Bumble Bee Processors’ Questionnaire Response, response to question II-12; Chicken of the Sea Posthearing Brief at 5.

7.6 percent of U.S. processors' commercial shipments of frozen shrimp in 2003 were of counts over 150 pieces per pound.³³

The end use of both canned and frozen shrimp is in meal preparations. Domestic canned shrimp producer Bumble Bee lists a variety of recipes for canned shrimp on its website, including shrimp cole slaw, cheese shrimp chowder, "herby" shrimp pasta, shrimp puff appetizers, shrimp toast points, oyster and shrimp gumbo, shrimp and crab enchiladas, and deluxe seafood dip.³⁴

Interchangeability. Purchasers that commented on whether canned and frozen shrimp could be used for the same end uses provided mixed responses, with two stating that the products could not be substitutes, and two stating that consumers could use the products interchangeably in some end uses. It should be noted, however, that only six of the 36 purchasers which submitted questionnaire responses purchased both frozen and canned shrimp.³⁵ The restaurateur who testified at the hearing stated that his restaurant chain would not substitute canned shrimp for frozen shrimp.³⁶

Petitioner submitted a large number of recipes gathered off the Internet which indicate that canned or frozen shrimp can be substituted for each other. One general characteristic these recipes share with the Bumble Bee recipes is that shrimp is one of several ingredients used to make the dish, and would not be the central visual component of the dish.³⁷ By contrast, in meal preparations using frozen shrimp, shrimp will often be the central visual component of the preparation.³⁸ That canned shrimp is always cooked and peeled also limits the range of meal preparations in which it can be used in comparison to frozen shrimp.

Channels of Distribution. Bumble Bee's questionnaire response indicates that, throughout the period examined, *** percent of its shipments were sold to distributors and *** percent were sold directly to retailers and other buyers.³⁹ The record indicates that the great majority of canned shrimp is ultimately purchased by consumers in grocery stores.⁴⁰ By contrast, petitioner has estimated that 80 percent of frozen shrimp is consumed in restaurants.⁴¹ As previously stated, only six of 36 purchasers that responded to the Commission's purchaser questionnaire purchase both canned and frozen shrimp.⁴²

Production Processes, Facilities, and Employees. There is one domestic processor of shelf-stable canned shrimp, Bumble Bee, which does not process frozen shrimp.⁴³ Consequently, there is no overlap between producers of canned shrimp and producers of frozen shrimp. There were 36 other entities that performed processing operations on frozen shrimp exclusively which provided usable data in response to the Commission's processors' questionnaire.⁴⁴ Bumble Bee indicates that certain processes and equipment it uses to process canned shrimp are the same as those used by processors of frozen shrimp.

³³ Processors Questionnaire Responses, response to question II-12 (aggregation of responses).

³⁴ Petitioner Prehearing Brief, Ex. 8.

³⁵ Confidential Report (CR) at II-41, Public Report (PR) at II-26.

³⁶ Tr. at 271 (Herzig).

³⁷ Petitioner Prehearing Brief, Ex. 6.

³⁸ This would encompass preparations such as shrimp cocktail, Asian dishes such as kung pao shrimp or shrimp with black bean sauce, and the "shrimp scampi" recipes referenced in the discussion above.

³⁹ Bumble Bee Processors' Questionnaire Response, response to question II-9.

⁴⁰ Tr. at 162 (Cook) (Bumble Bee does not sell canned shrimp in large food-service sizes); *** Questionnaire Response, response to question IV-C (***).

⁴¹ See CR at I-7, PR at I-6.

⁴² CR at II-41, PR at II-26.

⁴³ Tr. at 89 (Cook), 162 (Cook).

⁴⁴ See CR at III-1, PR at III-1.

These include de-icing, weighing, peeling, grading, deveining, blanching, and cleaning.⁴⁵ However, Bumble Bee's production process also includes several important steps that are unique to canning. These include ***. These steps all require specialized equipment.⁴⁶ The retort processing equipment used to sterilize cans is unique to canning and imparts several of the physical characteristics distinctive to the product, such as its ability to be stored for long periods without refrigeration or freezing.⁴⁷ The canning process also affects the physical appearance and texture of the product.⁴⁸

Producer and Customer Perceptions. Bumble Bee's website depicts canned shrimp as one member of a family of branded canned seafood products which also encompasses canned salmon, canned tuna, canned crab, canned oysters, canned clams, and sardines.⁴⁹ Grocers, which are the principal purchasers of canned shrimp, typically display canned and frozen seafood in different parts of their store that are supervised by different managers.⁵⁰

Price. The pricing data collected by the Commission indicate that domestically-produced canned shrimp is priced higher (on a per pound basis) than almost all of the frozen shrimp products on which the Commission collected pricing data.⁵¹ Petitioner does not dispute that a canned product will be more expensive than a frozen product containing similarly-sized shrimp.⁵² This price differential appears to reflect the additional costs associated with the processing steps unique to canned shrimp.

Conclusion. There are several clear distinctions between canned and frozen warmwater shrimp. Canned shrimp is always cooked and peeled, packaged through the retort process in a different form than frozen shrimp, is shelf-stable, and is typically of a smaller size than the great majority of frozen shrimp. It is produced in the United States by a single company that produces canned shrimp exclusively, using equipment dedicated to the production of canned shrimp. Further, it can be distinguished from frozen shrimp because it is generally not used for food preparations in which shrimp would be a central visual focus, is not used to any significant extent by restaurants where the substantial majority of frozen shrimp is consumed, is marketed by that company more as a canned seafood product than as a shrimp product, and is priced higher on a per-pound basis than comparable sizes of frozen shrimp.

Although we acknowledge that there is some overlap between canned and frozen shrimp in terms of end uses and production equipment, and that both products are distributed to grocers, these overlaps do not obscure the clear dividing line between canned shrimp and frozen shrimp. Accordingly, we find that canned warmwater shrimp is a separate domestic like product.⁵³

⁴⁵ CR at I-9, PR at I-7-8; Tr. at 89 (Cook); Petitioner Posthearing Brief, Ex. 49, ¶ 6.

⁴⁶ Petitioner Posthearing Brief, Ex. 49, ¶ 7.

⁴⁷ CR at I-10, PR at I-8.

⁴⁸ See Chicken of the Sea Posthearing Brief, Ex. 1; Tr. at 384 (Wendt).

⁴⁹ See <http://www.bumblebee.com/products.jsp> (visited and printed Dec. 16, 2004).

⁵⁰ Chicken of the Sea Posthearing Brief, Ex. 3, ¶¶ 9-14. Additionally, AC Nielsen consumer survey data indicate that in 2003, ***. Chicken of the Sea Posthearing Brief, Ex. 4.

⁵¹ Pricing data for the canned product is reported on a per can basis at CR/PR, Table G-10. These data were converted to a per-pound basis based on a can containing four ounces of product. (Petitioner does not contest this. Petitioner Posthearing Brief, Ex. 27). The one domestically processed frozen product that was consistently higher priced on a contemporaneous basis was the largest size (10-15 count per pound) product on which pricing information was sought. It is reported at CR/PR, Table G-9. The lower priced products are reported at CR/PR, Tables G-1-8. For product definitions, see CR at V-7, PR at V-6.

⁵² Petitioner Posthearing Brief at C-34.

⁵³ We have reviewed several investigations the parties have cited that involved food or agricultural products. Some of the investigations did not involve comparisons of products within the scope, and thus appear to us to be of
(continued...)

4. Conclusion

We define two domestic like products in these investigations. The first like product consists of fresh warmwater shrimp and prawns and those frozen warmwater shrimp and prawn products defined in Commerce's scope definition. Throughout the remainder of this opinion, we will refer to this domestic like product as "certain non-canned warmwater shrimp." The second like product consists of canned warmwater shrimp and prawns, and will be referred to as "canned warmwater shrimp."

III. CERTAIN NON-CANNED WARMWATER SHRIMP

A. Domestic Industry and Related Parties

The domestic industry is defined as "producers as a [w]hole 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."⁵⁴ In defining the domestic industry, the Commission's general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁵⁵

There are two principal sets of domestic industry issues in these preliminary phase investigations pertaining to the domestic industry producing certain non-canned warmwater shrimp.⁵⁶ The first concerns whether certain processors engage in sufficient production-related activity to be considered members of this domestic industry. The second concerns whether appropriate circumstances exist to exclude certain processors from this domestic industry under the statutory related parties provision. Because we have defined this domestic like product to include fresh warmwater shrimp, fishermen that harvest warmwater shrimp produce the domestic like product and consequently are part of the domestic industry. In light of

⁵³ (...continued)

limited relevance to the issue here. See Durum and Hard Red Spring Wheat from Canada, Inv. Nos. 701-TA-430A-430B, 731-TA-1019A-1019B (Final), USITC Pub. 3639 at 5-12 (Oct. 2003) (hard red winter wheat, which was not included in scope, not included in same domestic like product as hard spring wheat); Certain Preserved Mushrooms from Chile, Inv. No. 731-TA-776 (Final), USITC Pub. 3144 at 4-6 (Nov. 1998) (fresh and marinated mushrooms, neither of which was within scope, not included in same domestic like product as preserved mushrooms); Canned Pineapple Fruit from Thailand, Inv. No., 731-TA-706 (Final), USITC Pub. 2907 at I-6-7 (July 1995) (fresh forms of pineapple, which were not within scope, not included in same domestic like product as canned pineapple). In the investigations that did involve comparisons between different domestically produced products described by the scope, the Commission's findings were based on factual circumstances peculiar to the individual investigations rather than broader principles of general applicability. In our view, the factual circumstances in the cited investigations do not strongly resemble the ones in these investigations. See Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 at I-8-12 (Nov. 1994) (fresh, dehy, and seed garlic separate domestic like products); Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final), USITC Pub. 3116 at 5-7 (July 1998) (salmon cuts not distinct domestic like product from whole salmon). Consequently, we do not find that the investigations provide significant guidance concerning how to resolve the issues presented here.

⁵⁴ 19 U.S.C. § 1677(4)(A).

⁵⁵ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F. 3d 1352 (Fed. Cir. 1996).

⁵⁶ Chairman Koplan and Commissioner Lane note that these issues are equally applicable to the domestic industry producing the certain warmwater shrimp domestic like product that they have defined.

this, we find it unnecessary to determine whether fishermen should be included in the domestic industry pursuant to the statutory grower/processor provision codified at section 771(4)(E) of the Act.⁵⁷

1. Production-Related Activities

Petitioner contends that several firms that completed processors' questionnaires do not engage in sufficient production-related activities to be considered domestic producers.⁵⁸ We consequently examine whether each firm whose status petitioner challenges engages in sufficient production-related activity in the United States to qualify as a domestic producer.⁵⁹

The Commission made several findings in the preliminary determination concerning whether certain activities conducted by processors constitute domestic production. The Commission found that processing activities such as deheading, grading, machine peeling, and deveining all constitute domestic production. It observed that these operations each require specialized equipment and that petitioner did

⁵⁷ As in the Commission's preliminary views, Chairman Koplan and Vice Chairman Okun would conclude that fishermen should be included in the domestic industry pursuant to the statutory grower/processor provision were they to reach the issue. The record indicates that processed warmwater shrimp is produced from raw warmwater shrimp in a "continuous line of production" in that over 90 percent of fresh shrimp are processed into frozen and canned warmwater shrimp, warmwater shrimp is the principal raw material used through all processing steps through cooking, and warmwater shrimp accounts for at least 80 percent of the weight of all shrimp products in the scope definition. Additionally there is a "substantial coincidence" of economic interest between fishermen and processors because the price fishermen receive for a specific size shrimp is largely determined by the price of the processed product (as can be seen by the very high correlation between dockside and wholesale prices), and because fresh shrimp accounted for over 70 percent of processor's cost of goods sold during the period examined. See CR/PR, Table VI-1. See generally Preliminary Determination, USITC Pub. 3672 at 15 n.84.

⁵⁸ See Petitioner Prehearing Brief at 38-47. Respondents did not address this issue.

⁵⁹ In deciding whether a firm qualifies as a domestic producer, the Commission generally has analyzed the overall nature of a firm's production-related activities in the United States, bearing in mind that production-related activity at minimum levels may be insufficient to constitute domestic production. The Commission generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. See DRAMs and DRAM Modules from Korea, Inv. No. 701-TA-431 (Preliminary), USITC Pub. 3569 (December 2002) at 7-11 (casing activities are production); Greenhouse Tomatoes from Canada, Inv. No. 731-TA-925 (Final), USITC Pub. 3499 (April 2002) at 10-11 (packers included in the industry along with growers); Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391, 731-TA-816-821 (Final), USITC Pub. 3273 at 9 (Jan. 2000). See also Large Newspaper Printing Presses from Germany and Japan, Inv. Nos. 731-TA-736-737 (Final) USITC Pub. 2988 at 7-8 (Aug. 1996). Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify a company as a domestic producer.

not contest that these activities were sufficient to constitute domestic production.⁶⁰ The Commission additionally found that cooking constitutes domestic production, because it typically requires specialized equipment and adds more value to the process than any preceding stage.⁶¹ By contrast, the Commission found that marinating and skewering do not constitute domestic production because they involve no specialized equipment and add relatively modest value to the processed shrimp product.⁶² Finally, the Commission concluded that breading could not constitute domestic production activity because breaded shrimp was not part of the domestic like product.⁶³ We rely on these findings in our analysis below of the specific firms whose status as domestic producers petitioner challenges.⁶⁴

*** – The record indicates that during the period examined, *** engaged in marinating/saucing and breading.⁶⁵ As stated above, the Commission found in the preliminary determination that these activities did not constitute domestic production. It consequently concluded that *** was not a domestic producer.⁶⁶ As the final phase record does not contain any additional information concerning the nature of *** processing activities, we again find that *** does not engage in sufficient activities to be considered a domestic producer.

*** – The record indicates that during the period examined, *** engaged in activities including machine peeling and deveining.⁶⁷ Consequently, in the preliminary determination, the Commission found that *** engaged in sufficient activity to be considered a domestic producer.⁶⁸ Consequently, for the same reasons stated in the preliminary determination, we find that *** engaged in sufficient domestic production activities to be considered a domestic producer.⁶⁹

*** – The record indicates that during the period examined, *** engaged in breading, marinating/saucing, and skewering.⁷⁰ As stated above, the Commission found in the preliminary determination that these activities did not constitute domestic production. It consequently concluded that *** was not a domestic producer.⁷¹ The final phase record does not contain any additional information

⁶⁰ Preliminary Determination, USITC Pub. 3672 at 17.

⁶¹ Preliminary Determination, USITC Pub. 3672 at 17.

⁶² Preliminary Determination, USITC Pub. 3672 at 17-18.

⁶³ Preliminary Determination, USITC Pub. 3672 at 17 n.90.

⁶⁴ Moreover, the parties have not asked for reconsideration of any of these findings. We note that much of the information concerning individual processors derives from the preliminary phase questionnaires. Unless stated otherwise, however, citations to questionnaires are to those issued in the final phase.

⁶⁵ *** Processors' Preliminary Phase Questionnaire Response, response to question II-12 (reprinted in Petitioner Prehearing Brief, Ex. 17).

⁶⁶ Confidential Preliminary Determination at 27-28.

⁶⁷ *** Processors' Preliminary Phase Questionnaire Response, response to question II-12.

⁶⁸ Confidential Preliminary Determination at 26-27.

⁶⁹ In its prehearing brief, petitioner observes that *** stated in its final phase questionnaire response ***. Although this is correct, *** response also observes that ***. *** Processors' Questionnaire Response, response to questions II-2, II-9, III-6.

⁷⁰ *** Processors' Preliminary Phase Questionnaire Response, response to question II-12 (reprinted in Petitioner Prehearing Brief, Ex. 18).

⁷¹ Confidential Preliminary Determination at 27-28.

concerning the nature of *** processing activities.⁷² Consequently, we again find that *** does not engage in sufficient activities to be considered a domestic producer.

*** – The record indicates that, during the period examined, *** engaged in cooking.⁷³ As stated above, the Commission concluded in the preliminary determination that cooking was sufficient activity to constitute domestic production. It consequently found that *** was a domestic producer.⁷⁴ We make the same finding for purposes of this final determination.

*** – The only processing activity which *** identified in its preliminary questionnaire response was breeding.⁷⁵ The final phase verification report of *** indicates that the company performs processing activities in addition to breeding, however.⁷⁶ Information obtained during the Commission staff's on-site verification indicates that *** performs activities including washing, sorting, grading, peeling, deveining, removing the tail, packaging, and freezing of the shrimp it purchases.⁷⁷ These activities are of the type the Commission determined in the preliminary determination constituted domestic production. We consequently find that *** engages in sufficient activities to be a domestic producer.

*** – The record indicates that, during the period examined, Singleton engaged in hand peeling, breaching, butterflying/other special cutting, cooking, and rebagging/relabeling.⁷⁸ As previously stated, the Commission has determined that cooking constitutes domestic production. On this basis, we find that *** engages in sufficient production-related activity to be considered a domestic producer.

*** – The record indicates that during the period examined, *** engaged in grading, deheading, hand peeling, deveining, breaching, butterflying/other special cutting, cooking, marinating/saucing, and skewering.⁷⁹ As previously discussed, the Commission found in its preliminary determination that grading, deheading, deveining, and cooking were all activities that constituted domestic production. Accordingly, we find that *** engages in sufficient production-related activities to be a domestic producer.

Conclusion. Of the domestic processors that petitioner has targeted, we find that *** engage in insufficient production-related activity to be considered domestic producers. We conclude that *** do perform sufficient production-related activities to be considered domestic producers.

⁷² As discussed above, there is some information in the final phase record indicating that ***. The record does not indicate, however, what, if any, processing activities that *** performs with respect to this product. We further observe that one reason the Commission cited in the preliminary determination for concluding that *** processing activities were insufficient to constitute domestic production was that the vast majority of warmwater shrimp the firm used as an input for further processing was imported. Preliminary Determination, USITC Pub. 3672 at 17. This remains true. See *** Processors Questionnaire, response to Question III-6.

⁷³ *** Processors' Preliminary Phase Questionnaire Response, response to question II-12.

⁷⁴ Confidential Preliminary Determination at 27.

⁷⁵ *** Processors' Preliminary Phase Questionnaire Response, response to question II-12 (reprinted in Petitioner Prehearing Brief, Ex. 15).

⁷⁶ *** Verification Report at 2 (Dec. 16, 2004).

⁷⁷ Electronic mail message from John Ascienzo, Commission auditor, to record concerning "*** processing activities" (Dec. 22, 2004).

⁷⁸ *** Processors' Preliminary Phase Questionnaire Response, response to question II-12.

⁷⁹ *** Preliminary Phase Processors' Questionnaire Response, response to question II-12 (reprinted in Petitioner Prehearing Brief, Ex. 19).

2. Related Parties

In defining the domestic industry, we must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude producers from the domestic industry that are related to an exporter or importer of subject merchandise or which are themselves importers.⁸⁰ Exclusion of a related or importing producer is within the Commission's discretion based upon the facts presented in each case.⁸¹

Six domestic producers that completed domestic processors' questionnaires imported subject merchandise during the period examined. These are ***,⁸² As importers of subject merchandise, these entities are potentially subject to exclusion from the domestic industry pursuant to the related parties provision.⁸³

A seventh entity, ***, has the same stockholders as ***, which imports subject merchandise from multiple subject countries.⁸⁴ Because both *** and *** have common control from the same stockholders, *** is potentially subject to exclusion from the domestic industry pursuant to the related parties provision.⁸⁵

Petitioner contends that appropriate circumstances exist for the exclusion of *** pursuant to the related parties provision. ASDA asserts that appropriate circumstances do not exist for the exclusion of ***.⁸⁶

No party asserts that appropriate circumstances exist for the exclusion of ***. These firms will be called the "non-targeted producers."

⁸⁰ 19 U.S.C. § 1677(4)(B).

⁸¹ Allied Mineral Products, Inc. v. United States, Slip Op. 04-139 at 9 (Ct. Int'l Trade Nov. 12, 2004); Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (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 (3) the position of the related producers 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. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

⁸² See CR/PR, Tables III-7, IV-1. While *** also imported subject merchandise during the period examined, we have concluded that these firms are not domestic producers. Consequently, we need not consider whether appropriate circumstances exist to exclude them from the domestic industry pursuant to the related parties provision.

⁸³ 19 U.S.C. § 1677(4)(B)(i). *** additionally would be subject to exclusion of the related parties provision pursuant to 19 U.S.C. § 1677(4)(B)(ii)(I) because ***. CR/PR, Table III-2.

⁸⁴ CR/PR, Tables III-2, IV-1.

⁸⁵ See 19 U.S.C. § 1677(4)(B)(ii)(III).

⁸⁶ ASDA's arguments, which also addressed ***, were directed solely to these processors' use of subject imports vis a vis their use of nonsubject imports. This is not a factor that the Commission traditionally considers in its related party analysis, and ASDA did not explain why the Commission should deviate from its customary practice in these investigations.

We now consider whether appropriate circumstances exist for each of the processors subject for exclusion pursuant to the related parties provision.

***. The quantity of subject imports imported by *** greatly exceeds its domestic production, which ***.⁸⁷ Meanwhile, *** had among the best operating performance during the period examined of the processors that submitted financial data.⁸⁸ *** the petition and states that it imported subject merchandise for several reasons, including ***.⁸⁹ The data indicate that *** has essentially no current interest in domestic production and that its importation activities shield it from any injury that might be caused by the subject imports. The Commission found in the preliminary determination that appropriate circumstances existed for the exclusion of ***.⁹⁰ We make the same finding here.

***. The ratio of subject imports to domestic production varied for *** during the period examined, but was highest during the latter portions of the period. The ratio was *** in 2003 and *** percent during January-June (interim) 2004.⁹¹ In the preliminary determination, the Commission considered the quantity of *** purchases of subject imports as well as its direct imports.⁹² The ratio of the sum of *** subject imports and purchases of subject imports to its production was *** percent in 2002, *** percent in 2003, *** percent in interim 2003, and *** percent in interim 2004.⁹³ *** the petition.⁹⁴ It states that it imports subject merchandise due to ***.⁹⁵

In the preliminary determination, the Commission found that appropriate circumstances existed to exclude *** from the domestic industry notwithstanding that its operating performance was not substantially different than the industry average. In particular, the Commission found that *** high ratio of imports and purchases of subject imports to production, as well as its ***, indicate that its principal interest is not in domestic production.⁹⁶ The record here supports the same conclusion. Consequently, we again find that appropriate circumstances exist to exclude *** from the domestic industry.

***. *** had very high ratios of subject imports to domestic production during the period examined.⁹⁷ It *** the petition and states that it imports subject merchandise for ***.⁹⁸ Its operating performance has been extremely variable. The firm was ***.⁹⁹ *** presents some similarities to ***, except that it has even larger ratios of subject imports to domestic production. The same considerations that support exclusion of *** pursuant to the related parties provision also support our finding that appropriate circumstances exist to exclude *** from the domestic industry.

⁸⁷ See CR/PR, Table III-7.

⁸⁸ CR/PR, Appendix Table I-4.

⁸⁹ CR/PR, Tables III-2, III-7.

⁹⁰ Confidential Preliminary Determination at 29-30.

⁹¹ CR/PR, Table III-7.

⁹² Confidential Preliminary Determination at 30.

⁹³ CR/PR, Table III-7.

⁹⁴ CR/PR, Table III-2.

⁹⁵ CR/PR, Table III-7.

⁹⁶ Confidential Preliminary Determination at 30.

⁹⁷ CR/PR, Table III-7.

⁹⁸ CR/PR, Tables III-2, III-7.

⁹⁹ CR/PR, Appendix Table I-4. The operating ratios reported for *** reflect adjustments staff made after verification.

***. *** did not submit usable trade or financial data to the Commission.¹⁰⁰ The data in the record concerning *** domestic production activities indicate that these activities involve relatively small quantities of product, while *** has imported far greater quantities of subject merchandise during the period examined.¹⁰¹ *** did not indicate why it imported subject merchandise when it also produced product, calling the question ***.¹⁰² *** on the petition.¹⁰³ The limited information in the record indicates that *** has a minimal domestic production presence, both on an absolute basis and in comparison to its importation activities. Because *** principal interest is in importation, rather than domestic production, we find that appropriate circumstances exist to exclude *** from the domestic industry.

***. *** domestic production is dwarfed by the subject imports of its affiliate, ***.¹⁰⁴ It *** the petition.¹⁰⁵ Its financial performance during the period examined was better than the industry average.¹⁰⁶ The record thus indicates that the principal interest of the *** corporate combination is in importation, not domestic production, and that these firms' subject importation activities benefit them financially. We consequently find that appropriate circumstances exist to exclude *** from the domestic industry.

Non-Targeted Processors. Both (***) had low ratios of subject imports to domestic production. While each of these firms also purchased subject imports, the ratio to domestic production of the sum of direct importation and purchases of subject imports never exceeded *** for any portion of the period examined.¹⁰⁷ ***, which stated that it imported ***, had operating performances slightly above industry averages.¹⁰⁸ While *** states that it imports subject merchandise for ***, its operating performance is well below the industry average.¹⁰⁹ Each firm *** the petition.¹¹⁰ The Commission found in the preliminary determination that appropriate circumstances did not exist to exclude either firm from the domestic industry on the basis that each firm's principal interest is in domestic production, and that neither firm has derived significant financial benefits from its importation activities.¹¹¹ The record in these final phase investigations similarly supports such a finding. We consequently find that appropriate circumstances do not exist to exclude either *** from the domestic industry.

¹⁰⁰ CR at III-1 n.3, PR at III-1 n.3.

¹⁰¹ *** preliminary phase questionnaire indicated that it cooked *** pounds of shrimp annually. (However, based on the processors' final phase questionnaire, it is likely that the amount of shrimp it cooked was actually *** pounds). See *** Preliminary Phase Processors' Questionnaire, response to question II-12; *** Processors' Questionnaire, response to question II-9. By contrast, Singleton imported *** pounds of subject merchandise in 2001, *** pounds in 2003, and *** pounds in interim 2004. *** Importers' Questionnaire, response to Question II-5.

¹⁰² *** Importers' Questionnaire, response to Question II-4.

¹⁰³ CR/PR, Table III-2.

¹⁰⁴ Because *** related party status is based on its common ownership with ***, we compared *** production reported in its processors' questionnaire to *** imports of subject merchandise reported in its importers' questionnaire. The ratio of *** subject imports to *** domestic production was *** percent in 2002, *** percent in 2003, *** percent in interim 2003, and *** percent in interim 2004.

¹⁰⁵ CR/PR, Table III-2.

¹⁰⁶ CR/PR, Appendix Table I-4.

¹⁰⁷ CR/PR, Table III-7.

¹⁰⁸ CR/PR, Table III-7, Appendix Table I-1.

¹⁰⁹ CR/PR, Table III-7, Appendix Table I-1.

¹¹⁰ CR/PR, Table III-2.

¹¹¹ Confidential Preliminary Determination at 30-31.

3. Conclusion

In light of the foregoing discussion, the domestic industry producing certain non-canned warmwater shrimp consists of: (1) all entities that harvest fresh warmwater shrimp (*i.e.*, fishermen and shrimp farmers) and (2) all processors of frozen shrimp products within the scope definition except for ***.¹¹²

B. Cumulation^{113 114}

1. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the 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 domestic like products in the U.S. market.¹¹⁵ In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between 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

¹¹² Chairman Koplan and Commissioner Lane note that in light of the foregoing discussion, they define the domestic industry producing certain warmwater shrimp to consist of: (1) all entities that harvest fresh warmwater shrimp (*i.e.*, fishermen and shrimp farmers) and (2) all processors of shrimp products within the scope definition except for ***.

¹¹³ In these investigations, subject imports of frozen warmwater shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam each accounted for more than three percent of the volume of all imports into the United States in the most recent 12-month period for which data are available preceding the filing of the petition. See Official Import Statistics. As such, we find that frozen shrimp imports from each of the subject countries are not negligible under 19 U.S.C. § 1677(24).

¹¹⁴ Chairman Koplan and Commissioner Lane note that the certain non-canned warmwater shrimp domestic like product defined by their colleagues accounted in 2003 for at least *** percent of domestic production of the certain warmwater shrimp domestic like product that they have defined, CR/PR, Table III-2, and the subject imports corresponding to their colleagues' definition of the domestic like product account for 99.6 percent of all subject imports. CR/PR, Tables IV-4, D-1. Accordingly, the cumulation discussion below is equally pertinent to the domestic like product that Chairman Koplan and Commissioner Lane have defined.

¹¹⁵ 19 U.S.C. § 1677(7)(G)(i). None of the statutory exceptions to cumulation applies to our analysis of the domestic like product encompassing certain non-canned warmwater shrimp. 19 U.S.C. § 1677(7)(G)(ii).

- (4) whether the subject imports are simultaneously present in the market.¹¹⁶

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.¹¹⁷ Only a “reasonable overlap” of competition is required.¹¹⁸

2. Analysis

Petitioner contends that the Commission should cumulate imports from all six subject countries for its analysis of material injury by reason of subject imports.¹¹⁹ ASDA was the sole respondent to address in its briefs cumulation for material injury analysis with respect to certain non-canned warmwater shrimp. It states that it does not contest the cumulation of subject imports.^{120 121}

The threshold for cumulation is satisfied because petitioner filed a petition with respect to each of the six subject countries on the same day. We next examine the four factors that the Commission customarily considers in determining whether there is a reasonable overlap of competition.

Fungibility. Questionnaire data indicate that market participants perceive at least some degree of overlap in the applications for which the domestic like product and imports from the subject countries are used. However, perceptions of product interchangeability varied markedly among different types of market participants. Majorities of purchasers ranging from 62 percent (U.S.-Vietnam) to 100 percent (U.S.-Brazil) found that domestically-produced shrimp and imports from individual subject countries were at least sometimes interchangeable. The ratio of purchasers finding imports from individual subject countries at least sometimes interchangeable with each other ranged from 71 percent (Brazil/India) to 100

¹¹⁶ 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).

¹¹⁷ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

¹¹⁸ The Statement of Administrative Action for the Uruguay Round Agreements Act (“SAA”) 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.” SAA, H.R. 316, 103d Cong., 2d Sess., vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic System, 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”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

¹¹⁹ Petitioner Prehearing Brief at 64-68.

¹²⁰ ASDA Prehearing Brief at 9.

¹²¹ Commissioner Hillman notes that the Commission determined to proceed with its vote on imports of shrimp from all six subject countries, despite the fact that the tsunami of December 26, 2004 may have significantly impacted the shrimp industries in India and/or Thailand. Given the timing and the extreme severity of the tsunami, parties were not in a position to know at the time they filed their final comments what effect, if any, the tsunami may have had on the shrimp industry in either of these two countries. Commissioner Hillman noted at the time of the Commission’s vote that she would have preferred to have delayed for a short time the Commission’s votes so that information could be collected on the impact, if any, of the tsunami on shrimp producers in India and Thailand, their inventories and their ability to export shrimp to the U.S. This information may have had an impact on a number of the four factors Commissioner Hillman examines in determining whether it is appropriate to cumulate imports from each of the subject countries and whether a “reasonable overlap in competition” between imports from India and/or Thailand and imports from the other four subject countries existed at the time of vote in these investigations.

percent (four comparisons).¹²² By contrast, a majority of U.S. processors stated that domestically produced product was always interchangeable with imports from each of the subject countries. A majority also reported that imports from each possible subject country combination were always interchangeable.¹²³ Importers stated that domestically produced product was interchangeable with product from subject sources less frequently than either purchasers or U.S. processors. In comparing domestically produced shrimp to subject imports from Vietnam, 53 percent of responding importers stated that the products were never interchangeable. In every other comparison of domestically produced product to imports from a particular subject country, between 57 and 79 percent of importers found that the products were at least sometimes interchangeable. The ratio of importers reporting that imports from different subject country combinations were at least sometimes interchangeable ranged from a low of 71 percent (for Ecuador/India) to a high of 100 percent (Brazil/Ecuador and Thailand/Vietnam).¹²⁴ Pricing data for both domestically-produced product and imports from each subject country were available for six of the nine frozen shrimp pricing products on which the Commission collected data.¹²⁵

Geographic Overlap. The overwhelming majority of both U.S. processors and importers of subject merchandise reported that they serve either a national market or multiple regions within the United States.¹²⁶ Imports from each of the subject countries entered the United States in substantial quantities throughout the period examined at ports in the East, Gulf, and West regions.¹²⁷

Channels of Distribution. Both the domestic like product and the subject imports are sold to distributors and to retail customers such as grocers and restaurants.¹²⁸ The record indicates that numerous market participants such as distributors, grocers, and restaurateurs purchase both domestically produced shrimp and imports from several different subject countries.¹²⁹

Simultaneous Presence. Imports from each of the subject countries have been present in the U.S. market throughout the period examined.¹³⁰

Conclusion. Although market participants do not have uniform views concerning the interchangeability of the domestic like product and the subject imports, a majority of market participants found the domestically produced product at least sometimes interchangeable with imports from each subject country except in one comparison by importers, and even in that comparison a substantial minority found the domestic like product and the subject imports at least sometimes interchangeable. Majorities of all market participants found imports from different subject countries at least somewhat interchangeable. Moreover, the purchaser data and pricing information in the record indicate that there is an overlap of purchasers and product types both between domestically processed frozen shrimp and frozen shrimp imports from each subject country and among imports from each of the subject countries. Particularly given that respondents have not challenged the appropriateness of cumulation for material

¹²² CR/PR, Table II-3. Because virtually all domestically processed shrimp and subject imports are frozen rather than canned, the data in the Commission report are applicable to the domestic like product consisting of certain non-canned warmwater shrimp. Indeed, all purchasers that responded to the Commission's questionnaire purchased frozen warmwater shrimp.

¹²³ CR/PR, Table II-1.

¹²⁴ CR/PR, Table II-2.

¹²⁵ CR/PR, Table V-2.

¹²⁶ CR at II-2, PR at II-1.

¹²⁷ See CR/PR, Table IV-8; Petitioner Prehearing Brief, chart 3.

¹²⁸ CR at I-12, II-1, PR at I-10, II-1.

¹²⁹ CR/PR, Table II-6.

¹³⁰ CR/PR, Tables IV-1, IV-9. See also Petitioner Prehearing Brief, chart 4.

injury analysis, the record indicates that the domestically produced frozen shrimp and frozen shrimp imports from the six subject countries are sufficiently similar in characteristics to satisfy the fungibility criterion. The criteria concerning channels of distribution, geographic overlap, and simultaneous presence are clearly satisfied. Accordingly, we cumulate imports from all six subject countries for purposes of our analysis of material injury by reason of subject imports for the domestic like product consisting of certain non-canned warmwater shrimp.¹³¹

C. Material Injury by Reason of Subject Imports

1. Legal Standards

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.¹³² In making this determination, the Commission must consider the volume of 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.¹³³ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹³⁴ 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.¹³⁵ 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.”¹³⁶

Section 771(7)(C)(i) of the 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

Section 771(7)(C)(ii) of the Act provides that, in 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
- (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.

¹³¹ Chairman Koplán and Commissioner Lane cumulate imports from all six subject countries for purposes of their analysis of material injury by reason of subject imports for the domestic like product consisting of certain warmwater shrimp.

¹³² 19 U.S.C. § 1673d(b).

¹³³ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

¹³⁴ 19 U.S.C. § 1677(7)(A).

¹³⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹³⁶ Id.

¹³⁷ 19 U.S.C. § 1677(7)(C)(i).

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹³⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. 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.”¹³⁹

2. Conditions of Competition

Several conditions of competition are pertinent to our analysis of the domestic industry producing certain non-canned warmwater shrimp.¹⁴⁰

a. Demand Conditions

U.S. apparent consumption of certain non-canned warmwater shrimp increased during the period for which the Commission collected data for the final phase investigations, which encompasses the period January 2001 through June 2004. U.S. apparent consumption increased from *** pounds in 2001 to *** pounds in 2002 and then to *** pounds in 2003. Interim 2004 U.S. apparent consumption of *** pounds was greater than interim 2003 U.S. apparent consumption of *** pounds.^{141 142} Processors generally cited lower prices as the reason for increased consumption, while importers were more likely to attribute increased consumption to an increase in demand brought about by factors such as increased health consciousness, wider availability, and increased marketing activities.¹⁴³

As stated above, warmwater shrimp is generally used in meal preparations. U.S. demand for certain non-canned warmwater shrimp comes from retail sellers of both prepared and unprepared products

¹³⁸ 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.”).

¹³⁹ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

¹⁴⁰ Chairman Koplán and Commissioner Lane note that, unless otherwise indicated, the remaining discussion in section III of the opinion is also applicable to the certain warmwater shrimp domestic like product that they have defined.

¹⁴¹ CR/PR, Table C-2. U.S. production data used to compute apparent consumption were derived from official statistics of the National Marine Fisheries Service and the U.S. Marine Shrimp Farming Program. These statistics encompass both wild catch landings and farmed production. Consequently, they include both fresh and processed warmwater shrimp. Shipments of U.S.-produced canned warmwater shrimp were then deducted from this total. Consequently, the data correspond to our definition of the certain non-canned warmwater shrimp domestic like product.

¹⁴² Chairman Koplán and Commissioner Lane note that these trends are also applicable for certain warmwater shrimp. Indeed, there is little difference between the public data concerning U.S. apparent consumption of certain warmwater shrimp and the proprietary data concerning U.S. apparent consumption of certain non-canned warmwater shrimp. U.S. apparent consumption increased from 1.01 billion pounds in 2001 to 1.05 billion pounds in 2002 and then to 1.21 billion pounds in 2003. Interim 2004 U.S. apparent consumption of 519 million pounds was greater than interim 2003 U.S. apparent consumption of 456 million pounds. CR/PR, Table IV-5.

¹⁴³ CR at II-14, PR at II-9.

– which are typically grocers – and from restaurants. Restaurants account for an estimated 80 percent of total U.S. consumption.¹⁴⁴

b. Supply Conditions

Numerous firms engage in the harvesting or processing of certain non-canned warmwater shrimp in the United States. Although there are not authoritative data on the total number of commercial shrimping licenses held in the United States, information presented by petitioner indicates that in 2003 there were over 16,000 holders of commercial fishing licenses in four Gulf states.¹⁴⁵ The petition identified 125 firms as domestic processors of warmwater shrimp. Thirty-seven firms provided usable trade and/or financial data in response to the Commission’s processors’ questionnaire. The data below pertaining to the domestic industry that processes certain non-canned warmwater shrimp are based on 30 of these responses.^{146 147}

Domestically-produced shrimp is overwhelmingly wild caught. During the period examined, wild-catch landings accounted for between 94 percent and 97 percent of total U.S. warmwater shrimp production.¹⁴⁸ Environmental concerns, high land costs in coastal areas, and a limited growing season limit the ability to expand shrimp farming in the United States.¹⁴⁹

Warmwater shrimp are harvested from the Gulf of Mexico, and to a lesser extent from the Atlantic Coast between the Carolinas and Florida. Harvesting is seasonal, with the main fishing season occurring between May and December. Processors freeze part of their in-season inventory for sales off-season.¹⁵⁰

The vast majority of the subject imports, by contrast, is farmed.¹⁵¹ Supply of the subject imports, when considered in the aggregate, is less seasonal than that of domestically-harvested shrimp. Although there is some degree of seasonality in the supply of particular sizes and/or species from individual subject countries, purchasers can generally obtain imports from another subject country when one country’s season ends or its supply is interrupted. Purchasers described the subject imports as more likely to be available the entire year than domestically produced shrimp.¹⁵²

¹⁴⁴ CR at II-12-13, PR at II-8-9.

¹⁴⁵ Petitioner Hearing Ex. 27.

¹⁴⁶ See CR at III-1, PR at III-1. Of the firms that provided usable data in response to the processors’ questionnaire that have not been included in the Commission’s database, two have been excluded because they do not engage in sufficient domestic production-related activities, four have been excluded pursuant to the related parties provision, and one firm processes only canned warmwater shrimp.

¹⁴⁷ The data on which Chairman Koplan and Commissioner Lane rely pertaining to the domestic industry processing certain warmwater shrimp encompass questionnaire responses from 31 processors. These include the 30 processors on which the majority relies and the single domestic canner.

¹⁴⁸ CR/PR, Table IV-4. Deduction of the very small volume of canned shrimp production would not change these percentages materially.

¹⁴⁹ CR at I-11-12, PR at I-9.

¹⁵⁰ CR at II-3, PR at II-2. Frozen shrimp may be consumed up to two years after it has been processed. Petitioner Posthearing Brief, Ex. 21, ¶ 3.

¹⁵¹ CR at II-6, VII-1 n.1, PR at II-4, VII-1 n.1.

¹⁵² CR at II-8-9, PR at II-5.

During the period examined, subject imports accounted for the majority of U.S. apparent consumption.¹⁵³ The next largest source of supply was from nonsubject sources. The share of the quantity of U.S. apparent consumption of certain non-canned warmwater shrimp represented by nonsubject imports ranged from a low of *** percent in 2003 to a high of *** percent in interim 2004.¹⁵⁴ The domestic industry supplied a smaller share of the market than either subject imports or nonsubject imports.¹⁵⁵ The parties agree that the quantity of warmwater shrimp available from U.S. fisheries is insufficient to meet demand for the product.¹⁵⁷

c. Interchangeability Considerations

The record contains information indicating that both domestically processed frozen shrimp products and the subject imports are sold to similar types of customers for the same applications. Petitioner has presented declarations from domestic processors indicating that during the period examined they have sold appreciable quantities of their products to customers including large food service distributors, large chain restaurants, and breaders.¹⁵⁸ Indeed, one of the large food distributors named in petitioner's declarations, *** confirmed to Commission staff that it sells both products containing domestically processed shrimp and products containing the subject imports ***.¹⁵⁹

Information compiled in the purchasers' questionnaires confirms that the same entities purchase both domestically processed product and the subject imports. Of the 30 purchasers that provided information concerning the matter, 25 indicated that they purchased both domestically processed product and subject imports in 2003 and/or interim 2004.¹⁶⁰

We acknowledge that these purchasers had mixed perceptions about the interchangeability between domestically processed shrimp and the subject imports. As explained in section III.B.2. above, however, majorities of purchasers reported that domestically processed shrimp was at least somewhat interchangeable with imports from each of the six subject countries.¹⁶¹

Comments about lack of substitutability were also reflected in both questionnaire responses and hearing testimony in which purchasers indicated perceptions that domestically processed frozen shrimp was inferior to the subject imports in non-price characteristics such as availability, consistency, handling, product range, and reliability.¹⁶² We do not question the credibility of these reports. Nevertheless, there

¹⁵³ CR/PR, Table C-2. Chairman Koplan and Commissioner Lane rely on the data at CR/PR, Table IV-5 in making the same finding.

¹⁵⁴ CR/PR, Table C-2.

¹⁵⁵ Chairman Koplan and Commissioner Lane note that the percentage of U.S. apparent consumption of certain warmwater shrimp represented by nonsubject imports ranged from a low of *** percent in 2003 to a high of *** percent in interim 2004. CR/PR, Table IV-5.

¹⁵⁶ CR/PR, Table C-2. Chairman Koplan and Commissioner Lane have relied on the data in CR/PR, Table IV-5 in making the same finding.

¹⁵⁷ Tr. at 114 (Appelbaum); China Coalition Prehearing Brief at 7.

¹⁵⁸ Petitioner Posthearing Brief, Ex. 9, ¶¶ 6-9; Ex. 10, ¶¶ 23-27. Respondent witnesses emphasized that the subject imports serve such customers. Tr. at 229 (Herzig), 239 (Mentzer).

¹⁵⁹ Memorandum of John Benedetto, Commission economist, to File (Dec. 16, 2004).

¹⁶⁰ CR/PR, Table II-6.

¹⁶¹ CR/PR, Table II-3.

¹⁶² See CR/PR, Table E-1, Tr. at 229 (Herzig), 237 (Redmond), 240-45 (Mentzer).

are several reasons why they do not provide a sufficient basis for the finding sought by respondents that domestically processed shrimp and subject imports are highly differentiated products.

First, the testimony and questionnaire responses cannot negate the information on the record indicating overlaps in purchasers between domestically processed shrimp and the subject imports. Indeed, the three purchasers that testified on respondents' behalf during the hearing indicated that they purchase some domestically processed product.¹⁶³ While these purchasers admittedly testified that the domestically processed product they purchased was not necessarily used interchangeably with the subject imports they purchased, this is not the case for all purchasers. As indicated above, other purchasers perceive domestically processed shrimp and the subject imports to be interchangeable and in fact use them for the same applications.

Second, most responding producers indicate that they require approval of suppliers for either a substantial portion or all of their purchases. Over 60 percent of responding suppliers with approval requirements (19 of 30) reported that no suppliers failed to receive approval.¹⁶⁴ Given that the overwhelming majority of reporting purchasers indicated purchases of U.S.-processed product, these data indicate that the domestically processed product satisfies purchaser approval standards with at least some frequency.

Third, purchasers' comments on factors such as availability and product range to some extent reflect that the supply of domestically processed product is subject to greater constraints than are the subject imports as a whole. Because it is not disputed that the domestic industry cannot supply sufficient product to satisfy all U.S. demand, it is not surprising that in some instances purchasers report that subject imports are superior in factors such as availability, product range, and reliability of delivery.¹⁶⁵

Fourth, the purchasers' testimony and comments establish at most that some large-volume purchasers may have applications in which the subject imports may be used for which domestically processed product may not be substituted. There is nothing on the record that indicates that there are any significant applications for which only the domestically processed product may be used for which the subject imports may not be substituted. To the contrary, as discussed further below, a major thrust of respondents' presentation in these investigations has been to fault the domestic industry for failing to develop such applications, such as positioning their product as a "premium" wild-caught product.¹⁶⁶ This consideration also undercuts the notion that the domestically processed product and the subject imports are highly differentiated products.

Even taking into account purchasers' perceptions of non-price differences between domestically processed shrimp and the subject imports, the record indicates that purchasers generally perceive these products are at least somewhat interchangeable, that many of the same entities purchase both subject imports and domestically processed product, and that purchasers acquire U.S.-processed product for the same uses that they acquire the subject imports. In light of this, we find that domestically processed certain non-canned warmwater shrimp and the subject imports are at least moderate substitutes.

¹⁶³ Tr. at 230 (Herzig), 235 (Redmond), 240 (Mentzer).

¹⁶⁴ CR at II-31, PR at II-21.

¹⁶⁵ This fact, however, does not detract from our finding in section III.C.3 below that subject imports displaced the domestic like product during the period examined.

Commissioner Pearson does not join this footnote.

¹⁶⁶ See, e.g., ASDA Prehearing Brief at 2; Tr. at 46 (Connelly), 393 (Connelly).

3. Volume of the Subject Imports¹⁶⁷

The quantity of subject imports increased throughout the period examined. The quantity of cumulated subject imports of certain non-canned warmwater shrimp increased from *** pounds in 2001 to *** pounds in 2002 to *** pounds in 2003. Cumulated subject import quantity was higher in interim 2004, when it was *** pounds, than in interim 2003, when it was *** pounds.^{168 169}

Market penetration of cumulated subject imports also increased throughout the period examined. The share of U.S. apparent consumption of certain non-frozen warmwater shrimp held by cumulated subject imports of frozen warmwater shrimp increased from *** percent in 2001 to *** percent in 2002 and then to *** percent in 2003. Interim 2004 subject import market penetration of *** percent was below interim 2003 market penetration of *** percent.^{170 171} Respondents acknowledge that the interim period decline in market penetration was to some degree a function of the filing of the petition in these investigations.^{172 173}

The increases in subject import market penetration came largely at the expense of domestic producers. The share of U.S. apparent consumption of certain non-canned warmwater shrimp held by U.S. producers declined from 15.2 percent in 2001 to 13.1 percent in 2002 and then to 11.9 percent in 2003. Domestic producers' 8.4 percent share in interim 2004 was lower than their 10.1 percent share in interim 2003.^{174 175}

We do not agree with respondents that the increase in the market penetration of the cumulated subject imports relative to that of U.S. producers is simply a function of U.S. processors being unable to provide any more product than U.S. shrimp fisheries will yield. We observe initially that although from 2002 to 2003 the supply of fresh U.S. shrimp increased by 8.2 percent and U.S. apparent consumption increased by an even greater percentage, the U.S. shipments of those processors we have included in the

¹⁶⁷ Commissioner Pearson does not join section III.C.3. of the opinion. See Additional Views of Commissioner Pearson.

¹⁶⁸ CR/PR, Table C-2. The subject imports are exclusively frozen products.

¹⁶⁹ Chairman Koplman and Commissioner Lane note that the quantity of cumulated subject imports of certain warmwater shrimp increased from *** pounds in 2001 to *** pounds in 2002 to *** pounds in 2003. Cumulated subject import quantity was higher in interim 2004, when it was *** pounds, than in interim 2003, when it was *** pounds. CR/PR, Table IV-4.

¹⁷⁰ CR/PR, Table C-2.

¹⁷¹ Chairman Koplman and Commissioner Lane note that the share of U.S. apparent consumption of certain warmwater shrimp held by cumulated subject imports increased from *** percent in 2001 to *** percent in 2002 and then to *** percent in 2003. Interim 2004 subject import market penetration of *** percent was below interim 2003 market penetration of *** percent. CR/PR, Table IV-5.

¹⁷² ASDA Prehearing Brief at 75.

¹⁷³ We also note that the ratio of cumulated subject imports to domestic production increased each year from 2001 to 2003 and was higher in interim 2004 than in interim 2003. CR/PR, Table C-2. Chairman Koplman and Commissioner Lane have relied on the data in CR/PR, Table IV-6 in making the same finding.

¹⁷⁴ CR/PR, Table C-2.

¹⁷⁵ Chairman Koplman and Commissioner Lane note that the share of U.S. apparent consumption held by the domestic like product, as they have defined it, declined from 15.3 percent in 2001 to 13.2 percent in 2002 and then to 12.0 percent in 2003. Domestic producers' 8.6 percent share of U.S. apparent consumption in interim 2004 was lower than their 10.2 percent share in interim 2003. CR/PR, Table IV-5.

domestic industry producing certain non-canned warmwater shrimp increased by only 4.4 percent.¹⁷⁶ During the period 2001 to 2003, these U.S. processors' U.S. shipments declined while the U.S. supply of fresh shrimp increased.¹⁷⁷ Consequently, the domestic industry was not able to increase its U.S. shipments of frozen warmwater shrimp to the extent the supply of fresh shrimp increased.¹⁷⁸

Additionally, wild-catch landings of U.S. fishermen were sharply lower in interim 2004 than they were in interim 2003.¹⁷⁹ Data collected in response to the Commission's fishermen's questionnaire indicate that the number of days fishing boats were at sea was lower in interim 2004 than in interim 2003.¹⁸⁰ The record does not indicate that these declines were due to natural factors.¹⁸¹ Rather, as explained further below, it indicates that the declines were due to reduced fishing effort attributable to the very low prices which precluded fishermen from operating profitably. We view the interim 2004 declines in both fishing effort and output as additional evidence that the subject imports have to some extent displaced supplies of shrimp of domestic origin in the U.S. market notwithstanding increasing consumption.^{182 183 184}

Certain respondents contend that the increase in subject import volume and market penetration simply reflected that the subject imports "created a new market" and supplied new channels of distribution.¹⁸⁵ This argument cannot be reconciled with our finding above that the large and increasing volume of subject imports has not merely satisfied increased demand, but in addition has displaced domestic production as well. Furthermore, the record does not indicate that subject imports serve any new markets or channels of distribution that were created during the period examined. At most, it

¹⁷⁶ CR/PR, Tables IV-5, C-2, C-3.

¹⁷⁷ CR/PR, Tables IV-5, C-3.

¹⁷⁸ Chairman Koplan and Commissioner Lane note that this is also true for the domestic industry they have defined. From 2001 to 2003, the U.S. shipments of those processors in the domestic industry producing certain warmwater shrimp declined. From 2002 to 2003, these processors' U.S. shipments increased by *** percent. CR/PR, Table III-6.

¹⁷⁹ CR/PR, Table IV-4.

¹⁸⁰ CR/PR, Table F-2.

¹⁸¹ The 2004 hurricane season began after June 30, 2004 and thus could not have affected the interim period data. See Petitioner Posthearing Brief at B-65.

¹⁸² Respondent economic witness Dr. Chad Bown presented an economic model ("the Kelly model") purporting to show that any volume of domestic production displaced by imports was minimal. We find Dr. Bown's analysis to be flawed because the Kelly model used by Dr. Bown does not address the inquiry posed by the statute, which concerns the volume of subject imports and not imports in general. See Tr. at 267 (Bown).

¹⁸³ Chairman Koplan, Vice Chairman Okun, and Commissioner Lane note that the results yielded by the model used by Dr. Bown are to a great extent dependent upon the inputs used. Dr. Bown used several elasticities, particularly concerning the elasticity of U.S. supply and the elasticity of substitution, that differ sharply from those estimated by the Commission's economic staff. Compare CR at II-42-43, PR at II-26-27 with ASDA Prehearing Brief, Ex. 10 at 57-58. Chairman Koplan, Vice Chairman Okun, and Commissioner Lane disagree with Dr. Bown's estimate of the elasticity of U.S. supply for the reasons stated in the Commission report. See CR at II-42 & n.58, PR at II-26 & n.58. His estimate of the elasticity of substitution is flawed for the reasons stated in section III.C.2.c. above.

¹⁸⁴ Because the "Kelly model" economic analysis presented by Dr. Bown does not address the question posed by the statute as to the impact of the volume of subject imports, Commissioners Miller and Hillman did not find it to be useful in reaching their determination in these investigations. They do not find that a change to the elasticity inputs used would have overcome this more basic flaw in the model.

¹⁸⁵ See China Coalition Prehearing Brief, Ex. 1 at 21-22.

indicates that demand has increased from large purchasers (such as restaurant chains and food processors) whose use of warmwater shrimp predated the period examined, and which have purchased warmwater shrimp from domestic processors.¹⁸⁶

We consequently find the volume of subject imports and the increase in that volume, both in absolute terms and relative to consumption in the United States, to be significant.

4. Price Effects of the Subject Imports

The record indicates that price is at least a moderately important consideration in purchasing decisions. Purchasers listed price second most frequently as both the most important factor and the second most important factor in purchasing decisions.¹⁸⁷ Purchasers at the hearing similarly acknowledged that, while price was not the sole consideration in their purchasing decisions, it was an important factor.¹⁸⁸ Purchasers also testified that they constantly monitor the market to stay apprised of price trends.¹⁸⁹

It is true that purchasers ranked quality above price as a purchasing factor.¹⁹⁰ As we discussed in section III.C.2.c., however, the record indicates that domestically processed shrimp and the subject imports are at least moderate substitutes notwithstanding purchasers' perceptions of the subject imports as being superior in certain non-price characteristics. In light of our prior findings concerning both substitutability and the importance of price in purchasing decisions, price will play a significant role – if admittedly not the only role – in a purchaser's decision whether to purchase a domestically processed product or the subject imports.¹⁹¹ Moreover, changes in the price of the subject merchandise will affect the prices of domestically processed shrimp to a significant degree.^{192 193}

¹⁸⁶ Cf. ASDA Posthearing Brief at A-59 (noting that Red Lobster Restaurants have been serving shrimp dishes since at least 1971); CR/PR, Table II-6.

¹⁸⁷ CR/PR, Table II-8.

¹⁸⁸ Tr. at 278 (Herzig), 280 (Redmond).

¹⁸⁹ Tr. at 299 (Herzig, Mentzer).

¹⁹⁰ CR/PR, Table II-8.

¹⁹¹ This finding distinguishes these investigations from Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684-685 (Final), USITC Pub. 2862 (March 1995), aff'd sub nom. Floral Trade Council v. United States, 20 CIT 595 (1996), on which respondents heavily rely. In Roses, the Commission found limited price competition between the domestic like product and the subject imports. Id. at I-21-24. Roses also found no evidence of price depression. By contrast, in these investigations we find significant price depression for the reasons explained below.

¹⁹² We do not find the contrary economic analysis (“the Armington model”) presented by the respondents' economist, Dr. Bown, to be persuasive. The Armington model estimates the elasticity of substitution between domestically processed shrimp and the subject imports. To derive this estimate, Dr. Bown used pricing data from the Commission's prehearing report that was based on responses to the processors' and importers' questionnaires. This pricing data may not give a complete picture of competition between domestically processed product and the subject imports. Other information not reflected in the pricing data, such as that in the purchasers' questionnaire responses, is valuable in determining the elasticity of substitution. See CR at II-43 n.59, PR at II- 27 n.59; Petitioner Posthearing Brief at A-3-7.

¹⁹³ Commissioners Miller and Hillman do not join the preceding footnote. They did not find the “Armington model” economic analysis presented by Dr. Bown to be more persuasive than the data and other information in the record of these investigations. They do not find that modifications to the elasticity estimates or other inputs would have made the results of this model more relevant in their determination.

The Commission collected pricing data concerning nine frozen warmwater shrimp products. The subject imports undersold the domestically processed product in 318 of 543 quarterly comparisons, or 58.6 percent of all such comparisons.^{194 195}

We have considered respondents' argument that the frequency of underselling varied dramatically among the different pricing products for which the Commission collected data. Respondents particularly emphasize that for pricing product 1, which featured the highest volume of domestic shipments of any of the products, there was pervasive overselling. We have neither given controlling weight to the data for product 1 nor disregarded it. Instead, in analyzing the data, we have taken into account that it encompasses both deveined and undeveined product.¹⁹⁶ The subject imports tend to be deveined, while domestically processed product is overwhelmingly undeveined.¹⁹⁷ The parties do not dispute that deveined shrimp sell at a premium over undeveined shrimp.¹⁹⁸ Consequently, the prices being compared in product 1 are not for entirely comparable products.

Additionally, while pricing product 1 has higher quantities of domestically processed product than do the other pricing products, it features lower quantities of subject imports than most of the other frozen products. We note that for several pricing products where there were greater quantities of subject imports and appreciable quantities of domestically processed product, there was predominant underselling.¹⁹⁹

Consequently, there was predominant underselling for the entire spectrum of products on which the Commission collected pricing data.²⁰⁰ That there was also pervasive underselling in individual pricing products where there were appreciable volumes of both the domestically processed product and the subject imports rebuts respondents' contention that the underselling data are skewed by the inclusion of products where the domestically processed product does not have a substantial presence.²⁰¹ In light of the relative importance of price in purchasing decisions and the gains in market penetration the subject imports made at the expense of the domestic industry during the period examined, we find the incidence of underselling to be significant.²⁰²

It is not disputed that there were large price declines for both the domestically produced product and the subject imports during the period examined. For every product for which a trend comparison could be derived between the first and final quarters of the period examined, prices for the domestically

¹⁹⁴ CR/PR, Table V-2.

¹⁹⁵ The Commission collected pricing data for ten distinct products within the certain warmwater shrimp domestic like product defined by Chairman Koplan and Commissioner Lane. The subject imports undersold the domestically produced product in 332 of 568 quarterly comparisons, or 58.5 percent of all such comparisons. CR/PR, Table V-2.

¹⁹⁶ Pricing product 1 was frozen warmwater shrimp and prawns, all species, 71 to 90 count, raw, headless, peeled (whether or not deveined), tail-off, block frozen (cut or not cut). CR at V-7, PR at V-6.

¹⁹⁷ Petitioner Posthearing Brief, Ex. 10, ¶ 30.

¹⁹⁸ See Petitioner Posthearing Brief, Ex. 10, ¶ 31; ASDA Prehearing Brief at 69.

¹⁹⁹ See CR/PR, Tables G-7-9. In fact, there were more observations of underselling than overselling for six of the eight frozen shrimp pricing products for which comparisons can be made. CR/PR, Table V-2.

²⁰⁰ Commissioner Pearson does not join this paragraph. See Additional Views of Commissioner Pearson.

²⁰¹ See ASDA Prehearing Brief at 70-71.

²⁰² There was additionally one confirmed lost sale. CR at V-12, PR at V-10. Respondents criticize the failure of the petitioning firms to make a substantial number of lost sales allegations. Most processors, however, indicated that they had difficulty supplying lost sales allegations because sales negotiations are usually conducted by telephone and the competitors are not usually known. CR at V-12, PR at V-10. Confirmed lost sales and revenues, however, are not a prerequisite to an affirmative determination. See, e.g., Makita Corp. v. United States, 974 F. Supp. 770, 789 (Ct. Int'l Trade 1997); Acciai Speciali Terni, S.p.A. v. United States, 19 CIT 1051, 1056 (1995).

processed product declined. For five of seven products, the price decline during this period exceeded 30 percent.²⁰³ For the subject imports, there were 39 products for which comparisons could be made on a country-specific basis between the first and final quarters of the period examined. There were price declines in 38 of these comparisons. In 31 instances, prices declined by more than 20 percent; in 17 instances, prices declined by more than 30 percent.^{204 205}

The two explanations respondents offer for the price declines lack factual support. Respondents first assert that the price declines simply reflect recent efficiencies in shrimp farming in the subject countries. Respondents' argument disregards that we compare prices for sale in the United States, not prices for which foreign producers sell their product for export. Moreover, the record contains no empirical data that would corroborate respondents' assertions. The witness who provided testimony on this matter on respondents' behalf furnished no empirical data in his direct testimony on how production costs may have declined in any of the subject countries during the period examined.²⁰⁶ Nor did he provide such information in responding to questions asked by Commissioners at the hearing.²⁰⁷ In a subsequent written response to questioning at the hearing concerning the significance of the reductions of production costs in the subject countries, respondents simply referred back to the hearing testimony and provided no new information.²⁰⁸

A second, related argument respondents assert is that the price declines that occurred during the period examined were due to competition from farmed shrimp generally, rather than the subject imports. As a legal matter, respondents' argument would be relevant only if the record shows that price competition from nonsubject imports breaks the apparent nexus between the large and increasing volumes of subject imports entering the U.S. market at declining prices and the large corresponding declines in the prices of the domestically processed product. The record does not support such a finding. As previously stated, subject import quantities were far larger than those for nonsubject imports during the period examined.²⁰⁹ The record does not indicate any consensus among purchasers that there was a price leader in the warmwater shrimp market.²¹⁰ Moreover, were respondents' hypothesis to be true, one would expect that both subject and nonsubject imports would have taken market share from the domestic

²⁰³ CR/PR, Table V-1.

²⁰⁴ CR/PR, Table V-1.

²⁰⁵ Chairman Koplán and Commissioner Lane note that the findings above are also applicable for the domestically processed pricing products they examined. For the subject imports, there were 41 products for which comparisons could be made on a country-specific basis between the first and final quarters of the period examined. There were price declines in 40 of these comparisons. In 32 instances, prices declined by more than 20 percent; in 18 instances, prices declined by more than 30 percent. CR/PR, Table V-1.

²⁰⁶ The witness first stated that an academic study performed in the 1980s indicated that it was far cheaper to farm shrimp in several of the subject countries than it was to harvest them from the Gulf of Mexico. Tr. at 220-21 (Chamberlain). That there were differences in the cost of production in the 1980s cannot explain price declines over a decade later. The witness then testified as to antiviral techniques he developed in 1999, which was before the period examined, in Malaysia, which is not a subject country. He asserted that these techniques caused production costs to decline during an unspecified period in Indonesia, which is also not a subject country. Tr. at 222-23 (Chamberlain).

²⁰⁷ See Tr. at 285-88 (Chamberlain).

²⁰⁸ ASDA Prehearing Brief at A-29.

²⁰⁹ CR/PR, Table C-2. Chairman Koplán and Commissioner Lane have relied on the data in CR/PR, Table IV-4 in making the same finding.

²¹⁰ CR at V-6, PR at V-5-6.

industry.²¹¹ Yet from 2001 to 2003, the subject imports took market share away not only from domestic producers but from nonsubject imports as well.²¹²

We therefore find that a causal nexus exists between the large quantities of subject imports entering the U.S. market at declining prices and the corresponding price declines for U.S.-processed certain non-canned warmwater shrimp. We consequently conclude that the subject imports had significant price-depressing effects.

5. Impact of the Subject Imports on the Domestic Industry

In analyzing the impact of the subject imports on the domestic industry producing certain non-canned warmwater shrimp, we examine each of the two segments of the industry – fishermen and processors.

During the period examined, fishermen experienced declines in employment-related indicators and extreme deterioration in operating performance. Publicly available data indicate that production of fresh warmwater shrimp fluctuated between 2001 and 2003, but was lower in interim 2004 than interim 2003. On a converted basis, U.S. production of fresh shrimp declined from 181.9 million pounds in 2001 to 168.7 million pounds in 2002, and then increased to 182.5 million pounds in 2003. Interim 2004 production of 91.3 million pounds was less than interim 2003 production of 108.6 million pounds.²¹³ We observe that the 130 fishermen who provided usable data in response to the Commission’s fishermen’s questionnaire, and who (in contrast to fishermen overall) increased their harvest during each full year of the period examined, also experienced lower harvests in interim 2004 than in interim 2003.²¹⁴ The questionnaire data indicate that fishermen’s shipments are simply a function of the harvest – which is the natural result of fishermen selling their harvest once their voyage concludes.²¹⁵ Employment declined throughout the period examined and wages paid to production workers declined from 2001 to 2003 and were lower in interim 2004 than in interim 2003.²¹⁶ Public data indicate that the number of commercial shrimp fishing licenses in four Gulf states declined each year from 2001 to 2004.²¹⁷

Average unit values (AUVs) fishermen received for the shrimp they sold declined sharply during the period examined, corresponding to the declines in prices. As a consequence, sales revenues declined from 2001 to 2003 and were lower in interim 2004 than in interim 2003.²¹⁸ Operating expenses also declined on both an absolute and per-unit basis. We observe, however, that many of the declines in operating expenses were not attributable to greater “efficiency.” The largest absolute per-unit decline in operating expenses was in labor costs.²¹⁹ This, however, is largely a function of the price declines that frequently exceeded 30 percent, as the wages crew members receive are a fixed proportion of the

²¹¹ Purchasers overwhelmingly perceived the subject and nonsubject imports as comparable products. CR/PR, Table E-1.

²¹² CR/PR, Table C-2. Chairman Koplman and Commissioner Lane have relied on the data in CR/PR, Table IV-5 in making the same finding. As discussed above, respondents acknowledge that the decline in subject import market share during interim 2004 was at least partially a function of the filing of the petitions in these investigations.

²¹³ CR/PR, Table IV-4.

²¹⁴ CR/PR, Table F-2.

²¹⁵ See CR/PR, Tables F-2-3.

²¹⁶ CR/PR, Table F-2.

²¹⁷ Petitioner Hearing Ex. 27.

²¹⁸ CR/PR, Table F-5.

²¹⁹ CR/PR, Table F-5.

revenues a vessel receives for its catch.²²⁰ Other per-unit declines from 2001 to 2003 were in vessel repairs and maintenance, insurance, and fishing gear.²²¹ The record indicates that numerous fishermen are cutting or deferring such expenses because they lack sufficient funds to pay them.²²²

The decline in AUVs was much steeper than the decline in operating expenses. As a result, operating performance declined sharply. Although the fishermen who provided data in response to the Commission's questionnaire reported an operating profit before salaries to corporate officers or partners of \$732,095 in 2001, they had operating losses before salaries of \$4.4 million in 2002, \$3.0 million in 2003, \$2.5 million in interim 2003, and \$3.8 million in interim 2004. Operating margins before salaries plummeted from 1.4 percent in 2001 to a negative 9.8 percent in 2002, and remained in negative territory in 2003 (negative 6.6 percent), interim 2003 (negative 20.0 percent), and interim 2004 (negative 36.0 percent). The percentage of fishermen reporting net losses before salaries soared from 37 percent in 2001 to 64 percent in 2002, and was at 60 percent in 2003. This percentage was a very high 73 percent in interim 2003, and was even higher at 84 percent in interim 2004.²²³

Processors showed increases in inventories, declines in employment, and generally poor financial performance. The production of those processors we have included in the domestic industry producing certain non-canned warmwater shrimp peaked in 2001 at 142.9 million pounds. Production then declined to 132.6 million pounds in 2002, and increased to 138.1 million pounds in 2003. The 49.7 million pounds produced in interim 2004 was lower than the 52.0 million pounds produced in interim 2003.^{224 225} Capacity was generally stable during the period examined and capacity utilization fluctuated within a narrow range from 2001 to 2003 and showed only small variations between the interim periods.²²⁶

Processors' U.S. shipments also peaked in 2001 at 118.3 million pounds. They then declined to 112.4 million pounds in 2002, and increased to 117.4 million pounds in 2003. The 51.5 million pounds of U.S. shipments in interim 2004 was less than the 54.7 million pounds of U.S. shipments in interim 2003. By contrast, inventories rose throughout the period examined, increasing from 23.7 million pounds in 2001 to 23.9 million pounds in 2002 and then to 28.9 million pounds in 2003. The 24.4 million pounds of inventories in interim 2004 were greater than the 19.5 million pounds of inventories in interim 2003. Because inventories grew while shipments did not, the ratio of inventories to shipments increased throughout the period examined.^{227 228}

²²⁰ Tr. at 63 (Versaggi), 65-66 (St. Pierre).

²²¹ CR/PR, Table F-5.

²²² Tr. at 62 (Versaggi), 66 (St. Pierre), 70-71 (Wallis), 76 (Chauvin). See also CR at J-3, J-6, J-11-14, PR at J-3.

²²³ CR/PR, Table F-5.

²²⁴ CR/PR, Table C-3.

²²⁵ The production of those processors Chairman Koplan and Commissioner Lane have included in the domestic industry producing certain warmwater shrimp peaked in 2001 at *** pounds. Production then declined to *** pounds in 2002, and increased to *** pounds in 2003. The *** pounds produced in interim 2004 was lower than the *** pounds produced in interim 2003. CR/PR, Table III-5.

²²⁶ CR/PR, Table C-3. Chairman Koplan and Commissioner Lane have relied on the data in CR/PR, Table III-5 in making the same finding.

²²⁷ CR/PR, Table C-3.

²²⁸ The U.S. shipments of those processors Chairman Koplan and Commissioner Lane have included in the domestic industry producing certain warmwater shrimp peaked in 2001 at *** pounds. They then declined to *** pounds in 2002, and increased to *** pounds in 2003. The *** pounds of U.S. shipments in interim 2004 was less than the *** pounds of U.S. shipments in interim 2003. CR/PR, Table III-6. Inventories increased from *** pounds in 2001 to *** pounds in 2003. The *** pounds of inventories in interim 2004 were greater than the *** pounds of (continued...)

The number of production and related workers declined from 2,180 in 2001 to 1,802 in 2002 and then to 1,616 in 2003. The 1,319 production workers in interim 2004 was fewer than the 1,431 in interim 2003. Hours worked and wages paid declined from 2001 to 2003 and were lower in interim 2004 than in interim 2003. By contrast, productivity increased during the period examined.^{229 230}

AUVs for those processors we have included in the domestic industry producing certain non-canned warmwater shrimp declined during the period examined, reflecting declining shrimp prices. These processors' unit cost of goods sold declined as well, largely reflecting reductions in what processors paid fishermen. Because sales quantities were stagnant to declining over the period examined, total sales revenues declined.²³¹ Operating income was \$4.4 million in 2001, negative \$131,000 in 2001, \$1.2 million in 2003, \$2.0 million in interim 2003, and \$4.3 million in interim 2004. Operating margins were 0.9 percent in 2001, negative 0.0 percent in 2002, 0.3 percent in 2003, 1.1 percent in interim 2003, and 2.7 percent in interim 2004.^{232 233} While over 65 percent of domestic processors had operating profits in 2001, over half the producers had operating losses in 2002 and 2003.²³⁴ The improvement in interim 2004 appears to be largely a function of the petitions, as processors were able to sell shrimp during 2004 for a higher price than they estimated they would receive when they arranged to purchase it.²³⁵ Because fishermen's operating performance in interim 2004 was worse than it was in interim 2003, the improved financial performance processors experienced in interim 2004 are not indicative of improvements in the industry as a whole. Rather, processors appear in interim 2004 to have shifted to fisherman a greater share of the impact of the subject imports.

Respondents have advanced several reasons why the subject imports are not responsible for the declines in AUVs and sales revenues and the poor operating performance experienced by both processors and fishermen. They first contend that the industry's problems are structural in nature, and that, in particular, fishermen cannot operate profitably because there are too many of them and barriers to entry into the industry are too low.²³⁶ The record, however, does not support the notion that attrition of the fishing fleet improved the operating performance of the surviving fishermen. During the period

²²⁸ (...continued)

inventories in interim 2003. Because inventories grew while shipments did not, the ratio of inventories to shipments increased throughout the period examined. CR/PR, Table III-8.

²²⁹ CR/PR, Table C-3.

²³⁰ The number of production and related workers for those processors Chairman Koplán and Commissioner Lane have included in the domestic industry producing certain warmwater shrimp declined from *** in 2001 to *** in 2002 and then to *** in 2003. The *** production workers in interim 2004 was fewer than the *** in interim 2003. Hours worked and wages paid declined from 2001 to 2003 and were lower in interim 2004 than in interim 2003. By contrast, productivity increased during the period examined. CR/PR, Table III-9.

²³¹ CR/PR, Table C-3. Chairman Koplán and Commissioner Lane have relied on the data in CR/PR, Table VI-1 in making the same finding.

²³² CR/PR, Table C-3. Additionally, processors' capital expenditures declined sharply. *Id.*

²³³ Chairman Koplán and Commissioner Lane note that for the industry producing certain warmwater shrimp, operating income was *** in 2001, *** in 2001, *** in 2003, *** in interim 2003, and *** in interim 2004. Operating margins were *** percent in 2001, *** percent in 2002, *** percent in 2003, *** percent in interim 2003, and *** percent in interim 2004. CR/PR, Table VI-1.

²³⁴ CR/PR, Appendix Table I-1.

²³⁵ Petitioner Prehearing Brief at 103. Respondents acknowledge that there was some improvement in prices immediately after the filing of the petitions attributable in part to the filing. ASDA Posthearing Brief at A-51.

²³⁶ ASDA Prehearing Brief at 43-46, 52-53; ABCC Prehearing Brief at 4-9; China Coalition Prehearing Brief at 19-21.

examined, the fishermen who responded to the Commission's questionnaire increased their average daily harvest, and from 2001 to 2003, managed to increase their total harvest notwithstanding declines in employment and the numbers of days their boats were at sea.²³⁷ Notwithstanding this increased productivity – and the fact that the overall number of vessels in the fishing fleet was declining – the operating performance of the fishermen deteriorated sharply. Additionally, as we previously observed, while fishermen have cut their costs during the period examined, their revenues have declined at a much sharper rate because of falling prices. We also observe that notwithstanding the alleged structural problems, the fishermen who furnished data to the Commission still operated profitably in 2001.²³⁸

Respondents also contend that the industry's problems are self-inflicted because the industry has devoted insufficient attention to marketing its product as a high-quality niche product. The legal relevance of this argument is questionable. The Court of International Trade has held that "importers take the domestic industry as they find it" and that inefficient operations by a domestic industry do not preclude the Commission from making an affirmative injury determination.²³⁹ The argument does not appear to be pertinent to the inquiry that the statute directs us to address – whether there is a nexus between the subject imports and the industry's acknowledged poor operating performance. Even assuming *arguendo* that the inquiry is pertinent, the record does not indicate that more effective marketing efforts would have materially ameliorated the adverse effects of the subject imports.²⁴⁰

Respondents cite what they characterize as low dumping margins in arguing that the domestic industry could not compete successfully with a fairly-traded product. In connection with this argument we have, as required by the statute, considered the magnitude of the margins of dumping that Commerce found.²⁴¹ We observe that, contrary to respondents' characterizations, the margins are not uniformly low.

²³⁷ CR/PR, Table F-2.

²³⁸ Moreover, petitioner submitted data indicating that U.S. shrimp fishermen have historically had profitable operations. Petitioner Hearing Ex. 21. Farmed warmwater shrimp from the subject countries, with its purportedly lower production costs, competed with domestic wild-caught shrimp in the U.S. market for many years prior to the period examined. Petitioner Hearing Ex. 22.

²³⁹ *Iwatsu Electric Co. v. United States*, 758 F. Supp. 1506, 1512, 1518 (Ct. Int'l Trade 1991).

²⁴⁰ The premium niche product theory is most vigorously advocated by a Texas A&M University study submitted by respondents. See ASDA Prehearing Brief, Ex. 6 at 47. But a draft report prepared by the National Marine Fisheries Service (NMFS), on which respondents also heavily rely, posits that such a marketing program "is uncertain in terms of outcome." ASDA Prehearing Brief, Ex. 1 at 94. The NMFS report provides more positive assessments of alternative measures such as vessel buy backs or fractional license programs. See *id.* at 89-93, 95-96. Such programs would require government action and could not be unilaterally implemented by the industry. It should be emphasized that neither the Texas A&M nor the NMFS studies purport to analyze systematically why the domestic shrimp industry is experiencing difficulties. Both studies acknowledge that increasing supplies of imported shrimp have placed downward pressure on domestic shrimp prices. ASDA Prehearing Brief, Ex. 1 at 23, Ex. 6 at 23. As detailed earlier, there is a causal relationship between the subject imports and these price declines.

We also do not find the testimony of China Coalition witness Lars Liabo concerning the purported benefits of a niche marketing program persuasive. Mr. Liabo presented various examples of successful niche marketing efforts for wild-caught seafood products. See Tr. at 258-60 (Liabo). Most of Mr. Liabo's examples did not involve U.S. markets, however, and he did not provide any information in either his oral or written testimony that indicates that any of the markets he analyzed has conditions of competition analogous to those found in the U.S. shrimp market.

Commissioner Pearson does not join the last paragraph of this footnote.

²⁴¹ For Brazil, Commerce found margins of 9.69 percent to 67.80 percent for three named exporters and 10.40 percent for all others. 69 Fed. Reg. at 76913. For China, Commerce found margins of between 27.89 and 84.93 percent for three named exporters for which it made affirmative LTFV findings, 55.23 percent for non-examined

(continued...)

For China, which in 2003 was the second largest supplier of the subject countries, and which was the fastest growing supplier during the period examined,²⁴² the lowest margin for any exporter found to be selling at LTFV was 27.89 percent and the all others rate was over 100 percent. There are also margins exceeding 25 percent for exporters in Brazil and Vietnam. Moreover, several of respondents' arguments appear to be premised on the notion that the Commission must find material injury by reason of dumping.²⁴³ Our reviewing court, however, has stated that "Congress has not simply directed ITC to determine directly if dumping itself is causing injury."²⁴⁴ Subsequent decisions have reiterated that the statute requires that the Commission ascertain the effect of a class or kind of imports that Commerce has found to be sold at LTFV and that it does not require the Commission to assess the effect of the dumping itself.²⁴⁵ Our findings conform to the statutory directive that we ascertain the impact of the dumped imports.^{246 247}

The large and increasing volume of subject imports that entered the United States during the period examined caused domestic prices to decline. These declines led to declines in operating revenues for both fishermen and processors, poor financial performance, and declining employment. We consequently conclude that the cumulated subject imports have a significant impact on the domestic industry.

²⁴¹ (...continued)

exporters entitled to a separate rate, and 112.81 percent for all others. 69 Fed. Reg. at 71003-04. For Ecuador, Commerce found margins of 2.35 percent to 4.48 percent for three named exporters and 3.26 percent for all others. 69 Fed. Reg. at 76915. For India, Commerce found margins of 5.02 percent to 13.42 percent for three named exporters and 9.45 percent for all others. 69 Fed. Reg. at 76918. For Thailand, Commerce found margins of 5.79 percent to 6.82 percent for three named exporters and 6.03 percent for all others. 69 Fed. Reg. at 76920. For Vietnam, Commerce found margins of 4.13 percent to 25.76 percent for four named exporters, 4.38 percent for non-examined exporters entitled to a separate rate margin, and 25.76 percent for all others. 69 Fed. Reg. at 71009.

²⁴² CR/PR, Table C-2. Chairman Koplman and Commissioner Lane relied on the data in CR/PR, Table IV-5.

²⁴³ See Tr. at 309 (Connelly), 337 (Stern).

²⁴⁴ Algoma Steel Corp. v. United States, 688 F. Supp. 639, 645 (Ct. Int'l Trade 1988), aff'd, 865 F.2d 240 (Fed. Cir. 1989).

²⁴⁵ Titanium Metals Corp. v. United States, 155 F. Supp.2d 750, 757 (Ct. Int'l Trade 2001); Iwatsu Electric Co. v. United States, 758 F. Supp. 1506, 1510 (Ct. Int'l Trade 1991).

²⁴⁶ To the extent that respondents have argued that imposition of duties will not remedy the difficulties of the domestic industry, their argument is not relevant as a legal matter. Nothing in the statute or case law requires (or allows) us to consider the likely effectiveness of an antidumping duty order in making our injury determination.

Respondents further contend that use of the Commission's COMPAS model indicates that the subject imports have had a minimal impact on the domestic industry. While COMPAS is a tool available to the Commission, it is not a substitute for considering the factors specified in the statute and the data on the record. See Altx, Inc. v. United States, 370 F.3d 1108, 1121 (Fed. Cir. 2004). We have examined the empirical data in the record pertaining to the statutory factors closely and found them to be more useful than conclusions based on the result of the COMPAS model.

²⁴⁷ Vice Chairman Okun, Commissioner Lane, and Commissioner Pearson further observe that respondents' COMPAS results are flawed because of the use of faulty or skewed inputs. Respondents used the same domestic supply elasticity estimate Vice Chairman Okun, Commissioner Lane, and Commissioner Pearson have previously criticized. As observed earlier, this estimate differs substantially from the one Commission staff prepared. Respondents also used the end points of staff estimates of elasticities of substitution that are most favorable to them.

We therefore determine that the domestic industry producing certain non-canned warmwater shrimp is materially injured by reason of cumulated subject imports from Brazil, China, Ecuador, India, Thailand, and Vietnam.²⁴⁸

D. Critical Circumstances

In its final determination, Commerce made an affirmative critical circumstances finding with respect to all Chinese exporters except Zhanjiang Guolian (which received a *de minimis* margin) and Red Garden.²⁴⁹ Consequently, the Commission must determine whether critical circumstances exist for these imports. Because we have determined that the domestic industry producing certain non-canned warmwater shrimp is materially injured by reason of subject imports from China, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”²⁵⁰ The SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”²⁵¹

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.²⁵²

Consistent with Commission practice,²⁵³ in considering the timing and volume of subject imports, we consider import quantities prior to the filing of the petitions with those subsequent to the filing of the petitions using monthly statistics on the record regarding exporters for which Commerce has made an affirmative critical circumstances determination.²⁵⁴

The petitions were filed on December 31, 2003. During the six month period from July 2003 to December 2003, there were 110 million pounds of imports from exporters subject to Commerce’s critical circumstances determination. During the six-month period from January 2004 to June 2004, there were

²⁴⁸ Chairman Koplun and Commissioner Lane determine that the domestic industry producing certain warmwater shrimp is materially injured by reason of cumulated subject imports from Brazil, China, Ecuador, India, Thailand, and Vietnam.

²⁴⁹ 69 Fed. Reg. at 71001-02. Commerce made negative final critical circumstances findings for India, 69 Fed. Reg. at 76917, and Thailand, 69 Fed. Reg. at 76920.

²⁵⁰ 19 U.S.C. § 1673d(b)(4)(A)(i).

²⁵¹ SAA at 877.

²⁵² 19 U.S.C. § 1673d(b)(4)(A)(ii).

²⁵³ See, e.g., Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 at 20-22 (Aug. 2003); Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338 at 12-13 (Aug. 2000).

²⁵⁴ Petitioner suggests that the Commission compare data for the first two months of 2004 and the first two months of 2003. It has provided no basis why this period would provide an appropriate basis for comparison.

51 million pounds of imports from these exporters.²⁵⁵ Consequently, import volumes for the pertinent exporters declined significantly immediately after filing of the petition.

The information available concerning inventories is that for all Chinese producers that responded to the Commission's foreign producer questionnaire. This indicates that inventories of the subject merchandise in China were significantly lower in June 2004 than they were at the end of 2003.²⁵⁶ Available information indicates that prices for Chinese frozen warmwater shrimp products during the first two quarters of 2004 were generally higher than those during the final quarter of 2003.²⁵⁷

Consequently, the record indicates that, in the period immediately after filing of the petition, volumes of imports subject to Commerce's critical circumstances finding declined, inventories declined, and prices increased. All of these factors support a conclusion that imports subject to Commerce's affirmative critical circumstances finding are not likely to undermine seriously the remedial effect of the antidumping order to be issued with respect to China. Accordingly, we make a negative finding with respect to critical circumstances.²⁵⁸

IV. CANNED WARMWATER SHRIMP

A. Domestic Industry

The pertinent legal standards are indicated in section III.A. above. The domestic canned warmwater shrimp industry consists of the single U.S. processor of canned warmwater shrimp, Bumble Bee.²⁵⁹

B. Negligible Imports

The statute provides that subject imports from one country that correspond to a domestic like product and account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition, shall be deemed negligible. If imports from multiple countries do not exceed the 3 percent threshold, they will be deemed negligible if they collectively account for less than 7 percent of all imports.²⁶⁰ By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.²⁶¹

²⁵⁵ CR/PR, Table IV-7.

²⁵⁶ CR/PR, Table VII-2.

²⁵⁷ This is true for six of the eight products on which there is data. CR/PR, Tables G-1, G-2, G-4, G-6, G-7, G-8. For the remaining two products, prices fell in the first quarter of 2004 but rose in the second quarter. CR/PR, Tables G-3, G-5.

²⁵⁸ Chairman Koplán and Commissioner Lane do not join the remainder of this opinion.

²⁵⁹ Because only *** percent of all warmwater shrimp processed in the United States in 2003 was canned, CR/PR, Table III-1, canned warmwater shrimp is not processed from fresh warmwater shrimp through a continuous line of production. Thus, fresh warmwater shrimp is not "substantially or completely" devoted to the production of canned warmwater shrimp. See 19 U.S.C. § 1677(4)(E)(ii)(I). Consequently, we do not include fishermen in the industry producing canned warmwater shrimp.

²⁶⁰ 19 U.S.C. § 1677(24)(A)(I)(I).

²⁶¹ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

The Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of deciding negligibility.²⁶²

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than 3 percent (or 7 percent, with respect to multiple countries) of all such merchandise imported into the United States.²⁶³

Imports of canned warmwater shrimp from China, Thailand, and Vietnam were respectively 13.5 percent, 59.0 percent, and 9.7 percent of all canned warmwater shrimp imports during the period from December 2002 to November 2003.²⁶⁴ Because these ratios are above the 3 percent statutory negligibility threshold, we find that imports of canned warmwater shrimp from China, Thailand, and Vietnam are not negligible.

There were no imports of canned warmwater shrimp from Brazil or Ecuador during the period December 2002 to November 2003. Imports of canned warmwater shrimp from India accounted for 1.0 percent of all canned warmwater shrimp imports during the period December 2002 through November 2003. During the period December 2002 through November 2003, imports of canned warmwater shrimp from Brazil, Ecuador, and India combined accounted for 1.0 percent of all canned warmwater shrimp imports.²⁶⁵ Consequently, subject canned warmwater shrimp imports from Brazil, Ecuador, and India are below both the individual and collective statutory negligibility thresholds.

We next consider whether subject canned warmwater shrimp imports from Brazil, Ecuador, and India will imminently exceed the statutory negligibility thresholds. We answer this question in the negative, as the record indicates that canned warmwater shrimp imports from these countries have not been present in the U.S. market during any recent period prior to the statutory negligibility period in quantities even close to the statutory negligibility thresholds.²⁶⁶ We further observe that the parties do not dispute that canned warmwater shrimp imports from Brazil, Ecuador, and India are negligible.²⁶⁷

We thus determine that imports of canned warmwater shrimp from Brazil, Ecuador, and India are negligible. Consequently, we terminate the investigations as they pertain to canned warmwater shrimp from these sources.

²⁶² 19 U.S.C. § 1677(24)(C). See also SAA at 856.

²⁶³ 19 U.S.C. § 1677(24)(A)(iv).

²⁶⁴ See Official Import Statistics.

²⁶⁵ See Official Import Statistics.

²⁶⁶ The most recent imports of canned warmwater shrimp from either Brazil or Ecuador prior to the statutory negligibility period occurred during 2000, when imports of canned warmwater shrimp from Ecuador accounted for less than 1 percent of all canned warmwater shrimp imports. Prior to July 2003, the most recent imports of canned warmwater shrimp from India occurred in 2000, when they accounted for less than 1 percent of all canned warmwater shrimp imports. See Official Import Statistics. To the extent that data reported by Indian canned shrimp producers in response to the Commission’s foreign producers’ questionnaire deviates from the official import statistics, we have relied on the official statistics.

²⁶⁷ See Chicken of the Sea Posthearing Brief at A-3-5; Petitioner Posthearing Brief at C-17-18 & n.58.

C. Cumulation

The general legal standards pertaining to cumulation are stated in section III.B.above.

Because subject canned warmwater shrimp imports from Brazil, Ecuador, and India are negligible, and the associated investigations have been terminated, they are ineligible for cumulation.²⁶⁸ Canned warmwater shrimp imports from China, Thailand, and Vietnam are eligible for cumulation. The parties do not dispute that the Commission should cumulate subject canned warmwater shrimp imports from these countries if canned warmwater shrimp is a separate domestic like product.²⁶⁹

The information in the record indicates that imported canned warmwater shrimp and domestically produced canned warmwater shrimp are sold side by side in supermarkets. Moreover, the principal importer of canned warmwater shrimp, Chicken of the Sea, has purchased canned product from both domestic sources and subject sources in recent years.²⁷⁰ These facts support a conclusion that the subject canned warmwater shrimp imports and the domestically produced product are fungible.

The other criteria the Commission examines in determining whether there is a reasonable overlap of competition are satisfied as well. Both the domestically produced product and the subject imports are sold to grocery stores and distributors, and are sold nationally.²⁷¹ Consequently, there are geographic overlaps and overlaps in channels of distribution. Imports of canned warmwater shrimp from China, Thailand, and Vietnam have been present in the U.S. market throughout the period examined.²⁷² Accordingly, we cumulate canned warmwater shrimp imports from China, Thailand, and Vietnam for purposes of our analysis of material injury by reason of subject imports for the domestic like product consisting of canned warmwater shrimp.

D. No Material Injury by Reason of Subject Imports

The general legal standards pertinent to analysis of material injury by reason of subject imports are stated in section III.C.1. above. We observe that petitioner did not assert a present material injury argument for a separate canned warmwater shrimp domestic like product. It argued solely that a separate canned warmwater shrimp industry was threatened with material injury by reason of subject imports.²⁷³

1. Conditions of Competition

Several conditions of competition are pertinent to our analysis of the domestic canned warmwater shrimp industry.

U.S. apparent consumption of canned warmwater shrimp fluctuated during the period examined. U.S. apparent consumption declined from 2001 to 2003, notwithstanding an increase from 2002 to 2003,

²⁶⁸ See 19 U.S.C. § 1677(7)(G)(ii)(III).

²⁶⁹ See Petitioner Posthearing Brief at C-17-19; Chicken of the Sea Posthearing Brief at A-5.

²⁷⁰ Chicken of the Sea Posthearing Brief, Ex. 3 at 2; Ex. 6 at 3.

²⁷¹ See ***.

²⁷² CR/PR, Table D-1.

²⁷³ See Petitioner Posthearing Brief at C-17, C-25-35.

but was higher in interim 2004 than in interim 2003.²⁷⁴ The parties agree that U.S. demand for canned warmwater shrimp has been flat or declining.²⁷⁵

Subject imports supplied the largest share of the U.S. canned warmwater shrimp market during the period examined. The domestic industry supplied the next largest share.²⁷⁶ As previously discussed, there is only one U.S. producer of canned warmwater shrimp – Bumble Bee. Nonsubject imports supplied a smaller share of the market than either the domestic industry or subject imports. The share of the U.S. market supplied by nonsubject imports, however, fluctuated sharply during the interim periods.²⁷⁷

2. Volume of the Subject Imports

The quantity of cumulated subject imports of canned warmwater shrimp declined during the period examined. Cumulated subject imports from China, Thailand, and Vietnam declined from 3.31 million pounds in 2001 to 3.26 million pounds in 2002 to 3.12 million pounds in 2003. Interim 2004 subject imports of 1.10 million pounds were lower than interim 2003 subject imports of 1.49 million pounds.²⁷⁸ The parties dispute whether the decline between the interim periods was a result of the filing of the petitions.²⁷⁹

Market penetration of the cumulated subject imports increased from 55.2 percent in 2001 to 58.4 percent in 2002 and then declined to 53.0 percent in 2003. Cumulated subject import market penetration was lower in interim 2004, when it was 37.4 percent, than it was in interim 2003, when it was 62.2 percent.²⁸⁰

Although subject imports accounted for a majority of U.S. apparent consumption of canned warmwater shrimp during most of the period examined, subject import volume and market penetration declined overall from 2001 to 2003 and showed further reductions between the interim periods.²⁸¹ These declines diminish the significance of the volume of subject imports.

²⁷⁴ U.S. apparent consumption of canned warmwater shrimp declined from *** pounds in 2001 to *** pounds in 2002, and then increased to *** pounds in 2003. Interim 2004 apparent consumption of *** pounds was higher than interim 2003 apparent consumption of *** pounds. CR/PR, Table D-1. As we indicated in section III.B.2. above, U.S. apparent consumption is much lower for canned warmwater shrimp than for certain non-canned warmwater shrimp.

²⁷⁵ Petitioner Posthearing Brief at C-26; Tr. at 384 (Wendt).

²⁷⁶ CR/PR, Table D-1.

²⁷⁷ The share of U.S. apparent consumption represented by nonsubject canned warmwater shrimp imports declined from *** percent in 2001 to *** percent in 2002, and then declined further to *** percent in 2003. This share was *** percent in interim 2003 – a lower share than that achieved during any full year of the period examined – and *** percent in interim 2004 – a higher share than that achieved during any full year of the period examined. CR/PR, Table D-1.

²⁷⁸ CR/PR, Table D-1.

²⁷⁹ Petitioner claims that the decline occurred because ***. Petitioner Posthearing Brief, Ex. 21, ¶ 13. Chicken of the Sea disputes this, stating that ***. Chicken of the Sea Posthearing Brief, Ex. 6, ¶ 17. It is unnecessary for us to resolve this factual dispute.

²⁸⁰ CR/PR, Table D-1.

²⁸¹ We acknowledge that the ratio of subject imports to domestic production did increase between 2001 and 2003. However, as we explain further below, the 2001 domestic production data are anomalous. The ratio of subject imports to domestic production declined from 2002 to 2003 and was lower in interim 2004 than in interim 2003. CR/PR, Table D-1.

3. Price Effects of the Subject Imports

To the extent that petitioner – which did not present a present material injury argument²⁸² – has made any argument on price effects, the crux of its argument is that Bumble Bee lost for price reasons a significant quantity of sales for private label product it made to Chicken of the Sea.²⁸³ (Indeed, this argument appears to be the crux of petitioner’s entire causation case for the canned warmwater shrimp domestic like product.) Having reviewed the submissions of the parties, we find that Bumble Bee lost this business not for price reasons, but because Chicken of the Sea did not desire to rely on its primary competitor in its main canned tuna business as its sole supplier of private label canned warmwater shrimp.²⁸⁴

Consequently, the single purchasing decision on which petitioner places principal reliance for its causation argument was not based on price considerations. This and the fact that the subject imports lost volume and market share to the domestic industry during the period examined diminishes the significance of the underselling observed.²⁸⁵

Prices for the domestically produced canned shrimp product declined between the first observation (for the first quarter of 2002) and the second (for the following quarter), but fluctuated within a fairly narrow range for the remaining nine quarters of observations. Prices for the subject imports generally fluctuated within a fairly narrow range during most of the periods during which observations for a domestically produced product were available. Even when there were fluctuations in the prices of subject imports, there was no discernible correlation between these changes and changes in the domestic canner’s price.²⁸⁶ We consequently find that the subject imports did not have significant price-depressing effects.

While we acknowledge that the domestic canner’s ratio of cost of goods sold (COGS) to sales was higher in 2003 than in 2001, this appears to be in substantial part due to ***.²⁸⁷ The ratio of COGS to sales declined from 2002 to 2003, and was lower in interim 2004 than in interim 2003.²⁸⁸ Based on this data, we find that cumulated subject imports of canned warmwater shrimp from China, Thailand, and Vietnam did not have significant price-suppressing effects.

²⁸² Petitioner was asked at the hearing to brief volume, price effects, and impact based on a separate canned warmwater shrimp domestic like product. See Tr. at 210.

²⁸³ Petitioner provides no meaningful details concerning its other allegations. Petitioner Posthearing Brief, Ex. 21, ¶ 5.

²⁸⁴ This finding is based on our review of the materials in the record, including Chicken of the Sea Posthearing Brief, Ex. 6, Petitioner Posthearing Brief, Ex. 21, and the hearing testimony of Mr. Cook of Bumble Bee.

²⁸⁵ For the canned warmwater shrimp product on which the Commission collected pricing data, subject imports from China, Thailand, and Vietnam undersold the domestic like product in 14 quarterly comparisons and oversold it in 11. CR/PR, Table V-2.

²⁸⁶ CR/PR, Table G-10. The domestic canner ***.

²⁸⁷ CR/PR, Table D-1. ***.

²⁸⁸ CR/PR, Table D-1.

4.

Impact of Subject Imports on the Domestic Industry²⁸⁹

The indicator of the domestic canner that fell most sharply between 2001 and 2003 is production, which declined by *** percent.²⁹⁰ Because production increased from 2002 to 2003 and was higher in interim 2004 than in interim 2003, this decline was entirely attributable to events in 2001. *** Bumble Bee experienced the effects of the private label sales it lost from Chicken of the Sea.²⁹¹ We have previously found that these sales were not lost for price reasons.

***.²⁹² Because ***, we believe that sales and shipments provide better measures of the domestic canner's performance. The canner's quantity of both sales and U.S. shipments increased from 2001 to 2003 and were higher in interim 2004 and interim 2003. Inventories declined during the period examined.²⁹³

Moreover, notwithstanding the declines in production, the domestic canner gained market share during the period examined. Its share of U.S. apparent consumption rose from *** percent in 2001 to *** percent in 2003, and was higher in interim 2004 than in interim 2003.²⁹⁴

Employment-related indicators generally declined during the period examined, although they increased from 2002 to 2003 and during the interim period comparison.²⁹⁵ These employment declines appear to be a function of the lost private label sales.

The domestic canner's financial performance was mixed. It incurred *** in 2002 and interim 2003, but showed *** financial performance during 2001, 2003, and interim 2004.²⁹⁶

Most performance indicators for the domestic canner, including shipments, market share, and operating performance, improved during the latter portion of the period examined. Any performance declines appear to be related to the loss of private sales to Chicken of the Sea, which we have found were not price-related. Due to these improvements in performance indicators and the lack of any significant price-depressing or -suppressing effects from the subject imports, we conclude that cumulated subject imports from China, Thailand, and Vietnam did not have a significant impact on the domestic industry producing canned warmwater shrimp. We consequently determine that the domestic canned warmwater shrimp industry is not materially injured by reason of subject imports from China, Thailand, and Vietnam.

E. No Threat of Material Injury by Reason of Subject Imports

Section 771(7)(F) of the Act directs the Commission to determine whether an industry in the United States 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."²⁹⁷ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat

²⁸⁹ Information on the pertinent dumping margins was provided in section III.C.5. above.

²⁹⁰ CR/PR, Table D-1.

²⁹¹ Petitioner Posthearing Brief, Ex. 21, ¶¶ 12, 14.

²⁹² CR/PR, Table D-1. There were no changes in the domestic canner's capacity during the period examined. Consequently, capacity utilization fluctuated in the same manner as production. Id.

²⁹³ CR/PR, Table D-1.

²⁹⁴ CR/PR, Table D-1.

²⁹⁵ CR/PR, Table D-1.

²⁹⁶ CR/PR, Table D-1.

²⁹⁷ 19 U.S.C. § 1677d(b) and 1677(7)(F)(ii).

factors “as a whole.”²⁹⁸ In making our threat determination, we have considered all factors that are relevant to these investigations.²⁹⁹

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act, which leaves to the Commission’s discretion the cumulation of imports in analyzing threat of material injury.³⁰⁰ Based on an evaluation of the relevant criteria, our analysis supporting cumulation in the context of assessing present material injury, and the lack of any objection to cumulation for threat analysis, we exercise our discretion to cumulate canned warmwater shrimp imports from China, Thailand, and Vietnam. For the reasons

²⁹⁸ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

²⁹⁹ 19 U.S.C. § 1677(7)(F). The Commission must consider, in addition to other relevant economic factors, the following statutory factors in its threat analysis:

- (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,
- (VII) in any investigation under this subtitle 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 1671d(b)(1) or 1673d(b)(1) of this title 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).

Moreover, the Commission shall consider the threat factors “as a whole” in making its determination “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur” unless an order issues. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.

Factors I and VII are inapplicable to the canned warmwater shrimp domestic like product. With respect to section VIII, the record does not contain any information that the domestic canned warmwater shrimp industry is engaging in any efforts to develop a more advanced product.

³⁰⁰ 19 U.S.C. § 1677(7)(H).

discussed below, we determine that the domestic canned warmwater shrimp industry is not threatened with material injury by reason of cumulated subject imports.

There was no significant rate of increase in the volume or market penetration of subject imports during the period examined. As discussed above, both the quantity and market penetration of subject imports declined from 2001 to 2003. Consequently, the data concerning subject import trends during the period examined do not indicate the likelihood of substantially increased subject imports.

The record indicates that there is unused capacity in the subject countries we have cumulated. Unused capacity existed throughout the period examined, however.³⁰¹ Nevertheless, cumulated subject import volume and market penetration did not increase. Moreover, while the record indicates that the industries producing subject merchandise are export-oriented, they have significant markets other than the United States.³⁰² In light of the historical data, we cannot conclude that the existence of unused capacity indicates a likelihood of substantially increased subject imports.

We found above that the cumulated subject imports do not currently have significant price-suppressing or -depressing effects. Given the cumulated subject import volumes are unlikely to increase significantly, the lack of significant price effects will likely continue.

We do not find that the data in the record concerning inventories support an affirmative threat determination. Inventory levels in the cumulated subject countries increased at the end of the period examined.³⁰³ As indicated above, the theoretical ability to increase exports had not led to actual increases during the period examined. Moreover, inventory levels of subject merchandise in the United States in June 2004 were at a low point for the period examined.³⁰⁴

There is a theoretical potential for product shifting, inasmuch as frozen shrimp can undergo further processing to be exported as a canned product. Nevertheless, we do not believe that a significant degree of product shifting is likely as a practical matter. As previously discussed, market participants agree that U.S. demand for frozen shrimp is increasing, while demand for canned warmwater shrimp is stagnant to declining.³⁰⁵ We do not believe that avoiding antidumping duties would provide a sufficient incentive for foreign producers to switch their production from a product type where demand is growing to one where demand is not. This is particularly true where the products are not good substitutes. As we found above, interchangeability between frozen and canned warmwater shrimp is limited, because canned shrimp are typically much smaller in size than frozen shrimp and are used in a far more limited variety of meal preparations.

We also have considered petitioner's argument that the domestic canner is in a vulnerable condition. Although we acknowledge that the domestic canner had mixed operating results during the period examined, we found above that the canner's shipments, market share, and financial performance all improved during the latter portion of the period examined. In light of these improvements and the other information in the record indicating that neither any significant increase in subject import volume nor significant price effects from cumulated subject imports is imminent, we do not find that there are demonstrable adverse trends indicating that there is likely to be material injury by reason of cumulated subject imports absent issuance of antidumping duty orders.

³⁰¹ CR/PR, Table D-3. This is based principally on data concerning canners in Thailand. Thailand was the source of the majority of cumulated subject imports throughout the period examined. CR/PR, Table D-1.

³⁰² CR/PR, Table D-3. We observe that this conclusion does not change if we additionally examine data concerning the industries producing all subject warmwater shrimp products in China and Vietnam, as petitioner advocates. See CR/PR, Table VII-2, VII-6.

³⁰³ CR/PR, Table D-3.

³⁰⁴ CR/PR, Table D-1.

³⁰⁵ Petitioner Posthearing Brief at C-26; Tr. at 384 (Wendt).

Accordingly, we determine that the domestic canned warmwater shrimp industry is not threatened with material injury by reason of subject imports from China, Thailand, and Vietnam.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing certain non-canned warmwater shrimp is materially injured by reason of subject imports from Brazil, China, Ecuador, India, Thailand, and Vietnam, but we find that critical circumstances do not exist with respect to imports from China. We determine that the domestic industry producing canned warmwater shrimp is not materially injured or threatened with material injury by reason of subject imports from China, Thailand, and Vietnam. We determine that subject canned warmwater shrimp imports from Brail, Ecuador, and India are negligible.

CONCURRING AND DISSENTING VIEWS OF CHAIRMAN KOPLAN AND COMMISSIONER LANE

Based on the record in these investigations, we determine that an industry in the United States producing certain canned or frozen warmwater shrimp and prawns is materially injured by reason of imports of subject merchandise from Brazil, China, Ecuador, India, Thailand, and Vietnam that are sold in the United States at less than fair value (“LTFV”). We concur with our colleagues in finding that critical circumstances do not exist with respect to the subject merchandise from China.

DOMESTIC LIKE PRODUCT

We join our colleagues in finding that fresh warmwater shrimp are part of the domestic like product under the Commission’s “semi-finished product” analysis. We also join in the Commission’s determination that “shrimp scampi” is not a separate like product for the reasons stated above. We dissent from the Commission’s views, however, in that we find that canned warmwater shrimp are part of the domestic like product encompassing frozen or canned warmwater shrimp and prawns, consistent with the scope of investigation as defined by the Department of Commerce.

A. Arguments of the Parties

1. Respondents

Respondents Chicken of the Sea and Seatech, both of which are importers of the subject merchandise, argue that the Commission should define canned shrimp as a distinct domestic like product. They point to distinctions in packaging between canned and frozen warmwater shrimp, i.e. canned shrimp is typically sold in four to six-ounce cans that have been hermetically sealed and cooked, while frozen shrimp is typically sold in a larger-size box or bag.¹ They assert that the canning process imparts distinct physical characteristics that distinguish canned from frozen warmwater shrimp. They contend that these characteristics include different ingredients, a different nutritional profile, softer texture, and a metallic taste. They assert that canned shrimp must always be peeled and cooked before packaging while frozen shrimp is sold in a variety of forms, and that canned shrimp are typically smaller than frozen shrimp.²

Chicken of the Sea and Seatech contend that canned warmwater shrimp is not used for “center of the plate” presentations, but is typically one of several ingredients in salads, soups, dips or casseroles. They contend that the limited range of overlap in end use, together with differences in physical characteristics limit the interchangeability of canned and frozen shrimp.³

These respondents also contend that canned and frozen shrimp are sold through different channels of distribution, in that frozen shrimp is sold principally to restaurants and canned shrimp is sold principally to retailers.⁴ Chicken of the Sea asserts that canned shrimp is marketed differently from frozen shrimp, and that even in situations in which grocers carry both canned and frozen shrimp, the two

¹The distinct “canned shrimp” domestic product advocated by Chicken of the Sea and Seatech encompasses only products that can be stored at room temperature (shelf-stable products). It does not include canned products that must be kept frozen until ready for use. See Chicken of the Sea Posthearing Brief at A-1; Seatech Posthearing Brief at 3.

²Chicken of the Sea Posthearing Brief at 3-6, Seatech Prehearing Brief at 4; Tr. at 384 (Wendt).

³Chicken of the Sea Prehearing Brief at 7-9; Seatech Prehearing Brief at 4-6.

⁴Chicken of the Sea Prehearing Brief at 9-10; Seatech Prehearing Brief at 9-10.

products are carried by different departments. It asserts that consumers purchase frozen shrimp for immediate or short-term use, while canned shrimp is purchased for longer-term or indeterminate use. It argues that these factors indicate that customers perceive canned shrimp and frozen shrimp to be distinct products.⁵

Chicken of the Sea and Seatech assert that the production of canned shrimp requires specialized machinery for sealing the cans and making them shelf-stable. No domestic processors of frozen shrimp produce shelf-stable canned shrimp. The single domestic producer of canned warmwater shrimp does not process frozen shrimp.⁶ Chicken of the Sea and Seatech also argue that the price of canned shrimp is far higher on a per-pound basis than that of frozen shrimp.⁷ Chicken of the Sea further asserts that there is no correlation between the pricing data collected by the Commission for domestically-produced canned shrimp and that collected for domestically-produced frozen shrimp.⁸

2. Petitioner

Petitioner, the Ad Hoc Shrimp Trade Action Committee, contends that frozen and canned warmwater shrimp are produced from the same raw materials (fresh warmwater shrimp), and are sold in overlapping size ranges. It asserts that canned shrimp have a similar physical appearance to frozen shrimp that have been thawed, peeled, and cooked. It also notes that there is a domestically-produced frozen warmwater shrimp product that is sold in canned form.⁹ It also asserts that the use of preservatives is common to both canned and frozen shrimp.¹⁰ Petitioner contends that both canned and frozen warmwater shrimp are consumed in meal preparations in an overlapping range of recipes and has submitted numerous recipes which it states indicate that the two may be substituted for each other in specific preparations.¹¹ It also states that the interchangeability of frozen and canned shrimp is evidenced by their similar seasonal consumption cycles.¹²

Petitioner contends that there are common channels of distribution for canned and frozen warmwater shrimp, in that both are sold to both distributors and retailers, and that some of the distributors that purchase domestically-produced canned shrimp also purchase frozen shrimp.¹³ In response to a request for information regarding the consumers of canned shrimp, *** of Bumble Bee reported that ***.¹⁴ While petitioner acknowledges that grocers do not stock canned and frozen shrimp side-by-side, it emphasizes that grocers may carry frozen shrimp in several different departments (such as frozen foods and the seafood service counter).¹⁵

Petitioner states that the production process for canning is exactly the same as that for the production of frozen shrimp up until the packaging stage, such that the production equipment and

⁵Chicken of the Sea Prehearing Brief at pages 9 and 14-15.

⁶Chicken of the Sea Prehearing Brief at 11-13; Seatech Prehearing Brief at 7-8.

⁷Chicken of the Sea Prehearing Brief at 15-16; Seatech Prehearing Brief at 11-12.

⁸Chicken of the Sea Posthearing Brief at 11.

⁹Petitioner Prehearing Brief at 16-17.

¹⁰Petitioner Posthearing Brief at D-5, Ex. 41, attachments 2, 3.

¹¹Petitioner Prehearing Brief at 16-18.

¹²Petitioner Posthearing Brief at D-13.

¹³Petitioner Prehearing Brief at 18, Posthearing Brief at A-18, Ex. 21. .

¹⁴Email from *** to John Benedetto, the Commission's International Economist, December 10, 2004, EDIS document #220542.

¹⁵Petitioner Posthearing Brief at D-17-18.

processes in a facility producing canned shrimp are the same as those in a facility producing frozen shrimp up until the packaging stage.¹⁶ Petitioner also contends that responses to the Commission's purchaser questionnaire indicate that the majority of responding purchasers confirm that price changes for frozen shrimp will affect prices for canned shrimp.¹⁷

B. Analysis

Physical Characteristics and End Uses

Canned shrimp have a basic appearance similar to other (frozen and thawed) cooked and peeled shrimp.¹⁸ Furthermore, canned shrimp is produced in a wide range of sizes and does not solely consist of tiny shrimp or shrimp pieces. Bumble Bee, the only domestic producer of shelf-stable canned warmwater shrimp, indicated in its questionnaire response that ***.¹⁹ ***.²⁰ Thus, although a large percentage of canned shrimp consist of relatively small shrimp or shrimp pieces, a significant portion of the domestic canned shrimp are larger sized shrimp.

In addition to cans of smaller shrimp, Bumble Bee produces and sells cans of shrimp that are equivalent to 40 pieces per pound or larger on a live weight basis. For example, Bumble Bee's cans of "Large Shrimp" contain between 30 and 40 shrimp per can, which is equivalent to 36 to 40 shrimp per pound on a live weight basis. Bumble Bee additionally produces cans of "Jumbo Shrimp" with less than 30 pieces per pound.²¹ Bumble Bee has submitted invoices indicating that it has purchased fresh shrimp for canning in sizes as large as 31-35 pieces per pound.²² The invoices submitted by Bumble Bee, which are described as being from a "representative month in both 2003 and 2004" show an overwhelming preponderance of purchases of shrimp in the size ranges of 61/71, 71/80, and 81/100 pieces per pound, with a very small percentage of purchases in sizes over 100 pieces per pound. Questionnaire data indicate that 21.7 percent of U.S. processors' commercial shipments of frozen shrimp in 2003 were of count sizes smaller than 91 pieces per pound, and that 7.6 percent of these shipments were of counts smaller than 150 pieces per pound.²³

Domestically-produced canned shrimp products contain shrimp, water, salt, and preservatives.²⁴ Respondents' witness indicated that domestically-produced frozen shrimp can also contain extra water content and preservatives.²⁵

The end use of both canned and frozen shrimp is meal preparation. Domestic canned shrimp producer Bumble Bee lists a variety of recipes on its website in which canned shrimp is an essential

¹⁶Petitioner Prehearing Brief at 18-19.

¹⁷Petitioner Prehearing Brief at 19-20.

¹⁸Chicken of the Sea Posthearing Brief, Ex. 1.

¹⁹Seatech's Prehearing Brief notes at 12 that "The yield of net weight canned shrimp is 50 percent or less from the same raw materials {headless shell-on shrimp}, with the difference being the severe cooking temperature required for the canned product."

²⁰Bumble Bee Processor Questionnaire Response, response to question II-12.

²¹Petitioner Posthearing Brief, Ex. 49, ¶ 3.

²²Petitioner Posthearing Brief, Ex. 49 attachment 1.

²³Processors' Questionnaire Responses (aggregation of responses to question II-12).

²⁴Petitioner Posthearing Brief Ex. 49, attachment 3.

²⁵Hearing Tr. at 244 (Mentzer).

ingredient.²⁶ Additionally, there is some overlap in recipes for canned shrimp and those for frozen shrimp.

Interchangeability

Only six of the 36 purchasers that submitted questionnaire responses reported purchases of both frozen and canned shrimp. Purchasers such as *** stated that the products could not be substitutes, while purchasers such as *** indicated that consumers could use the products interchangeably in some end uses.²⁷ The restaurateur who testified at the hearing stated that his restaurant chain would not substitute canned shrimp for frozen shrimp.²⁸ However, petitioner has provided a large number of recipes that specify canned shrimp may be substituted for frozen shrimp. One characteristic that these recipes share with the recipes provided by Bumble Bee is that shrimp is one of several ingredients used to make the dish.²⁹

Channels of Distribution

Bumble Bee's questionnaire response indicates that throughout the period of investigation, *** percent of its shipments were sold to distributors and *** percent were sold directly to retailers and other buyers.³⁰ The record indicates that the great majority of canned shrimp is ultimately purchased by consumers in grocery stores.³¹ In contrast, petitioner has estimated that 80 percent of frozen shrimp is consumed in restaurants.³² As previously noted, six responding purchasers purchase both canned and frozen shrimp.³³ Bumble Bee states that it sells canned shrimp to several distributors that also purchase frozen shrimp.³⁴

²⁶Petitioner Prehearing Brief, Ex. 8.

²⁷Staff Report, CR at II-41, PR at II-26.

²⁸Hearing Tr. at 271 (Herzig).

²⁹Petitioner Prehearing Brief, Ex. 6.

³⁰Bumble Bee Processors' Questionnaire Response, response to question II-9.

³¹Hearing Tr. at 162 (Cook); Bumble Bee Processors Questionnaire Response, response ***.

³²Staff Report, CR at I-7, PR at I-6.

³³Staff Report, CR at II-41, PR at II-26.

³⁴Petitioner Posthearing Brief, Ex. 21.

Production Processes, Facilities, and Employees

There is one domestic processor of shelf-stable canned shrimp, Bumble Bee, which does not process frozen shrimp.³⁵ Bumble Bee states that after it receives warmwater shrimp it unloads, ***, weighs, peels, ***, deveins, *** them.³⁶ Bumble Bee states that the processes performed and the equipment it uses in these steps are the same as the processes and equipment that would be used in processing frozen shrimp. This assertion, which respondents do not contest, is supported by the record.³⁷ Bumble Bee's production process also includes several steps that it indicates are unique to canning. These include ***. These steps require specialized equipment not used by processors of frozen shrimp.³⁸

Producer and Customer Perceptions

Bumble Bee's website depicts canned shrimp as one member of a family of branded canned seafood products which also includes canned salmon, tuna, crab, oysters, clams, and sardines.³⁹ Grocers, which are among the principal purchasers of canned shrimp, typically display canned and frozen shrimp in different parts of the store that are supervised by different managers.⁴⁰ However, as previously noted, frozen shrimp may also be displayed in several different parts of the store.⁴¹ Bumble Bee has presented data indicating that grocery sales of both canned and frozen shrimp peak at the same time of year – during the late December-early January holiday season.⁴²

Price

The pricing data collected by the Commission indicate that domestically-produced canned shrimp is priced higher on a per-pound basis than the majority of the frozen shrimp products for which the Commission collected pricing data. However, domestically-produced product 3 (frozen shrimp or prawns, 26 to 30 count, raw, peeled and deveined, tail-on, block frozen) sold at average unit values higher than those reported for canned shrimp in six of ten quarters for which comparisons could be made; and prices for domestically-produced product 9 (frozen shrimp or prawns, 10 to 15 count, raw, headless, shell-on, block frozen) were higher on a per-pound basis than the comparable price for canned shrimp in each of the ten quarters for which comparisons could be made.⁴³ Canned shrimp is further processed than most of the other products for which pricing data were collected. As we noted in the preliminary stage of these investigations, shrimp of a particular size generally sell for lower prices than products of the same size that have been further processed. Petitioner has estimated that cooking adds *** cents per pound to the

³⁵Hearing Tr. at 89, 162 (Cook).

³⁶Petitioner Posthearing Brief, Ex. 49, ¶ 6, 7.

³⁷Staff Report CR at I-9-10, PR at I-7-8; Petitioner Prehearing Brief, Ex. 2 (Gollott and Blanchard declaration).

³⁸Petitioner Posthearing Brief, Ex. 49, ¶ 7.

³⁹See <http://www.bumblebee.com/products.jsp> (visited and printed December 16, 2004).

⁴⁰Chicken of the Sea Posthearing Brief, Ex. 3, ¶ 9-14.

⁴¹Petitioner Posthearing Brief at D-17-18.

⁴²Petitioner Posthearing Brief, Ex. 21, attachment 1.

⁴³Staff Report, Tables G1 through G-10.

value of shrimp; more than is added by either peeling or deveining.⁴⁴ ***. Petitioner does not dispute that a canned product will be more expensive than a frozen product containing similarly-sized shrimp.⁴⁵

Conclusion

We find that there are significant overlaps in characteristics between canned and frozen shrimp. Canned and frozen cooked shrimp have similar underlying physical characteristics and end uses. Canned shrimp are sold in a range of sizes that overlaps that of frozen shrimp, both are used for meal preparations and may be used interchangeably in certain recipes, and are produced using significant common equipment and processes. Although there are some applications for which canned shrimp is not interchangeable for frozen shrimp, the same can be said of any continuum that encompasses both upstream and downstream articles.⁴⁶ Each processing step closes the door on applications that call for the less-processed product.

There are several purchasers that distribute or retail both frozen and canned shrimp. Canned shrimp is actually less expensive on a per pound basis than some items in the spectrum of frozen shrimp products. While we acknowledge that the majority of frozen shrimp is consumed in restaurants, the record establishes that there are also substantial sales at retail. In our view, as the Commission found in the Preliminary Determination, we find again that the overlaps in product characteristics, end uses, channels of distribution, and production processes outweigh the distinctions between the canned and frozen shrimp. We therefore find that canned shrimp is part of a single domestic like product encompassing frozen or canned warmwater shrimp; consistent with the scope of the investigation as defined by the Department of Commerce.

⁴⁴Petitioner Postconference Brief, Ex. 35, Blanchard affidavit, ¶ 11.

⁴⁵Petitioner Posthearing Brief at C-34.

⁴⁶For example, within the continuum of frozen shrimp, peeled shrimp could not be substituted for unpeeled shrimp in applications that call for unpeeled shrimp, and cooked shrimp could not be substituted for raw shrimp in a recipe that calls for raw shrimp.

ADDITIONAL VIEWS OF COMMISSIONER DANIEL R. PEARSON

I join with my colleagues in finding that the domestic industry producing certain non-canned warmwater shrimp is materially injured by reason of subject imports from Brazil, China, Ecuador, India, Thailand, and Vietnam. However, my findings about this industry and this market differ in some ways from those of my colleagues, especially regarding the volume of subject imports and the interchangeability of subject imports with the domestic like product.

The domestic like product is overwhelmingly produced from wild-caught shrimp, while subject imports are overwhelmingly produced by aquaculture. The supply curve for the U.S. shrimp industry is vertical over most of its range. The record indicates that, no matter how high the price goes, the domestic catch is not likely to exceed roughly 220 million pounds of shell-on, headless shrimp. Shrimp landing information for the last two decades support this conclusion. According to a National Marine Fisheries Service series, the peak year for shrimp landings in the last 20 years was as long ago as 1986. Shrimp landings over the last few years have been, on average, higher than in the early part of the 1990s, but no higher than the average for most of the 1980s.¹ The harvest remained fairly consistent across a long period of time despite innovations in technology (*e.g.*, freezer boats, better weather information, etc.) or increased regulations (*e.g.*, TEDs). This consistency suggests there is an upward limit on the possible shrimp harvest, and landing data suggest that the industry has been operating at the upper ends of that limit through most of the period of investigation.

Under the conditions that have prevailed in this industry, there is no evidence on the record indicating that further price increases lead to a significantly larger aggregate catch. Over a wide range of prices, changes in the volume of imported shrimp appear to have no effect on the volume of shrimp caught by the U.S. industry.

While landings of wild-caught shrimp have been consistent, apparent U.S. consumption of shrimp has increased at significant rates. In a single two-year period, apparent U.S. consumption of certain non-canned warmwater shrimp increased by *** percent, from *** billion pounds in 2001 to *** billion pounds in 2003.² Imports were required to meet this demand. Cumulated subject imports increased by *** percent between 2001 and 2003, and the actual volume of subject imports increased from *** million pounds in 2001 to *** million pounds in 2003. Subject imports accounted for *** percent of apparent U.S. consumption in 2003, up from *** percent in 2001.³

These are significant absolute increases in volume. The increase in subject imports between 2001 and 2003 was greater than total U.S. production of certain noncanned warmwater shrimp in any year of the period of investigation. But these increases could not have come at the expense of the domestic industry. As the extensive history on landings shows, the industry's ability to increase its production is constrained. Shrimp landings in 2001 were little different than in the mid-1980s, when apparent U.S. consumption was perhaps half as large as in 2001.⁴

Nothing in the record suggests that the domestic industry could supply a significantly larger volume than it is currently supplying. To be sure, U.S. shipments of certain non-canned warmwater shrimp declined somewhat between 2001 and 2003, and inventories increased. But the increase in inventories was modest relative to U.S. shipments and U.S. production and particularly modest compared

¹ National Marine Fisheries Service Draft, "Shrimp Business Options," at 12, in ASDA prehearing brief, exhibit 1.

² CR/PR at Table C-2.

³ CR/PR at Table C-2.

⁴ Technical Assistance Curriculum, Wild-Harvested Shrimp," at 12, in ASDA prehearing brief, exhibit 6.

to U.S. consumption. Indeed, had the domestic industry sold all of its domestic product, if its inventories had been zero at the end of each year, its share of apparent U.S. consumption would have declined between 2001 and 2003 anyway.⁵ And it's difficult to argue that, in the absence of subject imports, the domestic industry would have produced significantly more in 2003. Landings in 2003 were virtually identical to 2001 landings, suggesting that intervening increases in demand or subject imports had little effect on harvesting efforts.

The record suggests that, over most of the period of investigation, there was no relationship between the volume of imports and the volume of domestic production.⁶ Thus, my volume analysis does not rely on the increase in subject imports relative to domestic production.

The record in this case contains extensive evidence of quality differences between the domestic like product and subject imports. Leaving those complaints aside, however, the disparities between subject imports and the domestic like product—namely, the elasticity of the supply for subject imports compared to the relative rigidity of domestic supply, and the significant difference in actual volumes—suggest that these products were not perfect substitutes for each other in the market. A far larger supply of subject imports was available in the market, and a more flexible supply as well; this suggests that subject imports naturally would be more attractive to purchasers concerned with obtaining high and consistent volumes. This is borne out by the testimony of purchasers who bought from both sources and sold the subject imports as high-volume items and the domestic like product as boutique items.⁷

Product-specific pricing data suggests a mixed pattern of overselling and underselling, with underselling in approximately 60 percent of the quarterly comparisons. The domestic industry was able to document only one lost sales allegation. However, the record still suggests that subject imports had a negative effect on prices for the domestic like product. Prices declined during the period of investigation.⁸ While interchangeability between the products was limited, some competition did occur between these products. In any case, subject imports dominated the market, and the sheer volume of subject imports in the market ensured that subject imports would have a significant influence on price. Subject imports did not “displace” the domestic like product in the market. Rather, growing global supplies of shrimp led to lower prices. These lower prices encouraged increased domestic consumption but depressed prices for the domestic like product. I therefore agree with the conclusion of my colleagues that a causal nexus exists between the large volume of subject imports and the corresponding price declines for the domestic like product, and I join them in concluding that subject imports had significant price-depressing effects.

⁵ Calculated from Table C-2. U.S. shipments in 2001 were *** million pounds and ending inventories were *** million pounds, for a total of *** million pounds; apparent U.S. consumption was *** billion pounds, for a market share of *** percent. In 2003, U.S. shipments were *** million pounds and ending inventories were *** million pounds, for a total of *** million pounds; U.S. apparent consumption was *** billion pounds, for a market share of *** percent.

⁶ If prices for shrimp decline substantially below historic levels, it is possible to envision the supply curve for domestically-caught shrimp declining to the left. This would happen when the U.S. shrimping fleet simply is no longer able to afford to go out fishing. Anecdotal evidence suggests this was occurring by the end of the period of investigation.

⁷ Tr. at 234-237 (Mr. Redmond), 294 (Mr. Herzig).

⁸ Respondents suggested that prices declined because of increased efficiencies in shrimp farming in general. This might be true, but the record contains no specific information to support the conclusion that efficiency gains in these particular industries led to the price declines occurring during this period of investigation.

Arguments were put forward by respondents that structural changes in the global shrimp market have been so great that these changes have been predominantly responsible for price declines during the period of investigation. Thus, any further price reduction related to dumping is too modest to create a causal nexus between LTFV imports and the injury suffered by the domestic industry.

Although this case was made anecdotally in the hearing, and has an aura of plausibility to it, the record contains little evidence that might substantiate it. No evidence was presented regarding changes in the cost of shrimp production via aquaculture in the subject countries over time, and only limited data were available regarding changes in global shrimp output during the period of investigation. Price data for shrimp in other countries were quite limited. No case was made as to whether or how the U.S. shrimp price might serve as a proxy for global prices. In the absence of such information, the record supports a conclusion that subject imports, largely through price effects, are a cause of material injury to the domestic industry.

I join my colleagues in finding that subject imports have had an adverse impact on the domestic industry, and that the domestic industry is materially injured by reason of subject imports. However, the economic efficiency and distributional equity of applying antidumping duties in these investigations can be questioned. The value of U.S. shrimp consumption is now over \$4 billion per year. With trade-weighted antidumping duties of approximately 25 percent, a scenario that continues consumption at the same level with imports from the same suppliers would yield an increase in consumer costs of around \$1 billion.

The U.S. industry produces less than 15 percent of the shrimp consumed in the United States. Its production is not likely to increase significantly to replace imports, even with orders in place. If prices rise 25 percent and the value of U.S. consumption increases by \$1 billion, the U.S. shrimp industry would benefit by receiving about 15 percent of that increase, or roughly \$150 million. Nonsubject imports make up about 23 percent of U.S. consumption. If imports are not redistributed in the wake of the orders, nonsubject import suppliers would be expected to receive greater benefits from higher prices (approximately \$230 million) than the domestic industry.⁹

The negative effects on consumers are likely to be less than indicated above. The marketplace can be expected to operate in such a way that nonsubject imports, or imports subject to relatively modest duties, will increase relative to imports subject to higher duties, and the price effects in the U.S. marketplace will probably be less than the trade-weighted average duty of 25 percent. Consumers are also likely to respond to higher shrimp prices by reducing shrimp consumption.

The statutes do not permit the Commission to consider these issues in making injury determinations in an antidumping investigation, and I have not done so here. Based on the record in these investigations, I join with my colleagues in determining that the domestic industry producing certain noncanned warmwater shrimp is materially injured by reason of subject imports.

⁹ This analysis does not include the potential effects of monies that might be distributed to the domestic industry under the Continued Dumping and Subsidy Offset Act of 2000.

PART I: INTRODUCTION

BACKGROUND

These investigations result from petitions filed by the Ad Hoc Shrimp Trade Action Committee, Washington, DC, on December 31, 2003, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of certain frozen or canned warmwater shrimp and prawns¹ from Brazil, China, Ecuador, India, Thailand, and

¹ In its final determinations, Commerce defined the subject product as--

“. . . certain warmwater shrimp and prawns, whether frozen or canned, 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 or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products that are processed from warmwater shrimp and prawns through either freezing or canning and that 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 (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.”

The products covered by this scope are currently imported under the following HTS statistical reporting 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, 1605.20.1010, 1605.20.1030, and 1605.20.1040; the HTS general duty rates for these subheadings are free, so that no duty applies to products of Brazil, China, Ecuador, India, Thailand, or Vietnam. 69 FR 71001 (China) and 69 FR 71008 (Vietnam), December 8, 2004. 69 FR 47081 (Brazil), 69 FR 47091 (Ecuador), 69 FR 47100 (Thailand), and 69 FR 47111 (India), August 4, 2004.

In its final determinations, Commerce added certain dusted shrimp and certain battered shrimp to the items excluded from the scope of these investigations. 69 FR 71000 (China) and 69 FR 71007 (Vietnam), December 8, 2004. Commerce defined certain dusted shrimp as: “a shrimp-based product that (1) 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) so that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour; and (4) the non-shrimp content of the end product constitutes between 4 to 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) is subjected to IQF freezing immediately after application of the dusting layer.” Commerce defined certain battered shrimp as: “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.”

Vietnam. Information relating to the background of these investigations is presented in table I-1.

Table I-1

Warmwater shrimp: Chronology of investigation Nos. 731-TA-1063-1068¹

Date	Action
December 31, 2003	Petition filed with Commerce and the Commission; institution of Commission investigations
January 27, 2004	Commerce's notice of initiation
February 17, 2004	Commission's preliminary determinations
July 16, 2004	Commerce's preliminary determinations for China and Vietnam
August 4, 2004	Commerce's preliminary determinations for Brazil, Ecuador, India, and Thailand
August 19, 2004	Commission's scheduling of final phase investigations ²
November 29, 2004	Commerce's final determinations for China and Vietnam ³
December 1, 2004	Commission's hearing ⁴
December 17, 2004	Commerce's final determinations for Brazil, Ecuador, India, and Thailand
January 6, 2005	Commission's vote
January 21, 2005	Transmittal of Commission's determinations to Commerce
¹ <i>Federal Register</i> notices cited in this table are presented in app. A. ² 69 FR 51472. ³ 69 FR 70997 and 69 FR 71005, respectively, December 8, 2004. ⁴ A list of witnesses appearing at the Commission's hearing is presented in app. B.	

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of 39 processors that accounted for *** percent of U.S. production of certain frozen or canned warmwater shrimp and prawns (warmwater shrimp)² during 2003. U.S. imports are based on Commerce statistics.³

NATURE AND EXTENT OF SALES AT LTFV AND CRITICAL CIRCUMSTANCES

Commerce's final LTFV margins and critical circumstances determinations are presented in table I-2.

² For the balance of this report, certain frozen or canned warmwater shrimp and prawns will be referred to as "warmwater shrimp." Fresh shrimp (i.e., never frozen) which are excluded from the scope of the investigations will be referred to as "fresh shrimp." Further, there is no generally accepted agreement regarding the exact meanings of and the difference between the terms, "shrimp and prawns." Petitioners acknowledge that the terms are used interchangeably to describe the same species. Therefore, for the purposes of this description of subject product, the term, "shrimp," refers to both shrimp and prawns. "Shrimp or prawn, that is the question," found at <http://www.simplyseafood.com/fishtips/fishtips.html> and retrieved on January 22, 2004, and Petitioner response to supplemental questions from Commerce, January 12, 2004, p. 14.

³ To the extent official statistics contain any imports of "dusted" or "battered" shrimp (which Commerce excluded from the scope of investigations in its final determinations) imports may be slightly overstated.

Table I-2

Warmwater shrimp: Commerce's final LTFV margins and critical circumstances determinations

Country and firm	LTFV margin (percent)	Critical circumstances	Federal Register cite
Brazil:			
Central de Industrializacao e Distribuicao de Alimentos Ltda. (CIDA)	9.69	None alleged	69 FR 76910 (Dec. 23, 2004)
Norte Pesca, SA	67.80		
Empresa de Armazenagem Frigorifica Ltda/Maricultura Netuno, SA	9.69		
All others	10.40		
China:			
Allied	84.93	Yes ¹	69 FR 70997 (Dec. 8, 2004)
Zhanjiang Guolian Aquatic (ZG)	0.07 ²	No	
Red Garden	27.89	No	
Yelin	82.27	Yes ¹	
Asian Seafoods (Zhanjiang) Co., Ltd. Beihai Zhengwu Industry Co., Ltd; Chaoyang Qiaofeng Group Co., Ltd (Shantou Qiaofeng (Group) Co., Ltd.) Chenghai Nichi Lan Food Co., Ltd. Dalian Ftz Sea-Rich International Trading Co., Ltd. Dongri Aquatic Products Freezing Plants Fuqing Dongwei Aquatic Products Industry Co., Ltd. Gallant Ocean (Liangjiang) Co., Ltd. Hainan Fruit Vegetable Food Allocation Co., Ltd. Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatics Co., Ltd. Kaifeng Ocean Sky Industry Co., Ltd. Leizhou Zhulian Frozen Food Co., Ltd. Pingyang Xinye Aquatic Products Co., Ltd. Savvy Seafood Inc. Shanghai Taoen International Trading Co., Ltd. Shantou Jinyuan District Mingfeng Quick-Frozen Factory Shantou Long Feng Foodstuffs Co., Ltd. Shantou Ocean Freezing Industry and Trade General Corporation Shantou Wanya Food Factory Co., Ltd. Shantou Shengping Oceanstar Business Co., Ltd. Shantou Yuexing Enterprise Company Shantou Ruiyuan Industry Co., Ltd. Shantou Freezing Aquatic Product Food Stuffs Co. Shantou Jinhang Aquatic Industry Co., Ltd. Xuwen Hailang Breeding Co., Ltd. Yantai Wei-Cheng Food Co., Ltd. Zhangjiang Bobogo Ocean Co., Ltd. Zhangjiang Runhai Foods Co., Ltd. Zhangjiang Go-Harvest Aquatic Products Co., Ltd. Zhangjiang Newpro Food Co., Ltd. Zhangjiang Universal Seafood Corp. Zhangjiang Evergreen Aquatic Product Science and Technology Co., Ltd. Zhoushan Huading Seafood Co., Ltd. Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd. Zhoushan Lizhou Fishery Co., Ltd.	55.23	Yes ¹	
PRC-wide rate	112.81	Yes ¹	
Ecuador:			
Exporklore, SA.	2.35	None alleged	69 FR 76913 (Dec. 23, 2004)
Exportadora de Alimentos, SA	2.62		
Promarisco, SA	4.48		
All others	3.26		
Table continued on following page.			

Table I-2--Continued

Warmwater shrimp: Commerce's final LTFV margins and critical circumstances determinations

Country and firm	LTFV margin (percent)	Critical circumstances	Federal Register cite		
India:					
Devi Sea Foods, Ltd.	5.02	No	69 FR 76916 (Dec. 23, 2004)		
Hindustan Lever, Ltd. (HLL)	13.42				
Nekkanti Seafoods, Ltd.	9.71				
All others	9.45				
Thailand:					
The Rubicon Group	5.79	No	69 FR 76918 (Dec. 23, 2004)		
Thai I-Mei	6.20				
UFP	6.82				
All others	6.03				
Vietnam:					
Minh Phu Seafood Corp.	4.21	No	69 FR 71005 (Dec. 8, 2004)		
Kim Ahn Co., Ltd.	25.76				
Minh Hai Joint Stock Seafoods Processing Co.	4.13				
Camau Frozen Seafood Processing Import Export Corp.	4.99				
Amanda Foods (Vietnam) Ltd. Aquatic Products Trading Co. Bac Lieu Fisheries Co., Ltd. Coastal Fisheries Development Corp. (COFIDEC) Cai Doi Vam Seafood Import Export Co. Cam Ranh Seafoods Processing Enterprise Co. Can Tho Agriculture and Animal Products Import Export Co. Cantho Animal Fisheries Product Processing Export Enterprise C.P. Vietnam Livestock Co., Ltd. Cuu Long Seaproducts Co. Danang Seaproducts Import Export Corp. Hanoi Seaproducts Import Export Corp. Investment Commerce Fisheries Corp. Kien Giang Sea Product Import Export Co. Minh Hai Export Frozen Seafood Processing Joint-Stock Co. Minh Hai Seaproducts Import Export Corp. Nha Trang Fisheries Joint-Stock Co. Nha Trang Seaproduct Co. Pataya Food Industries (Vietnam) Ltd. Phu Cuong Seafood Processing Sao Ta Foods Joint-Stock Co. Soc Trang Aquatic Products and General Import Export Co. Song Huong ASC Import Export Co. Thuan Phuoc Seafoods and Trading Corp. UTXI Aquatic Products Processing Co. Viet Foods Co., Ltd. Viet Nhan Co. Vietnam Fish-One Co., Ltd. Vinh Loi Import Export Co.	4.38				
Vietnam-wide rate	25.76				
<p>¹In making its determination, Commerce noted: "In this case, the volume of imports of certain frozen and canned warmwater shrimp from the PRC increased 51.57 percent from the critical circumstances base period (December 2002 through August 2003) to the critical circumstances comparison period (September 2003 through May 2004)." 69 FR 42670, July 16, 2004. In its final determination, Commerce simply affirmed its earlier finding. 69 FR 71001, December 8, 2004.</p> <p>²<i>De minimis</i>.</p>					

THE SUBJECT PRODUCT

The imported warmwater shrimp products covered by the scope of these investigations are described in detail in the “Background” section earlier in Part I.

Physical Characteristics and Uses⁴

The imported products subject to these investigations are warmwater shrimp. The subject product can be any species of warmwater shrimp⁵ and can be harvested from the ocean (i.e., wild-caught) or produced by aquaculture (i.e., farm-raised). The shrimp can be in any of a wide variety of processed forms including head-on or head-off,⁶ tail-on or tail-off, shell-on or peeled, and deveined or not deveined.⁷ They may be raw or further processed by cooking, skewering, or adding marinade, spices, or sauces. Food preparations containing more than 20 percent by weight of shrimp are included in the subject product.⁸

Shrimp are crustaceans that usually inhabit salt waters in coastal regions in the tropics and subtropics. However, there are also coldwater and freshwater species of shrimp. The warmwater shrimp subject to these investigations are either wild-caught or farmed in tropical or subtropical regions,⁹ are generally classified in the *Penaeidae* family, and comprise shrimp of several genera and species.¹⁰ In the United States, the catch of warmwater shrimp is composed principally of brown shrimp (*Penaeus aztecus*), white shrimp (*Penaeus setiferus*), and pink shrimp (*Penaeus duorarum*), which are listed in order of commercial importance. Shrimp vary greatly in size depending on age and species. They typically grow to a harvestable size within one year; their size depends largely on the time of the year they are harvested.¹¹

⁴ Except as otherwise noted, information in this section is sourced from *Conditions of Competition Affecting the U.S. Gulf and South Atlantic Shrimp Industry (332 Shrimp Report)*, USITC, Pub. No. 1738, Aug. 1985.

⁵ 69 FR 71000 (China) December 8, 2004. Scope is the same for all subject countries.

⁶ Shrimp sizes are generally referred to in terms of the number of shrimp, either head-on (whole) or head-off, contained in a pound. Sizes range from as low as 5 to over 200 shrimp per pound.

⁷ 69 FR 71000 (China) December 8, 2004. Scope is the same for all subject countries.

⁸ The threshold of 20 percent for food preparations as outlined in the scope of these investigations is consistent with the threshold for classification in chapter 16 of the HTS as outlined in note 2 to that chapter.

⁹ 69 FR 71000 (China) December 8, 2004. Scope is the same for all subject countries.

¹⁰ Subject imports include, but are not limited to, shrimp from the following species: 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*). Petition, Exhibit I-1, Scope of Investigation.

¹¹ U.S. shrimp fisheries in both the South Atlantic and the Gulf are seasonal, and seasonal peaks vary by species.

Fresh shrimp (i.e., never frozen) in any form are excluded from the products subject to these investigations. Likewise, coldwater shrimp¹² in any form, shrimp in prepared meals, breaded shrimp, and dried shrimp are also excluded from the subject product.^{13 14}

In 2003, estimated U.S. commercial landings of warmwater shrimp totaled 276.9 million pounds.¹⁵ In 2003, U.S. production of farm-raised shrimp was estimated to be 13.4 million pounds.¹⁶

Canned and frozen warmwater shrimp are used principally for human consumption¹⁷ and are sold primarily on the basis of size.¹⁸ Because the tail section is the edible portion and spoilage is more rapid with heads on, most shrimp are marketed raw and frozen with 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, driers, and producers of specialties.

Over the past decade U.S. consumption of shrimp increased steadily at an average compound annual growth rate of 4.0 percent, and in 2003, U.S. annual per capita consumption of shrimp (all preparations) reached a record of 4.0 pounds.¹⁹ It is estimated that 80 percent of shrimp in the U.S. market are bought by restaurants.²⁰

Production Process²¹

Harvesting

The U.S. Gulf and South Atlantic warmwater shrimp fleet is composed of thousands of vessels and is spread across about two dozen port communities on the Gulf and South Atlantic coasts. The vessels fall within 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 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. Off-shore shrimpers operate larger vessels typically manned by a crew of three in deeper waters out to and beyond the 200-mile U.S. territorial limit. Some offshore vessels can freeze their catch and thus make trips lasting several weeks. Most vessels are individually owned, often by the skipper. While horizontal and vertical integration is limited, some shrimpers also process shrimp and/or own multiple vessels.

¹² Species of coldwater shrimp, which are generally classified in the *Pandalidae* family, have different physical characteristics than warmwater species. In particular, they are usually 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). Petition, Exhibit I-1, Scope of Investigation.

¹³ Petition, Exhibit I-1, Scope of Investigation.

¹⁴ In its final LTFV determinations on China and Vietnam, Commerce also excluded certain dusted shrimp and certain battered shrimp from the scope of these investigations. 69 FR 71000 (China) December 8, 2004.

¹⁵ *Fisheries of the United States, 2003*, National Marine Fisheries Service, Oct. 2003, p. 3.

¹⁶ *Id.*, p. 22.

¹⁷ A relatively small amount of shrimp is used for bait.

¹⁸ Petition, Vol. II, p. 21.

¹⁹ *Fisheries of the United States, 2003*, National Marine Fisheries Service, Oct. 2004, p. 86.

²⁰ See, testimony of Jonathan D. Appelbaum, President, Penguin Frozen Fish, hearing transcript, p. 93.

²¹ Except as otherwise noted, information in this section is sourced from the *332 Shrimp Report*.

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 finding shrimp. 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 warmwater shrimp by towing one or more large, funnel-shaped nets. The U.S. fleet, especially 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.²² Shrimp may be placed in mesh bags before freezing.²³ Thus, warmwater shrimp can be landed either whole or headed (heads-off) and either fresh or frozen, and shrimp in different forms may be landed from the same trip.²⁴ 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.²⁵

Because of the differing feeding habits, migration patterns, and habitats of the different species, usually U.S. Gulf and South Atlantic shrimp vessels 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.

Processing

While some processors own their own boats, most have buying arrangements with several shrimp vessels.²⁶ After unloading, landings are transferred to processing facilities, which are often located dockside, and undergo initial processing such as separating the shrimp from the ice,²⁷ weighing, washing, sizing, and grading.²⁸ At this stage, shrimp may either be frozen in whole form (head-on, shell-on) or

²² See, testimony of Sal Versaggi, Versaggi Shrimp, conference transcript, pp. 21-22.

²³ *Id.*, p. 23.

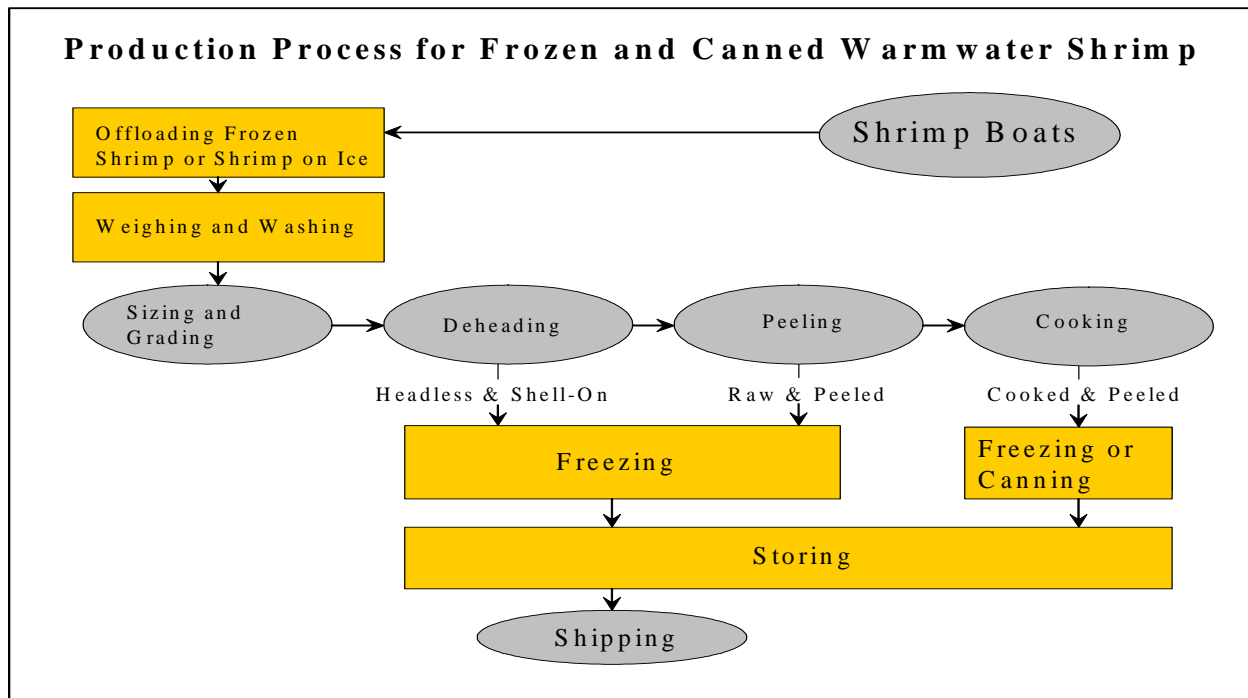
²⁴ *Id.*, p. 23.

²⁵ See, testimony of Scott St. Pierre, Commercial Shrimp Fisherman, and Craig Wallis, Commercial Shrimp Trawler Owner and Operator, conference transcript, pp. 27 and 32, respectively. Mr. St. Pierre stated, "As a boat owner and captain, I keep 60 percent of what the dock gives me to pay for fuel, maintenance, gear, and repairs. The crew gets 40 percent, and then share what's left after paying for ice and groceries." Conference transcript, pp. 27-28. Mr. Wallis in explaining the crew share stated, "Unlike most lines of work, the crew wages depend on the price of shrimp. It works like this. When the trawler returns from sea, the shrimp are weighed and sorted by size, and the price is determined for the catch. They only get 65 percent of the share to pay all expenses on the boat, and the crews get 35 percent. The captain only gets 55 percent of that, and he shares the other percentage with his other two crew members." Conference transcript, p. 32.

²⁶ See, testimony of Richard Gollot, Golden Gulf Coast Packing, conference transcript, p. 39, and *332 Shrimp Report*, p. 17.

²⁷ See, testimony of Scott St. Pierre, Commercial Shrimp Fisherman, conference transcript, p. 29.

²⁸ See Petitioners' Conference Exhibits, p. 16, which is reproduced as figure I-I.



may undergo a number of further steps such as deheading, peeling, deveining, and cooking.²⁹ 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.³⁰ If canned, the shrimp may be graded for size after cooking.³¹ Canners are required to have thermal processing equipment to sterilize the cans to insure that the final product is shelf-stable.³² Many processing steps (e.g., washing, grading, peeling, deveining, and cooking) may be performed manually or mechanically using purpose-built machinery.³³

Peeling can be done by one of two types of machines - the Laitram machine that operates by pushing the shrimp tail out of its shell, or the Jonsson machine that needs to be fed manually but peels the shrimp with cutting equipment. *** stated that it prefers the *** because the ***. It added that Laitram machines are generally used in the United States on smaller warmwater shrimp.³⁴

The processing of warmwater shrimp is conducted by a variety of operations. Dealers (a.k.a. shrimp houses or fish houses) and packinghouses perform minimal processing steps (e.g., weighing, washing, sorting, and packing) for other processors or distributors. Other processors, variously known as

²⁹ See, testimony of Richard Gollot, Golden Gulf Coast Packing, conference transcript, p. 39 and 332 *Shrimp Report*, p. 17.

³⁰ See, Petitioners' Conference Exhibits, p. 16.

³¹ See, testimony of David Cook, VP, Specialty Seafood Trade, Bumble Bee, conference transcript, p. 49.

³² See, testimony of Kevin McClain, Chicken of the Sea, conference transcript, p. 189 and testimony of John Wendt, Seatech, hearing transcript, p. 256.

³³ See, testimony of Richard Gollot, Golden Gulf Coast Packing, conference transcript, p. 37, and petitioners' postconference brief, Exhibit 36.

³⁴ Laitram machines are discussed in more detail in Petitioner's postconference brief, Exhibit II-36. Jonsson machines are discussed in more detail petitioners' posthearing brief, Exhibit 42.

freezers, peelers, breaders, and canners, produce the variety of processed forms of shrimp noted previously and perform additional steps as such as breeding, cutting (for sushi),³⁵ and preparing specialty items (e.g., dried shrimp, cocktails, cakes and patties, stuffed shrimp, creole, and gumbo).³⁶

Aquaculture

A small but growing percentage of U.S. domestic production of warmwater shrimp is produced by aquaculture (i.e., farm-raised).³⁷ In 2003, an estimated 4.5 percent of U.S. production of warmwater shrimp were farm-raised.³⁸

Farm-raised shrimp are produced in a controlled environment, which involves several stages: hatching eggs; growing shrimp through various larval stages; and growing post-larval shrimp to a mature, marketable size. Most U.S. shrimp farming operations produce saltwater species of warmwater shrimp. Shrimp may be raised using one of three basic regimens: extensive, semi-intensive, and intensive. Extensive farming utilizes large ponds (approximately 150 acres) and very limited control of stocking, feeding, water circulation, and predator control; semi-intensive farming involves smaller ponds and somewhat more control of conditions and inputs; and intensive farming utilizes very small ponds (approximately one-half acre) or covered raceways and very strict control of conditions and inputs.

In addition to ponds, shrimp farms may include hatcheries, labs, quarantine facilities, nursery raceways, and on-site processing plants.³⁹ Shrimp aquaculture operations produce whole shrimp which are sometimes further processed on-site or sold to off-site processors. On-site processing facilities may be owned and operated by contractors.

According to the U.S. Marine Shrimp Farming Program, opportunities to expand shrimp farming in the United States are limited by three factors: environmental concerns regarding effluent water discharges, high land costs in coastal regions, and a limited growing season.⁴⁰ Growing conditions in the United States are generally not as favorable as in other parts of the world; climate limits U.S. shrimp farming operations to one or two crops annually.

Interchangeability and Customer and Producer Perceptions

Processors responding to questionnaires, in general, viewed wild-caught and farmed warmwater shrimp as being the same, whereas importers were more likely to see differences in the two categories. The processors who did note differences between wild-caught and farmed warmwater shrimp often stated that consumers were not willing to pay more for such differences, or were unable to discern such differences except in particular regions of the country. Importers, on the other hand, noted differences in quality (i.e., taste, texture, etc.), seasonal availability (i.e., year-round availability in consistent quantities and sizes), and price (i.e., farmed warmwater shrimp having a lower, more stable price). More detailed information on interchangeability and customer and producer perceptions can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

³⁵ See Petition Vol. II, Exhibit II-1.

³⁶ See, testimony of Richard Gollot, Golden Gulf Coast Packing, conference transcript, p. 39 and 332 *Shrimp Report*, p. 17.

³⁷ See, Petition Vol. II, Exhibit II-16.

³⁸ See, Petition Vol. II, Exhibit II-16.

³⁹ See, testimony of George Chamberlin, Global Aquaculture Alliance (GAA) , conference transcript, p. 148.

⁴⁰ McAbee, Brad, Craig Browdy, Raymond Rhoades, and Alvin Stokes, "Super-Intensive Success," *Industry Briefs*, U.S. Marine Shrimp Farming Program, Vol. 9, No. 3 (Oct. 2003), p. 1.

Channels of Distribution

Both U.S. processor and importer questionnaire respondents reported selling warmwater shrimp directly to distributors or retail customers as well as selling some of their product through brokers. Additionally, some of the importers reported further processing their imported product into another form of subject warmwater shrimp (e.g., marinated or sauced) or into a nonsubject product (e.g., breaded shrimp). More detailed information on channels of distribution can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

Price

Information with regard to prices of warmwater shrimp is presented in Part V, *Pricing and Related Information*, and appendix G of this report.

DOMESTIC LIKE PRODUCT ISSUES

During the preliminary phase of the investigations, the parties made several arguments concerning the definition of the domestic like product in these investigations. Petitioner urged the Commission to define a single domestic like product consisting of all domestically produced merchandise described in Commerce's scope of investigation. The American Seafood Distributors Association (ASDA) argued for two domestic like products: (1) "basic processed shrimp" (shrimp that is merely frozen and deheaded), and (2) "value added shrimp," which includes both all other shrimp products within the scope and breaded shrimp, an article expressly excluded from the scope. The Seafood Exporters Association of India (SEAI) contended that "salad shrimp," which it defined as a frozen shrimp product with over 250 pieces to the pound, and giant freshwater prawns of the type *Macrobrachium rosenbergii* should be defined as separate domestic like products. Thai respondents and Vietnamese respondents argued that canned shrimp should be defined as a separate domestic like product. Finally, the Louisiana Shrimp Association (LSA), a group of U.S. processors of warmwater shrimp ("processors") and U.S. harvesters of warmwater shrimp ("fishermen") that supports the imposition of antidumping duties but is not part of the petitioning coalition, contended that there should be a single domestic like product, but that it should include fresh shrimp, an article expressly excluded from the scope definition.

In making its preliminary determinations, the Commission defined a single domestic like product that included both fresh warmwater shrimp and the processed warmwater shrimp products within Commerce's scope definition. In including the fresh warmwater shrimp in its like product definition, the Commission stated:

"Fresh warmwater shrimp is overwhelmingly sold in a processed form, and 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. In light of this, we conclude that fresh warmwater shrimp should be included in the same domestic like product as the processed warmwater shrimp products within the scope definition."⁴¹

⁴¹ See, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam (Preliminary Shrimp Report)*, USITC, Pub. No. 3672, p. 14.

With respect to the other like products proposed, the Commission determined that none of them should be treated as separate like products;^{42 43} however, the Commission did state with regard to canned shrimp:

“In light of the overlaps between canned and frozen shrimp in physical characteristics, end uses, channels of distribution, and processing methods, we find for purposes of these preliminary determinations that canned shrimp is not a separate domestic like product from frozen shrimp. In any final phase investigations we will again examine whether canned shrimp should be defined as a separate domestic like product.”⁴⁴

Further, regarding canned shrimp, the Commission indicated that it would seek trade, pricing, financial, and foreign industry data specifically pertaining to canned shrimp in the questionnaires in the final phase investigations.⁴⁵ Data gathered with respect to canned shrimp as a separate like product are presented in appendix D.

During the final phase investigations, Xian-Ning Seafood Co., Ltd. (XN), a producer and exporter of subject merchandise from Thailand, requested that the Commission find shrimp scampi to be a separate like product.⁴⁶ In its prehearing brief, XN summarized its like product argument, as follows:

“Shrimp scampi has distinct physical characteristics from frozen and canned shrimp. Scampi is a higher value-added product and, hence, completely different from frozen and canned shrimp. Its physical appearance is completely different. It’s taste, chemical composition, and nutritional content is complete different. Its uses are completely different.

⁴² See, *Preliminary Shrimp Report*, pp. 4-15, for the discussion of the Commission’s like product determinations.

⁴³ Neither ASDA nor SEAI reasserted their like product arguments during the final phase investigations. See, ASDA prehearing brief, pp. 6-7, fn. 5.

⁴⁴ See, *Preliminary Shrimp Report*, p. 13.

⁴⁵ See, *Preliminary Shrimp Report*, p. 13, fn. 70.

⁴⁶ See, prehearing brief of deKieffer & Horgan on behalf of XN (XN prehearing brief), November 22, 2004. On July 19, 2004, XN filed a request with Commerce to find shrimp scampi outside the scope of these investigations. On November 29, 2004, Commerce determined that shrimp scampi is included in the scope of these investigations. In its determination, Commerce stated, in part:

“The Department disagrees with XN’s assertion that shrimp scampi should be excluded from the scope of these investigations based on the fact petitioners excluded breaded shrimp. First, breaded shrimp, by virtue of the name, has an outer coating that consists of a dry breading material. XN, however, explicitly states that shrimp scampi is ‘coated with a liquid mixture.’ Further, in order for a product to be ‘battered,’ it must be dusted in accordance with the definition of dusting, coated with a wet viscous layer containing egg and/or milk, and par-fried. However in XN’s submission and ingredients list, neither rice flour, egg nor milk are listed as ingredients for shrimp scampi. According to XN, scampi is composed of a ‘mixture of soybean oil, seasoned dry ingredients, and a liquid butter alternative, as the majority of the coating ingredients.’ Additionally, XN states that ‘each shrimp is coated individually (individually quick frozen, IQF)’ with no mention of the product being par fried. Therefore, because XN’s shrimp scampi does not meet either the definition for breaded or battered shrimp - the only types of coated products explicitly excluded from the scope of these investigations - the Department finds shrimp scampi to be within the scope of these investigations.”

See, Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People’s Republic of China, and the Socialist Republic of Vietnam: Scope Clarification on Shrimp Scampi, November 29, 2004, pp. 7-8.

Shrimp scampi is sold through different channels of distribution. The vast majority of scampi is sold only in the retail channel, to grocery stores, supermarkets, and club-style stores. Moreover, even within that channel, there are separate buyers for scampi versus frozen and canned shrimp. The vast majority of frozen shrimp is sold within the food service sector.

Shrimp scampi is produced in separate production lines/facilities from frozen and canned shrimp. Since scampi is a coated product, it has much more added value than frozen and canned shrimp. That value added is performed on completely different processing lines from frozen shrimp and different facilities from canned shrimp.

Shrimp scampi is not interchangeable with frozen and canned shrimp. Scampi is a completely self-contained, finished product. Its end uses are significantly limited, usually to being used as an entree. Frozen and canned shrimp, on the other hand, are intermediate products. They are traditionally used as appetizers and ingredients in recipes (to then produce an entree or salad, for example).

Shrimp scampi is sold at much different prices from frozen and canned shrimp. In an apples-to-apples comparison, shrimp scampi is imported at prices up to 100% higher than frozen shrimp. Then, wholesalers usually sell scampi to retailers at prices approximately 40% higher than frozen shrimp.

U.S. classification and origin rules support a legal conclusion that shrimp scampi is a different product from frozen shrimp. Shrimp scampi is imported under a different tariff category from frozen shrimp, reflecting its further processed nature.⁴⁷

According to XN, there “appears to be only three U.S. producers, Fishery Products Int’l., Ltd., King and Prince Seafood Corp., and Red Chamber Company.”⁴⁸ XN estimates that sales of scampi in the U.S. market were 12 million pounds valued at \$65 million.⁴⁹ On a quantity and value basis, these figures amount to 1.0 percent and 1.5 percent, respectively, of U.S. frozen and canned shrimp consumption in 2003.

At the hearing in these final phase investigations, petitioners, when queried regarding shrimp scampi, stated:

“One respondent also claims that shrimp scampi is a separate like product, but no clear definition of this product is provided, which is not surprising as the term scampi is used to describe various forms of shrimp products within the scope of the investigations. Thus, there is no clear dividing line separating scampi from other shrimp products.”⁵⁰

Further, testifying for the petitioners, Jonathan D. Applebaum, President of Penguin Frozen Fish, stated:

“In my 20 years experience, honestly I don't know of a wholesaler specifically marketing a shrimp scampi product as a separate product. It's going to use the same raw material, no matter what.”⁵¹

In its posthearing submission, XN offered the following regarding petitioners' comments concerning shrimp scampi.

⁴⁷ See, XN prehearing brief, pp. 2-3.

⁴⁸ Id., p. 15. Aside from these three firms, XN is aware of only itself and one Chinese firm as exporters of scampi. ***. In the preliminary phase investigations, the Commission determined that ***. ***.

⁴⁹ XN prehearing brief, p. 16.

⁵⁰ See, testimony of Kevin Dempsey, Dewey Ballantine, counsel for petitioners, hearing transcript, pp. 56-57.

⁵¹ See, testimony of Jonathan D. Applebaum, President, Penguin Frozen Fish, hearing transcript, p. 173.

“ . . . since petitioners do not know what shrimp scampi is, they cannot be injured by it, much less materially injured or threatened with material injury. Since petitioners have never heard of this product, they cannot claim on behalf of the U.S. industry that material injury has occurred.”⁵²

⁵² See, posthearing brief of deKieffer & Horgan on behalf of XN, December 8, 2004.

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

U.S. MARKET SEGMENTS

Warmwater shrimp are almost always intended for human consumption, but may be canned or frozen, farm-raised or wild-caught, and processed to varying levels (e.g., peeled, deveined, shell-off, tail-off, marinated, skewered, or sauced). There are also multiple species of shrimp both farmed and wild-caught, as well as a range of sizes. Further discussion of these differences is contained at the end of Part II.¹

CHANNELS OF DISTRIBUTION

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. Processors buy the fresh shrimp at the dock, and then may inspect, weigh, count, devein, peel, and cook it before freezing or canning it. Some of the production will be put into inventory for later sale. 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).

Both processors and importers serve a large national market. When asked to identify their geographic market, 23 processors and 39 importers² (including importers of warmwater shrimp from all subject countries) reported having a national market or a market that consisted of multiple regions of the country. Only four processors and four importers reported serving only one regional market. Among processors, 17 reported that 50 percent or more of their sales were between 100 and 1,000 miles from their plant (including the only processor who reported 50 percent of its sales were within 100 miles), while eight reported that 50 percent or more of their sales were more than 1,000 miles from their plant. Among importers, 17 reported that 50 percent or more of their sales were less than 100 miles from their warehouse, eight reported that 50 percent or more of their sales were between 100 and 1,000 miles from their warehouse, and eight reported that 50 percent or more of their sales were more than 1,000 miles from their plant.

¹ With regard to different levels of preparation of warmwater shrimp, domestic processors stated that marinated and sauced warmwater shrimp are a small part of the overall U.S. warmwater shrimp market. See, testimony of Jonathan D. Applebaum, President, Penguin Frozen Foods, conference transcript, p. 99. Texas supermarket chain H-E-B stated that 80 percent of its imported warmwater shrimp purchases are cooked shrimp, which it said are a major benefit to consumers because of their ease of use. It added that while it does sell cooked domestic warmwater shrimp, it is one of the few U.S. supermarkets to do so, and that it has difficulty obtaining cooked warmwater shrimp from domestic sources. See, testimony of Rich Catanzaro, H-E-B, conference transcript, p. 174. *** did not know why U.S. processors were not supplying cooked shrimp in larger quantities, but did say that cooked warmwater shrimp had been a major growth area for imports. See, staff interview with ***. *** said that U.S. processors used to cook more shrimp, but that as U.S. cookers had switched to using imported raw shrimp, it was no longer profitable to cook shrimp in the United States. *** cited cooked shrimp rings as an example of a product once produced by U.S. processors but now not produced as much in the United States because of less expensive imports. See, staff interview with ***.

² Several firms submitted both processor and importer questionnaires. In the interest of not counting companies twice, they were assigned either to “processor” or “importer” for the purposes of this chapter. *** were categorized as processors while *** were categorized as importers.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, U.S. warmwater shrimp processors are likely to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced warmwater shrimp to the U.S. market. The main contributing factor to the moderate degree of responsiveness of supply is the availability of significant unused capacity, although there is ultimately a biological limit to how much fresh shrimp can be fished from U.S. waters.³

U.S. supply of fresh shrimp

U.S. fishermen generally harvest white, pink, and brown shrimp from the Gulf, with white and pink shrimp from the Carolina and Florida coasts, respectively.⁴ U.S. shrimp fishermen primarily work with shrimp as opposed to harvesting or processing other animals. For fishermen, the Gulf of Mexico is a year-round fishery and changes to other harvests would be expensive. Likewise, their equipment (trawlers, nets, etc.) are appropriate for catching shrimp but not other forms of fish or seafood.⁵

The U.S. supply of wild-caught fresh shrimp varies by season.⁶ The main fishing season is May to December, but different parts of the year are better for particular species and sizes.⁷ In addition to shrimp being less available for biological reasons in certain parts of the year, several states in the Gulf have regulated seasons. In the offseason (roughly January through April), some fishermen take time for maintenance and upgrades while others continue fishing. Processors are able to maintain some supply of warmwater shrimp during the offseason by freezing part of their in-season inventory for later sale.⁸ However, as supply of both fresh shrimp and warmwater shrimp is lower in the offseason, prices have

³ Respondents allege that U.S. fishermen have fished U.S. waters to near capacity in the past. See, postconference brief of Akin Gump (counsel for ASDA), pp. 16-17. However, petitioners maintain that the U.S. wild catch declined over 2000 to 2002. See, petition, exhibit II-17.

⁴ See, testimony of Sal Versaggi, Owner, Versaggi Shrimp Company, conference transcript, p. 90 and Craig Wallis, Commercial Shrimp Trawler Owner and Operator, conference transcript, pp. 96-97, and Commission visit to ***.

⁵ The National Marine Fisheries Service (NMFS) recently released a report characterizing the U.S. shrimp fishery as suffering from overcapacity and too many fishermen. See, prehearing brief of ASDA, pp. 48-50. However, petitioners, some of whom worked with the NMFS during the drafting of the report, said that the NMFS had no clear estimate of how many shrimp boats actually were fishing even though the NMFS recommended reducing the number of boats. Furthermore, petitioners said that the NMFS did not take into account reductions in the shrimp fishing fleet that had already taken place, nor tried to estimate what effect a reduction in imports would have on the U.S. shrimp fishery. See, testimony of Kevin Dempsey, Dewey Ballantine, counsel for petitioners, Kimberley Chauvin, owner of Mariah Jade Shrimp Company, Sal Versaggi, owner of Versaggi Shrimp Company, and Jonathan D. Applebaum, President, Penguin Frozen Foods, hearing transcript pp. 154-159.

⁶ See, testimony of Scott St. Pierre, Commercial Shrimp Trawler Owner and Operator, conference transcript, pp. 26-27.

⁷ See, testimony of Russ Mentzer, King & Prince, conference transcript, pp. 227-228. Larger shrimp in particular may be in shorter supply at some times of the year.

⁸ Penguin Frozen Foods stated that as a result of processors like itself holding inventory, domestic shrimp is available year round. See, testimony of Jonathan D. Applebaum, President, Penguin Frozen Foods, conference transcript, p. 89.

been historically higher in the offseason. Processors and fishermen describe this seasonal supply characteristic of the U.S. warmwater shrimp market as a necessary cycle for fishermen and processors to make money (through higher offseason prices) and gain time for needed repairs and upgrades. They describe subject imports as reducing the value of their off-season inventories, forcing some fishermen and processors into production slowdowns, postponement of needed maintenance, reduced insurance and creditworthiness, and layoffs.⁹

U.S. wild-caught shrimp fishing and warmwater shrimp production are covered by multiple U.S. government regulations, including the HACCP (Hazardous Analysis Critical Control Points), state boards of health, and the mandatory use of TEDS (turtle excluder devices).¹⁰ U.S. processors stated that imports of warmwater shrimp are inspected so rarely (allegedly less than 2 percent of imports) that the standard is effectively different for U.S. and imported warmwater shrimp.¹¹ In addition, *** alleged that imported shrimp that fail chemical tests are often returned to the importer, who then can “port-shop” and return to another U.S. port (where it may not be inspected).¹² In their posthearing brief, petitioners submitted (1) a GAO analysis of FDA inspections of seafood that confirmed some of these allegations about low levels of testing and (2) the relevant laws that allow the potential for re-importation of rejected merchandise.¹³

When asked how regulations affect their own production, processors acknowledged that there may be costs, but felt the costs were manageable and (for some) beneficial, and that pressure from low-priced imports were far more of a problem.

U.S. supply of frozen and canned warmwater shrimp

While 15 processors stated that they had not had any problem meeting their customers’ demand since January 1, 2001, 12 other processors did reference shortages of particular types of warmwater shrimp (particularly larger sizes) during the offseason periods. These 12 said that they could usually avoid such seasonal supply shortages by freezing supply from better months. Moreover, several processors stated that they were having trouble selling their current inventory at today’s low market prices.

When asked if their supply of frozen and canned warmwater shrimp is seasonal, most processors¹⁴ said that even if the supply of fresh wild-caught shrimp is seasonal, processors hold enough frozen warmwater shrimp in inventory to make year-round sales. Several reported that they currently have more frozen warmwater shrimp in inventory than they can sell.

Processors may handle other seafood items (especially if they bread shrimp in addition to processing it), but 31 processors reported that they did not use their equipment for processing shrimp in order to process other items. Some processors may process a limited amount of oysters as well, but in

⁹ See, testimony of Craig Wallis, Commercial Shrimp Trawler Owner and Operator, and Richard Gollott, Golden Gulf Coast Packing, conference transcript, pp. 34 and 39, respectively.

¹⁰ In 1998, the WTO ruled against a U.S. law requiring imports to be harvested using TEDS, stating that the law was applied differently to Asian suppliers than to Latin American ones. In 2001, the WTO Appellate Body ruled that the United States was now in compliance with WTO rules, as it was supplying financial assistance to Asian shrimp supplying nations and permitting other forms of conservation efforts. See “U.S. Wins WTO Case on Sea Turtle Conservation,” Office of the United States Trade Representative, June 15, 2001, “The World Trade Organization and Sea Turtles,” National Wildlife Foundation website (www.nwf.org/trade/turtleswto.html) and “India etc. vs. US, ‘Shrimp Turtle,’” World Trade Organization website (www.wto.org/english/tratop_e/envir_e/edis08_e.htm).

¹¹ For example, see testimony of Sal Versaggi, Owner, Versaggi Shrimp Company, conference transcript, p. 86.

¹² Commission visit to ***.

¹³ See, petitioners’ posthearing brief, pp. D-34-D-45 and exhibit 52.

¹⁴ ***.

some states (e.g., Louisiana) shrimp must be processed on equipment used only for processing shrimp in order to avoid contamination issues.¹⁵

Twenty processors reported changes in their plants, including closing production lines and other reductions in production, as a result of pressure from subject imports. Twelve reported no changes in their plants. Many described their major production constraint as the ability to make a profit on sales of warmwater shrimp, as well as the ability of U.S. shrimp fishermen to make a profit. While 14 processors reported no changes in the product range or marketing of the warmwater shrimp they sell, 13 others reported that increased subject imports had caused deleterious effects such as large inventories and shrimp being sold primarily on price. Several of these 13 described changing their target markets to sell more expensive larger shrimp, sell to smaller volume customers, and/or sell to grocery stores more. *** said it was trying to sell directly to end users now to save money on distribution.

Capacity utilization at U.S. processing facilities fell from 2001 to 2003, leaving room for expansion. The domestic wild catch landings of fresh shrimp fell from 2001 to 2002 but recovered somewhat in 2003. U.S. processors' inventories are up since 2001.

Subject Imports

Subject imports constitute the majority of the U.S. warmwater shrimp market, and even petitioner's witness stated that the current volume of the U.S. warmwater shrimp market could not be supplied by U.S. production and nonsubject imports alone.¹⁶ Imports from subject countries include both farmed and wild-caught warmwater shrimp. However, production of farmed warmwater shrimp plays a much more important role in subject country production than in U.S. production. Shrimp of many different species can be farmed, and shrimp farms are usually designed principally for export. Importer responses to Commission questionnaires often stressed the difference between imported farm-raised warmwater shrimp and domestic wild-caught warmwater shrimp.

In addition to the advantages stressed by importers, farmed production of warmwater shrimp in subject countries often has additional advantages of less strict rules regarding effluent release,¹⁷ less expensive labor, and substantial governmental assistance. Petitioners submitted newspaper and magazine articles documenting that the subject country governments have been active in assisting the growth of their warmwater shrimp industries, using subsidies, loans, prohibitively high tariffs on imports of warmwater shrimp from other countries, government efforts in research and development and in developing a seed stock of warmwater shrimp for farms, government aid in response to epidemics that reduced warmwater shrimp populations, and training.¹⁸

¹⁵ See, testimony of Andrew Blanchard, Pearl, Richard Gollott, Golden Gulf Coast Packing, and Craig Wallis, Commercial Shrimp Trawler Owner and Operator, conference transcript, pp. 97-99.

¹⁶ Petitioners describe their problem with subject imports as being more price and excess volume related. See, testimony of Jonathan D. Applebaum, President, Penguin Frozen Foods, conference transcript, p. 100.

¹⁷ See, for example, "Shrimp Success Hurts Asian Environment, Group Says" by James Owen for National Geographic News, at news.nationalgeographic.com/news/2004/06/0621_040621_shrimpfarm.html (downloaded November 4, 2004). Whether or not shrimp farming is an environmentally sustainable activity has been debated by several environmental groups (saying it may not be) and the Global Aquacultural Alliance (saying that it is). See "Farming shrimp, harvesting hunger" by Susan Stonich and Isabel De La Torre at www.foodfirst.org/pubs/backgrdrs/2002/w02v8n1.html. The GAA has worked to make shrimp farming in Thailand and other countries more environmentally friendly and long-term sustainable. See www.gaalliance.org/ceissu5.html (downloaded on November 5, 2004).

¹⁸ Different subject country governments used different methods. See petition, volume II, pp. 43-44, 46, 48, 49, 51, and 53-54, and exhibits II-35, 36, 37, 38, 45, 46, 47, 50, and 51 as well as the website of the Indian government's (continued...)

George Chamberlain of the Global Aquaculture Alliance (GAA) described shrimp farming in both subject and nonsubject countries as a growing and successful way of producing low cost warmwater shrimp. He said that farming had begun in the 1980s and that the shrimp farming industry had suffered several periods of short supply due to problems with shrimp diseases and land use, among other issues. However, he described shrimp farming as having overcome many of these difficulties through the use of better technology, and said that the increased ability to prevent shrimp disease through use of resistant shrimp breed stocks was the most important factor in allowing increased worldwide shrimp harvests.¹⁹

Imports include both white and black tiger shrimp species, and the overwhelming majority of importers imported from more than one subject country, with at least 19 importers importing from all, or all but one, subject countries. In addition, subject importers frequently reported importing from nonsubject countries. Several processors also imported, including ***. Of the processor/importers, *** stating that it imported a small amount of warmwater shrimp in 2002 because of production shortages, but no longer did so due to low import quality and frequent illegal additives.

When asked how regulations affect their ability to supply warmwater shrimp, most importers stated that the regulations either did not have an effect or that their product was able to meet the government standards. *** said that regulations make it purchase only from reputable companies. Generally, importers reported that regulations in other countries had little or no effect on their ability to supply warmwater shrimp, but *** said that differences in antibiotics tolerance levels in the United States, EU, and Japan had led exporting countries to target markets where their products have a higher chance of being successfully imported. Some importers, however, stated that U.S. regulatory agencies (i.e., the FDA) were tougher on imports than U.S. production, and often held imports at points of entry.

Twenty-one importers stated that their product range and marketing had changed since January 1, 2001. They stated that subject imports offer standardized sizes, lower overseas labor costs, and quality that were allowing an increased variety of final, further processed, products (such as cooked, skewered, sauced, e-z peel, shrimp rings, butterfly tail-on, combinations with rice bowls, etc.) and thus more marketing of warmwater shrimp by retailers. In addition, importers *** stated that some subject countries are switching to farm-based production of more white shrimp,²⁰ a species that allows higher growth densities, instead of black tiger shrimp. However, 20 importers stated that they had not changed their product range or marketing for warmwater shrimp.

When asked about seasonality of both domestic warmwater shrimp and imports, purchasers tended to report that U.S. warmwater shrimp was more seasonal than imports from subject countries. However, some purchasers who described U.S. warmwater shrimp as seasonal described availability as lower in the offseason, and not necessarily non-existent. Purchasers were more likely to describe subject imports as having year round availability, but there was some awareness of seasonality from some countries in particular sizes and/or species.

Subject imports, when considered together, are not as seasonal as domestic production. When one country's season ends or when its supply is interrupted due to disease, other subject warmwater shrimp is usually available. Importers did cite a few examples of seasonality in subject countries (although not as many as were cited in importer responses to similar questions in the preliminary phase of

¹⁸ (...continued)

Marine Products Exports Development Authority (MPEDA), which outlines the subsidies and other assistance available for Indian warmwater shrimp farmers at www.mpeda.com/aquaculture/Subsidyscheme.htm (downloaded August 26, 2004). In addition, international lenders (such as the World Bank, Asian Development Bank, and Inter-American Development Bank) have historically assisted shrimp aquaculture development in at least India among subject countries. See "Choosing the Road to Sustainability" at www.earthisland.org/map/rdstb.htm (downloaded July 19, 2004).

¹⁹ See, testimony of George Chamberlain, GAA, hearing transcript, pp. 220-225 and 290-291.

²⁰ *** also mentioned more marketing of macrobracium rosenbergii.

the investigations). In addition, weather and farming-related diseases can affect availability. However, overall, importers stated that, because imported shrimp from subject countries is farm-raised and because importers can sell warmwater shrimp from multiple sources and sell out of inventory, imported frozen warmwater shrimp is available year round.²¹

Petitioners described some subject imports as having sometimes tested for levels of antibiotics (specifically chloramphenicol²²) that were unacceptable to the EU and Japan, leading to more testing of some products (specifically Thai warmwater shrimp exported to the EU). Petitioners allege that as a result of increased EU testing, and additionally as a result of Thailand losing its GSP status with the EU, subject imports were diverted into the United States.²³ Respondents collectively deny these allegations.²⁴ They described the increased chloramphenicol incident as a mistaken and no longer used response to white spot disease (a viral disease), and stated that EU and Japanese testing and tariffs have not affected all subject countries, nor prevented subject countries from increasing their exports of warmwater shrimp to the EU and Japan.²⁵ Respondents also said that switching the entire production process for warmwater shrimp (i.e., breeding, ponds, and processing) to farming another animal would be difficult and expensive. However, the ponds themselves can be used for or switched to other fish production, including tilapia, catfish, and milkfish, depending on the salinity of the pond. Ecuador and Vietnam have seen some such switching to tilapia and catfish.²⁶

Brazil.-- Based on available information, Brazilian processors are likely to respond to changes in demand with large changes in the quantity of shipments of warmwater shrimp to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are large alternative export markets and the rapid growth in capacity of the Brazilian warmwater shrimp industry over 2001 through 2003. While the low level of inventories and a small home market would constrain the supply responsiveness, they are not likely to outweigh the effects of the growing available capacity and alternative markets.

²¹ Twenty-two importers stated that they had not had problems in supplying their customers' demands. Those importers who did cite supply problems often described them as occasional or focused on a particular size or a particular country of origin, with FDA inspections and demand from other countries also mentioned as reasons why importers might have difficulty supplying their U.S. customers. Five importers cited the current investigations as impairing their ability to supply warmwater shrimp.

²² Chloramphenicol may help or be perceived as helping against diseases to which high density farmed shrimp are vulnerable.

²³ See, testimony of Kevin Dempsey, Dewey Ballatine, Sal Versaggi, Owner, Versaggi Shrimp Company, and Richard Gollott, Golden Gulf Coast Packing, conference transcript, pp. 89-98. Thailand's loss of GSP status was unconnected to food safety issues. See staff interview with Kenneth Pierce, Wilkie Farr, February 4, 2004. In addition, the ASDA stated that the EU has now decided to restore Thailand's GSP status in 2005. See, testimony of Warren Connolly, Akin-Gump (counsel for ASDA), hearing transcript, p. 348.

²⁴ See, testimony of George Chamberlain, Global Aquaculture Alliance, Warren Connelly, Akin Gump, Jose Cyriac, Marine Products Export Development Authority of India, Matthew Nicely, Wilkie Farr, Kenneth Pierce, Wilkie Farr, conference transcript, pp. 220-224.

²⁵ See, testimony of George Chamberlain, Global Aquaculture Alliance, Warren Connelly, Akin Gump, Jose Cyriac, Marine Products Export Development, Matthew Nicely, Wilkie Farr, Kenneth Pierce, Wilkie Farr, conference transcript, pp. 220-224. In addition, Thai processors noted that the EU has removed Thailand from its mandatory testing list. See, postconference brief of Thai respondents, pp. 6-7.

²⁶ See, testimony of George Chamberlain, Global Aquaculture Alliance, and Matthew Nicely, Wilkie Farr, conference transcript, pp. 224-225, and exhibit 4, postconference brief of Vietnamese respondents.

China.-- Based on available information, Chinese processors are likely to respond to changes in demand with large changes in the quantity of shipments of warmwater shrimp to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the rapid growth in capacity of the Chinese warmwater shrimp industry over 2001 through 2003 and available capacity in the current industry. While the low (though increasing) level of inventories and a small home market would constrain the supply responsiveness, they are not likely to outweigh the effects of the growing available capacity and alternative markets.

Ecuador.-- Based on available information, Ecuadorian processors are likely to respond to changes in demand with large changes in the quantity of shipments of warmwater shrimp to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the large existing capacity of the Ecuadorian warmwater shrimp industry over 2001 through 2003, the large available capacity in the current industry, and large alternative export markets. While the low level of inventories and a small home market would constrain the supply responsiveness, they are not likely to outweigh the effects of the growing available capacity and alternative markets.

India.-- Based on available information, Indian processors are likely to respond to changes in demand with large changes in the quantity of shipments of warmwater shrimp to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the large existing capacity of the Indian warmwater shrimp industry over 2001 through 2003, the low level of capacity utilization in the current industry, and large alternative export markets. While the small home market would constrain the supply responsiveness, it is not likely to outweigh the effects of the growing available capacity and alternative markets.

Thailand.-- Based on available information, Thai processors are likely to respond to changes in demand with large changes in the quantity of shipments of warmwater shrimp to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are the large existing capacity of the Thai warmwater shrimp industry over 2001 through 2003, high levels of inventories, and large alternative export markets. While a small home market would constrain the supply responsiveness, it is not likely to outweigh the effects of the available capacity and alternative markets.

Vietnam.-- Based on available information, Vietnamese processors are likely to respond to changes in demand with large changes in the quantity of shipments of warmwater shrimp to the U.S. market. The main contributing factor to the high degree of responsiveness of supply is the growth in capacity of the Vietnamese warmwater shrimp industry over 2001 through 2003. While high capacity utilization rates and home market sales would constrain the supply responsiveness, they are not likely to outweigh the effects of the growing available capacity.²⁷

²⁷ The prehearing brief of Vietnamese respondents discusses limitations on future shipments of Vietnamese warmwater shrimp to the United States, including capacity restrictions, alternate markets, and a developing home market. In addition, Vietnam has a larger (though still small) proportion of its production of warmwater shrimp going to its own home market than any other subject country. However, while these projections may have merit, the Vietnamese industry showed high capacity utilization in 2001 and 2002, and yet still managed to increase actual shipments to the United States substantially in 2002 and 2003. It remains to be seen if the projections of reduced Vietnamese warmwater shrimp shipments to the United States will become an observable reality or not.

Nonsubject Countries

Imports of warmwater shrimp from nonsubject countries are available both as farmed and wild-caught. Mexico provides wild-caught warmwater shrimp with the same seasonal supply surge as U.S. production. *** cited Mexican warmwater shrimp as a long-term supply source for the U.S. market, with much of the product coming through importer Ocean Garden. *** described this Mexican warmwater shrimp as a high quality product that generally sells at a higher price than U.S. shrimp.²⁸ Other major nonsubject country sources, generally for farmed shrimp, include Indonesia, Malaysia, Bangladesh, and Venezuela. While nonsubject imports have risen over the last year, including from Indonesia, petitioners submitted newspaper articles quoting Indonesian officials as concerned that Indonesia (possibly through licensed Indonesian exporters in Singapore) is being used as a transshipment zone for shrimp from subject countries. Concerned about transshipment, Indonesia imposed a three-month ban on shrimp imports from China, India, Thailand, and Vietnam after shrimp exports from Indonesia surged in the first eight months of 2004.²⁹

U.S. Demand

Demand Characteristics

Demand for shrimp comes from retail sellers of both prepared and unprepared warmwater shrimp (grocery stores) and restaurants, with restaurants making up an estimated 80 percent of total consumption.³⁰ In recent years, larger restaurant chains and seafood processors (i.e., breaders, skewers, and marinaters) have demanded warmwater shrimp in larger quantities, with year-round availability, standardized sizes, and lower prices. These new market segments have generally been met with imports, particularly farm-raised subject imports.³¹

*** said that U.S. warmwater shrimp demand generally increases from October through Christmas due to more frequent holidays and parties. It said that January is a slow period with a spike for the Super Bowl, followed by another lull and then an increase in demand during Lent. Late spring and early summer is another lull with spurts of activity for holidays such as the Fourth of July and Memorial Day, and then September is probably the worst month for demand. Severe weather, such as hurricanes, in the Gulf can also slow demand.³²

When asked if the selling prices they charge to customers for products involving shrimp had changed, 19 purchasers said their prices had changed while eight said they had not. Breaders *** reported some price changes for breaded and/or battered shrimp, including decreases, due to the changing cost of warmwater shrimp. However, *** reported that while warmwater shrimp prices had fallen, its promotional costs for shrimp had risen. Grocery chain *** reported that it passes cost changes on to consumers, with its seafood department reporting that in 2001, 31/35 farmed shrimp retailed at \$10.30 per pound but in 2004 at \$6.55. Likewise, *** reported that 41/50 count headless shrimp from Ecuador had dropped from \$3.75 per pound in 2001 to \$3.05 per pound in 2003, and *** reported passing cost

²⁸ Commission trip to ***.

²⁹ See, petitioners' posthearing brief, exhibit 22.

³⁰ See, testimony of Jonathan D. Applebaum, President, Penguin Frozen Foods, conference transcript, pp. 50 and 121.

³¹ In addition to importer questionnaires, see also, testimony of Bill Herzig, Darden Restaurants, conference transcript, pp. 157-159. Prepared warmwater shrimp has maintained its price levels at the consumer level even as warmwater shrimp prices have fallen, perhaps suggesting that demand has been growing at close to the same rate as total supply.

³² Commission visit to ***.

reductions along to consumers. *** said that both domestic and imported prices had fallen since 2001, as had prices of shrimp rings. However, *** stated that while there had been some price variations for its products, there had not been across-the-board price reductions. Some restaurant chains, though, such as ***, stated that menu prices are not driven by shrimp prices, or that menu price changes are infrequent and tied to larger promotional activity, not just to the price of one raw material.

Overall, nine purchasers reported that demand for their products incorporating warmwater shrimp had increased, six reported that demand was unchanged, and one, ***, reported that it was producing fewer products using shrimp. Of the nine purchasers that reported increased demand for their products incorporating warmwater shrimp, seven reported that this increase had led to their own increase in purchases of warmwater shrimp. *** explained that the increase was due both to more demand as shrimp became a more widespread menu item and ***.

Demand Trends

Overall demand for warmwater shrimp is up, even if consumers have not necessarily seen lower prices for warmwater shrimp at grocery stores or restaurants.³³ Processors cited low prices of imported shrimp as the explanation for the increased consumption,³⁴ while importers were more likely to describe an increase in demand, describing increased health consciousness as well as the availability of a low-priced, standardized product, and overall increased marketing of seafood and particularly shrimp.³⁵

***.

Purchasers were asked if they had made a significant increase in the volume or frequency of purchases in the last three years. Twenty-one purchases said yes, generally citing increases due to increased demand, increased promotions, and seasonal demand at holidays, although *** cited decreases due to the tariffs from these investigations. ***, however, reported a decrease due to its shift away from ***. Thirteen purchases said they had not had a significant change.

Substitute Products

In general, there are few, if any, close substitutes for warmwater shrimp. While other proteins may be consumed, they offer different tastes, textures, and presentations. Seventeen processors and 20 importers stated that there were no substitutes for warmwater shrimp. Twelve processors and 16 importers said that the prices of shrimp substitutes did not affect the price of shrimp. Thirteen importers did list other seafood as substitutes, including coldwater shrimp, a smaller shrimp that is not subject to these investigations. Three importers mentioned meats as potential substitutes for warmwater shrimp. Four processors also listed other seafoods (including coldwater shrimp and fresh shrimp) as substitutes. Among purchasers, 19 said that there were no substitutes for warmwater shrimp, while three listed coldwater shrimp and five listed other proteins as substitutes.

³³ See "Getting Skewered by Shrimp Prices," Wall Street Journal, October 16, 2003. Some purchasers, such as Darden Restaurants, have stated that limited-time promotions have offered lower-priced shrimp to consumers. See, testimony of Bill Herzig, Vice President for Seafood Purchasing, Darden Restaurants, hearing transcript, p. 226.

³⁴ Ten processors reported increased demand for shrimp, but 12 processors actually reported decreased demand, but then explained that their answers mean decreased demand for U.S. warmwater shrimp due to increased competition from subject imports. Among processors who reported increased demand, many still said that the increased demand had mostly gone to lower cost imports, as consumers did not differentiate between U.S. and imported warmwater shrimp. ***.

³⁵ Thirty-eight importers described demand for frozen warmwater shrimp as having increased, with two stating it was unchanged, and one stating it had fallen because of the 9/11 terrorist attacks.

Cost Share

For most end-use products prepared with shrimp, including breaded and marinated shrimp, the shrimp itself remains a high part of the cost of the final product, with most purchasers reporting that shrimp was 50 to 86 percent of the cost of breaded shrimp and 70 to 90 percent of the cost of marinated shrimp or shrimp scampi. However, *** reported that shrimp could be a lesser percentage of plate meals such as ***.

SUBSTITUTABILITY ISSUES

Factors Affecting Purchasing Decisions

Most sales of warmwater shrimp are made out of inventory. Twenty-three processors and 20 importers described 90 percent or more of their sales as coming out of inventory, while an additional four processors and six importers described over half their sales as coming out of inventory. Sales out of inventory generally had lead times of 10 days or less. Only one processor and eight importers reported that half or more of their sales were produced to order, with processors reporting lead times of one to three weeks on these orders, and importers reporting lead times of three days to four months.

Comparisons of Domestic Products and Subject Imports

Respondents and some purchasers alleged that U.S. warmwater shrimp is not available in sufficient quantity or quality (in terms of peeling, preparation, uniformity and handling) to supply large purchasers who bread and/or sell to large chain restaurants.³⁶ Processors were more likely to say that U.S. and imported warmwater shrimp is basically interchangeable on quality issues, and that U.S. processors had supplied large purchasers in the past (before the recent arrival of larger volumes of imports).³⁷

In the Commission questionnaires, processors and importers were asked to assess how interchangeable warmwater shrimp from the United States was with warmwater shrimp from subject countries and nonsubject countries. Their answers are summarized in tables II-1 and II-2.³⁸ Processors generally described U.S. and imported shrimp as interchangeable.³⁹ However, *** stated that some of the subject countries produce a lot of black tiger shrimp, and that this species is somewhat less well received in the United States than other species of warmwater shrimp. However, *** stated that other species of warmwater shrimp from subject countries are interchangeable with U.S. warmwater shrimp. Importers cited differences in species (white, brown, and pink shrimp vs. black tiger), sizes, uniformity (with U.S.

³⁶ See, for example, testimony of Bill Herzig, Vice President for Seafood Purchasing, Darden Restaurants, Russ Mentzer, CEO and President of King & Prince, and Peter Redmond, Vice President for Deli/Seafood, Wal-Mart, hearing transcript, pp. 229, 238-246, and 237 respectively.

³⁷ See, for example, testimony of Richard Gollot, Treasurer of Golden Gulf Coast, hearing transcript, pp. 116-117.

³⁸ Several firms submitted both processor and importer questionnaires. In the interest of not counting companies twice, they were assigned either to “processor” or “importer” for the purposes of this question. *** were categorized as processors while *** were categorized as importers.

³⁹ Some processors and importers said that U.S. wild-caught warmwater shrimp has a better flavor than farm-raised warmwater shrimp (although other importers also believed that farmed warmwater shrimp had a milder and more consistent flavor preferred by consumers). Various importers alleged that U.S. wild-caught shrimp is often on a shrimp boat for weeks before being processed and frozen, and thus may need more preservative chemicals (sulphites) than farm-raised warmwater shrimp. However, in a Commission visit to Tarpon Springs, *** Commission visit to ***.

warmwater shrimp allegedly less uniform), and level of processing (e.g., U.S. warmwater shrimp is often PUD (peeled not deveined) while imports are tail-on peeled for further processing), and workmanship as key hindrances to interchangeability between U.S. and subject country imports, and to a lesser extent among the individual subject countries.

**Table II-1
Warmwater shrimp: U.S. processors' perceived degree of interchangeability of warmwater shrimp produced in the United States and other countries**

Perceived degree of interchangeability	Brazil	China	Ecuador	India	Thailand	Vietnam	Nonsubject
United States	21 always 3 frequently 1 some 1 never	26 always 1 frequently 0 some 1 never	24 always 2 frequently 0 some 1 never	18 always 5 frequently 1 some 1 never	23 always 3 frequently 1 some 1 never	23 always 2 frequently 2 some 1 never	15 always 3 frequently 0 some 1 never
Brazil		22 always 1 frequently 0 some 0 never	21 always 1 frequently 0 some 1 never	17 always 2 frequently 1 some 1 never	20 always 2 frequently 1 some 0 never	20 always 1 frequently 2 some 0 never	15 always 2 frequently 0 some 0 never
China			21 always 3 frequently 0 some 0 never	17 always 3 frequently 2 some 0 never	21 always 3 frequently 1 some 0 never	21 always 3 frequently 1 some 0 never	15 always 3 frequently 0 some 0 never
Ecuador				17 always 3 frequently 2 some 0 never	20 always 3 frequently 1 some 0 never	20 always 2 frequently 2 some 0 never	15 always 3 frequently 0 some 0 never
India					18 always 2 frequently 2 some 0 never	18 always 2 frequently 2 some 0 never	14 always 3 frequently 5 some 0 never
Thailand						22 always 2 frequently 1 some 0 never	15 always 3 frequently 0 some 0 never
Vietnam							16 always 3 frequently 0 some 0 never

Note.— “some” means “sometimes” (shortened for space reasons).

Source: Compiled from responses to Commission questionnaires.

Table II-2

Warmwater shrimp: Importers' perceived degree of interchangeability of warmwater shrimp produced in the United States and other countries

Perceived degree of interchangeability	Brazil	China	Ecuador	India	Thailand	Vietnam	Nonsubject
United States	3 always 5 frequently 11 some 6 never	4 always 3 frequently 16 some 6 never	3 always 4 frequently 11 some 8 never	2 always 3 frequently 11 some 12 never	3 always 2 frequently 13 some 12 never	2 always 2 frequently 10 some 16 never	2 always 3 frequently 13 some 5 never
Brazil		5 always 11 frequently 8 some 1 never	6 always 15 frequently 6 some 0 never	3 always 8 frequently 9 some 7 never	4 always 9 frequently 11 some 3 never	3 always 7 frequently 10 some 7 never	4 always 9 frequently 10 some 0 never
China			9 always 11 frequently 10 some 1 never	4 always 7 frequently 11 some 8 never	7 always 9 frequently 13 some 3 never	5 always 7 frequently 12 some 6 never	4 always 10 frequently 8 some 1 never
Ecuador				4 always 7 frequently 9 some 8 never	5 always 11 frequently 11 some 2 never	3 always 5 frequently 12 some 6 never	4 always 9 frequently 12 some 0 never
India					6 always 8 frequently 14 some 3 never	6 always 10 frequently 12 some 1 never	4 always 9 frequently 11 some 0 never
Thailand						7 always 13 frequently 11 some 0 never	6 always 9 frequently 10 some 0 never
Vietnam							3 always 8 frequently 11 some 0 never

Note.— “some” means “sometimes” (shortened for space reasons).

Source: Compiled from responses to Commission questionnaires.

Purchasers were also asked to assess how interchangeable warmwater shrimp from the United States was with warmwater shrimp from subject countries and nonsubject countries. Their answers are summarized in table II-3. Purchasers' answers varied widely due to their different interpretations of the word “interchangeable.” *** remarked that warmwater shrimp from all countries was always interchangeable with all other countries' warmwater shrimp, but noted that in describing “interchangeability,” it meant “can {the shrimp} physically be used in the same applications” independently of availability. It indicated in answers to other questions that availability of U.S. warmwater shrimp was a concern. Eleven purchasers mentioned species difference as a reason to mark a country comparison “sometimes” or “never” interchangeable. Purchasers also cited quality differences, flavor differences between farmed and wild shrimp, size, price, alleged U.S. use of sodium triphosphate, and extent of peeling as important factors affecting interchangeability. *** noted that its customers will be more willing to substitute between shrimp from different countries when price differences are larger. *** described U.S. shrimp as generally lower quality than Chinese, Indian, Thai, and Vietnamese

warmwater shrimp in specific size ranges. *** said that China, India, Thailand, and Vietnam (especially Thailand and Vietnam) have high capacities for cooking shrimp, while the United States has “zero” capability and Brazil and Ecuador have little capability, restricting interchangeability. It added that U.S. interchangeability with other countries is declining because the U.S. industry does not have sufficient value added offerings such as cooked, EZ peel, and peeled shrimp. *** stated that it can not buy head-on from China and Thailand, and mainly buys head-on from U.S. and South American suppliers. *** stated that Indian warmwater shrimp has a different taste and texture than warmwater shrimp from most other subject countries and the United States.

Table II-3
Warmwater shrimp: Purchasers’ perceived degree of interchangeability of warmwater shrimp produced in the United States and other countries

Perceived degree of interchangeability	Brazil	China	Ecuador	India	Thailand	Vietnam	Nonsubject
United States	7 always 5 frequently 4 some 0 never	6 always 2 frequently 9 some 6 never	7 always 5 frequently 6 some 4 never	4 always 1 frequently 9 some 7 never	6 always 1 frequently 9 some 8 never	4 always 1 frequently 8 some 8 never	5 always 3 frequently 6 some 4 never
Brazil		5 always 4 frequently 5 some 0 never	6 always 7 frequently 1 some 0 never	3 always 1 frequently 6 some 4 never	3 always 2 frequently 8 some 1 never	2 always 2 frequently 6 some 2 never	4 always 2 frequently 3 some 0 never
China			7 always 6 frequently 6 some 1 never	3 always 5 frequently 6 some 3 never	6 always 6 frequently 8 some 1 never	3 always 5 frequently 9 some 1 never	4 always 5 frequently 6 some 1 never
Ecuador				2 always 3 frequently 8 some 5 never	4 always 4 frequently 10 some 2 never	3 always 3 frequently 6 some 4 never	3 always 5 frequently 6 some 0 never
India					4 always 5 frequently 9 some 0 never	2 always 5 frequently 9 some 1 never	3 always 2 frequently 8 some 2 never
Thailand						6 always 7 frequently 8 some 0 never	4 always 4 frequently 8 some 1 never
Vietnam							3 always 2 frequently 7 some 2 never

Note.— “some” means “sometimes” (shortened for space reasons).

Source: Compiled from responses to Commission questionnaires.

Processors and importers were asked to assess how often differences other than price were significant in sales of warmwater shrimp from the United States, subject countries, or nonsubject countries. Their answers are summarized in tables II-4 and II-5. U.S. processors were generally likely to see few relevant differences other than price, while importers cited U.S. fishermen’s use of chemicals to

preserve caught shrimp, inconsistent quality of U.S. warmwater shrimp, lack of availability of U.S. warmwater shrimp in sizes and forms preferred by customers, and species and size differences as important differences other than price between U.S. and imported warmwater shrimp.

**Table II-4
Warmwater shrimp: U.S. processors' perceived importance of factors other than price in sales of warmwater shrimp produced in the United States and other countries**

Perceived importance of factors other than price	Brazil	China	Ecuador	India	Thailand	Vietnam	Nonsubject
United States	2 always 1 frequently 5 some 17 never	5 always 0 frequently 4 some 19 never	4 always 0 frequently 5 some 18 never	2 always 3 frequently 4 some 16 never	3 always 2 frequently 4 some 19 never	3 always 1 frequently 5 some 19 never	1 always 0 frequently 4 some 14 never
Brazil		3 always 0 frequently 4 some 16 never	2 always 0 frequently 5 some 16 never	2 always 1 frequently 3 some 15 never	2 always 1 frequently 4 some 16 never	2 always 0 frequently 5 some 16 never	0 always 0 frequently 4 some 14 never
China			3 always 0 frequently 5 some 16 never	2 always 0 frequently 5 some 15 never	2 always 1 frequently 5 some 18 never	2 always 1 frequently 5 some 18 never	0 always 0 frequently 4 some 14 never
Ecuador				2 always 1 frequently 3 some 16 never	2 always 1 frequently 4 some 17 never	2 always 1 frequently 4 some 17 never	0 always 0 frequently 4 some 14 never
India					2 always 1 frequently 3 some 16 never	2 always 0 frequently 3 some 16 never	0 always 0 frequently 4 some 14 never
Thailand						2 always 0 frequently 5 some 18 never	0 always 0 frequently 5 some 14 never
Vietnam							0 always 0 frequently 4 some 15 never

Note.— “some” means “sometimes” (shortened for space reasons).

Source: Compiled from responses to Commission questionnaires.

Table II-5

Warmwater shrimp: U.S. importers' perceived importance of factors other than price in sales of warmwater shrimp produced in the United States and other countries

Perceived importance of factors other than price	Brazil	China	Ecuador	India	Thailand	Vietnam	Nonsubject
United States	11 always 6 frequently 2 some 5 never	14 always 8 frequently 6 some 5 never	12 always 8 frequently 4 some 5 never	10 always 8 frequently 5 some 7 never	15 always 8 frequently 3 some 6 never	14 always 5 frequently 3 some 7 never	7 always 6 frequently 8 some 5 never
Brazil		3 always 6 frequently 13 some 4 never	2 always 6 frequently 12 some 7 never	3 always 6 frequently 10 some 6 never	3 always 6 frequently 12 some 5 never	3 always 6 frequently 9 some 5 never	1 always 6 frequently 14 some 3 never
China			3 always 7 frequently 13 some 5 never	4 always 5 frequently 12 some 7 never	3 always 7 frequently 14 some 6 never	4 always 5 frequently 13 some 5 never	1 always 6 frequently 14 some 2 never
Ecuador				3 always 6 frequently 10 some 8 never	3 always 6 frequently 13 some 7 never	3 always 5 frequently 11 some 7 never	1 always 5 frequently 15 some 4 never
India					4 always 8 frequently 14 some 4 never	4 always 8 frequently 14 some 5 never	2 always 7 frequently 13 some 3 never
Thailand						3 always 7 frequently 16 some 5 never	2 always 6 frequently 15 some 3 never
Vietnam							1 always 5 frequently 14 some 3 never

Note.— "some" means "sometimes" (shortened for space reasons).

Source: Compiled from responses to Commission questionnaires.

U.S. Purchasers

The Commission received questionnaires from 36 purchasers⁴⁰ of warmwater shrimp. Few (approximately five) purchasers were related to importers of warmwater shrimp, and *** (other than ***) were related to any producers (domestic or foreign) of warmwater shrimp.⁴¹

Thirty-two purchasers reported familiarity with and/or purchases of U.S. domestic warmwater shrimp, and 28 purchasers reported familiarity with and/or purchases from warmwater shrimp from at least three subject countries. In terms of reporting actual purchases, table II-6 presents a complete list of

⁴⁰ *** submitted two questionnaires, one for ***.

⁴¹ The Commission received purchaser questionnaires from the following companies that also submitted processor and/or importer questionnaires: ***.

which purchasers reported purchasing from which countries. (Not all purchasers were able to report their purchases.)

Table II-6
Warmwater shrimp: Purchasers' reported purchases from particular national sources in 2003 and/or January-June 2004

* * * * *

Fourteen purchasers were distributors, six were grocery chains, three were restaurant chains, four were breaders/marinaters/skewerers/producers of prepared meals, five were combinations of restaurants, groceries, and/or distributors, and three were other (distributor/processor, importer and seafood market). Distributors tended to sell to restaurants and grocery chains. Nineteen purchasers reported that they did not compete with their customers, although 13 (mostly distributors or breaders/marinaters/skewerers) reported that they did at least sometimes compete with their customers. All the purchasers reported purchasing frozen warmwater shrimp, although only six (four grocery chains and two distributors) reported purchasing canned warmwater shrimp.

Most purchasers reported contacting two to five suppliers when purchasing, although five reported the range could be higher than that. (None reported usually contacting only one supplier.) Twenty-one purchasers said that they had not changed suppliers since January 1, 2001, while 14 said that they had, and cited lack of consistency, sales increases, price, and availability as reasons. Twenty-two purchasers said they were not aware of any new suppliers, while 11 said that they were, with Rubicon being cited most frequently.

Purchasers were asked if the relative shares of their purchases from different countries had changed since January 1, 2001. Five purchasers reported increasing their relative share of purchases from U.S. suppliers, citing work done with suppliers and purchasers to make U.S. product more acceptable, switching U.S. suppliers, and increased demand. Three reported decreasing their relative share of purchases from U.S. suppliers, citing low sales, small decreases due to more emphasis on cooked shrimp, or quality problems. Twenty purchasers reported some shift in shares among their purchases of warmwater shrimp from subject countries.⁴² Reasons cited were usually increased demand, quality issues, price, or availability.

Purchasers were also asked to report their annual purchases of warmwater shrimp from each subject country and the United States. Table II-7 summarizes their responses for two time periods, 2001-03 and 2002-03.

⁴² Specifically, one purchaser reported decreased relative purchases of Brazilian product, nine purchasers reported increased relative purchases of Chinese product, three purchasers reported decreased relative purchases of Chinese product, four purchasers reported increased relative purchases of Ecuadorian product, six purchasers reported decreased relative purchases of Ecuadorian product, three purchases reported increased relative purchases of Indian product, one purchaser reported decreased relative purchases of Indian product, five purchasers reported increased relative purchases of Thai product, three purchasers reported decreased relative purchases of Thai product, four purchasers reported increased relative purchases of Vietnamese product, and two purchasers reported decreased relative purchases of Vietnamese product.

Table II-7
Warmwater shrimp: Purchaser volume trends

Country	Purchase volumes up 2001-03 (number of purchasers)	Purchase volumes down 2001-03 (number of purchasers)	Purchase volumes up 2002-03 (number of purchasers)	Purchase volumes down 2002-03 (number of purchasers)
Brazil	4	2	2	3
China	13	3	12	5
Ecuador	8	8	9	8
India	8	4	6	4
Thailand	11	7	14	6
Vietnam	7	6	8	8
United States	12	10	13	12
Source: Compiled from information submitted in response to Commission questionnaires.				

Factors Affecting Purchasing Decisions

Available data indicate that quality, price, and availability are the most important factors that influence purchasing decisions for warmwater shrimp.⁴³ Purchasers were asked to list the top three factors that they consider when choosing a supplier of warmwater shrimp. Table II-8 summarizes responses to this question. Purchasers were also asked to describe the importance of various purchasing factors, as summarized in table II-9. Price was an important factor for most purchasers, but sometimes came after quality in importance.⁴⁴ Summaries of purchaser comparisons of domestic, subject, and nonsubject warmwater shrimp are presented in appendix E.

⁴³ When asked what defines the quality of warmwater shrimp, purchasers listed many factors, including size, flavor, color, customer acceptance, odor, texture, size conformity, appearance, count, weight, peeling workmanship, use of chemicals, number of pieces, passing quality control, freshness, and ability to meet product specifications.

⁴⁴ When asked how often they purchase the warmwater shrimp offered to them at the lowest price, no purchasers said always, 15 said usually, 17 said sometimes, and three said never.

Table II-8
Warmwater shrimp: Ranking of purchasing factors by purchasers

Factor	Number of firms reporting		
	Number 1 factor	Number 2 factor	Number 3 factor
Quality	15	12	2
Price/cost	7	11	8
Availability	5	3	6
Food safety	2	0	0
Credit extension	1	0	2
Reputation	1	0	2
Customers' specs	1	0	0
Consistency/reliability	1	4	5
Delivery	0	1	2
<p>Note.--Other factors mentioned include product range, service, traditional supplier, country of origin, and species. These answers were not included above.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>			

Table II-9
Warmwater shrimp: Importance of purchasing factors

Factor	Number of firms reporting			
	Very important	Somewhat important	Not important	No answer
Availability	31	4	0	0
Consistency from one shipment to another	31	3	1	0
Delivery terms	12	19	4	0
Delivery time	17	14	2	2
Discounts offered	7	15	12	1
Extension of credit	5	20	10	0
Price	27	8	0	0
Minimum quantity requirements	7	14	14	0
Packaging	13	19	3	0
Product range	7	23	4	1
Proper cutting, handling, and packing techniques	28	6	1	0
Quality meets your firm's standards	32	3	0	0
Quality exceeds your firm's standards	16	15	3	1
Reliability of supply	30	5	0	0
Taste/flavor profile	27	4	3	1
Transportation network	8	16	10	1
U.S. transportation costs	9	17	8	1
Other	4	0	0	31

¹ 3 = very important, 2 = somewhat important, 1 = not important.

Note.--Other factors mentioned include traceability, HACCP, aquaculture produced, and environmental sustainability.

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

When asked how often U.S.-produced warmwater shrimp meets minimum quality specifications for their or their customers' uses, three purchasers said always, 12 said usually (although two of these noted the usually was for peeled shrimp and that domestic shrimp was less likely to meet specifications for other types), nine said sometimes, and seven said rarely or never. When asked how often subject country shrimp meets minimum quality specifications, four purchasers said always, 23 said usually, one said sometimes, and one said rarely or never. When asked how often nonsubject country shrimp meets minimum quality specifications, purchasers generally answered always or usually for many Central and South American countries and for many Southeast Asian countries as well.

Purchasers were asked how often they knew the producer/processor of the warmwater shrimp that they purchased. Nine purchasers said always, 14 said usually, 12 said sometimes, and one said never. Purchasers were also asked how often they and their customers were aware of the country of origin of the warmwater shrimp that they purchase. With regards to whether they were aware if their own purchases were U.S. warmwater shrimp or imported warmwater shrimp, 26 purchasers said always, eight said

usually, and one said never. With regards to whether their customers were aware of the country of origin of their purchases, seven said always, 14 said usually, 13 said sometimes, and two said never.

Twenty-five purchasers reported that they required approval of suppliers for 90-100 percent of their purchases, while three reported that they required approval of suppliers for 40-80 percent of their purchases. Approval was usually based on quality, chemicals, USDA inspection, consistency, HAACP approval, and size. Approving a new supplier is based on the same standards, as well as supplier reliability and company reputation. Seven purchasers, mostly distributors, stated that they did not require approval for their purchases.

Nineteen purchasers reported that no suppliers had failed to receive approval. However, 11 purchasers reported that U.S. suppliers had failed to receive approval, for issues such as quality, uniformity, traceability, and supply interruptions. Three purchasers reported Chinese suppliers failing because of quality and chemical problems. One purchaser reported failing an Ecuadorian supplier for workmanship and sizing issues, one reported failing an Indian supplier, one reported failing processor/importer *** because of too much use of phosphates, and one reported failing an importer.

When asked if they ever specifically ordered warmwater shrimp from one country over others, 29 purchasers said that they did, with seven of those mentioning the United States as at least one of the countries. The rest generally named subject countries for the availability of farm-raised product, for specific species, and for quality or price reasons. Several purchasers mentioned purchasing black tigers from Thailand and white shrimp from China, Ecuador, or Mexico (with five purchasers mentioning Mexican white shrimp as a high quality product). Similarly, when purchasers were asked if certain grades or types of warmwater shrimp are only available from a single country source, 23 said no and 11 said yes. The 11 who said yes generally cited specific species (such as black tigers from Thailand or freshwater prawns from Bangladesh), levels of processing (such as peeled tail-on small shrimp or cooked 16/20 not available from the United States), or levels of quality (such as black tigers from the Philippines and large Mexican white shrimp).

When asked why they had purchased more expensive warmwater shrimp when less expensive warmwater shrimp was available, purchasers cited a variety of reasons including consistent and reliable supply and quality. For example, *** said that it often pays or is willing to pay more for warmwater shrimp from China (for quality of workmanship), Ecuador (faster lead times and quality), India (availability of large shrimp), and Thailand (quality and reliability). *** said that it only buys from a pool of established suppliers familiar with its specifications and standards, but that even within that pool of suppliers it will sometimes buy higher-priced warmwater shrimp because of reliability, delivery time, and competitive balance among suppliers. However, *** stated that it tries to buy American except when “forced” to carry imports due to competition.

Different Forms of Warmwater Shrimp

Warmwater shrimp is available in multiple forms. It may be sold in different sizes, in species, with different freezing techniques (IQF vs. block frozen), with different extents of peeling, and in different forms (frozen or canned). When asked if warmwater shrimp in one form competes with warmwater shrimp in a different form, 21 processors said yes, stating that one size of shrimp is often substitutable for another, as are different sizes and amounts of peeling. *** stated that since shrimp is always consumed peeled anyway, price differences can entice consumers to substitute between peeled and headless shrimp. *** said that, due to competition from subject imports, many of its customers will still buy peeled shrimp from it but not headless. *** stated that value-added shrimp is competing more often with headless, shell-on shrimp. Sixteen importers also said that warmwater shrimp in one form can compete with warmwater shrimp in a different form. *** said that retailers compete within price bands, and therefore they purchase shrimp that fit within the band they are selling in. Other importers who said yes described such substitution among forms of warmwater shrimp as happening more at the final

consumer level. Five processors and 24 importers said different forms of shrimp do not compete with each other.

Purchasers were asked whether they usually purchase the same size and species of warmwater shrimp for use in the same end-use application. Twenty-three purchasers said that they always or usually did purchase the same size and species, while eight said they varied their purchases by size and species. Distributors were more likely to answer that they did vary the sizes and species that they purchased, while broader/marinaters and restaurant chains preferred to purchase the same sizes in general.

Questionnaires also asked purchasers to describe the uses and prices of warmwater shrimp across the following divisions: IQF vs. block frozen, peeled frozen vs. shell-on headless frozen, wild-caught vs. farm-raised, one species vs. another, and one count size vs. another. In each comparison, purchasers were asked first whether changes in the price of one type of frozen shrimp always, usually, sometimes, or never affected the price of another type. Then, purchasers were asked if they could or did use the different types for the same end uses.

Purchasers often responded that prices of different types of warmwater shrimp in each category were usually affected by the other type, but these same purchasers would also often say that they did not typically use the different types of shrimp in the same end uses. This apparent discrepancy could be because prices reflect the overall supply of warmwater shrimp, or because these purchasers have not felt constrained enough to purchase other forms of warmwater shrimp recently.

IQF vs. block frozen

When asked how often changes in the price of IQF warmwater shrimp affect the price of block frozen warmwater shrimp, one purchaser said always, 18 said usually, ten said sometimes, and one said never. Purchasers were then asked if they could or do use IQF and block frozen warmwater shrimp for the same end uses. Answers varied widely. *** reported that their customers could take either block frozen or IQF. *** said they could purchase block frozen and IQF product for the same end uses, perhaps depending on availability. *** said it could not interchange block frozen and IQF product as imported block frozen warmwater shrimp has no chemical treatment but IQF frozen warmwater shrimp does. *** said that they usually do not purchase IQF and block frozen product for the same end uses, and may use each or only one for a particular purpose. For example, *** said that block frozen product typically has less breakage than IQF product. *** said most of its sales were block frozen warmwater shrimp to restaurants, and *** said that restaurants and hotels prefer block frozen. *** said that they could purchase either, but typically purchase one depending on end use. *** said that they typically purchase either block frozen or IQF depending on customer preference. *** said that IQF can be thawed faster than block frozen product. *** said that traditionally, when the price of block frozen warmwater shrimp increases, then the price of IQF product increases within one month. However, it explained that recently, that increase has not been occurring as some customers require one form or the other. *** said it could not use block frozen in retail applications, and *** said that IQF is more for grocery stores while block frozen is for restaurants. *** said it preferred block frozen for its longer shelf life.

*** explained that block freezing keeps the shrimp colder, saves space, avoids breakage, and thus may be preferred by some retailers. However, it said that IQF has the advantage of being separated and can be sold in bags without additional thawing. *** added that IQF shrimp may command a slightly higher price premium than block frozen, but that block frozen are slightly more costly to produce as a result of higher handling costs.⁴⁵

⁴⁵ See, commission visit to *** and staff interview with ***.

Peeled frozen vs. shell-on headless frozen

When asked how often changes in the price of peeled frozen warmwater shrimp affect the price of shell-on headless frozen warmwater shrimp, one purchaser said always, 11 said usually, 13 said sometimes, and three said never. Purchasers were then asked if they could or do use peeled and shell-on headless warmwater shrimp for the same end uses. Fourteen answered that they rarely or never used peeled and shell-on headless for the same end uses, but seven said that they did or could. *** stated that the interchangeability of peeled and shell-on shrimp depends on both the purchaser's capacity to perform value-adding processes and the price/availability of each type. *** said that there are some restaurants that use both types. *** said that it usually can not interchange shell-on and headless, but that if peeled shrimp is not available, it will try to use shell-on. *** said that it is not staffed to peel and thus must use peeled, but *** said it preferred shell-on. *** said that the price of shell-on warmwater shrimp may affect the price of peeled warmwater shrimp, but not vice versa. *** said that it does not and can not purchase shell-on and peeled for the same end uses. *** said that some customers could peel their own shrimp, but *** saw peeled and shell-on as more interchangeable than ***. *** said that their customers usually order one or the other.

Wild-caught vs. farm-raised

Processors generally reported that farmed and wild-caught warmwater shrimp are fundamentally similar, while importers were more likely to report differences. The processors who supported the petition but also acknowledged some differences between farmed and wild-caught warmwater shrimp often stated that consumers were not willing to pay more for such differences, or were unable to discern such differences except in particular regions of the country. Importers, on the other hand, cited differences in quality (some stating that wild-caught shrimp tastes better and others stating the reverse), seasonal availability (with farmed warmwater shrimp being available in consistent sizes and quantities year round), and price (with farmed warmwater shrimp having a more stable and lower price).⁴⁶

Respondents have argued that a market niche does exist for U.S. wild-caught warmwater shrimp, with a potential premium available for taste.⁴⁷ They stated that U.S. processors have been unwilling to adapt to changing trends in the U.S. shrimp market. Many processors reported that consumers did not differentiate between types of shrimp, that "a shrimp is a shrimp" in consumers' eyes, and that while U.S. wild-caught warmwater shrimp may have a taste advantage, that advantage is not enough to make up for the substantially lower prices of subject imports.

When asked how often wild-caught and farm-raised warmwater shrimp compete with each other, 21 processors said always, three said usually, and four said sometimes. Those processors which thought there was some difference cited wild-caught shrimp's superior taste, farm-raised shrimp's uniform appearance, and the chemical-free nature of U.S. wild-caught shrimp. However, processors who saw more competition between wild-caught and farm-raised shrimp were more likely to say the major difference was the much lower price and higher volume of imported farm-raised shrimp, which some processors said they could not compete with due to much lower foreign labor costs. When asked how often wild-caught and farm-raised warmwater shrimp compete with each other, 27 importers said sometimes, two said usually, six said always, and seven said never (or rarely). Most importers (including the ones who answered "sometimes") described farmed warmwater shrimp as a higher quality product

⁴⁶ In addition to importer questionnaire responses, see also, testimony of George Chamberlain, Global Aquaculture Alliance, conference transcript, pp. 150-153.

⁴⁷ However, elsewhere (including importer questionnaire responses and testimony of George Chamberlain, Global Aquaculture Alliance, conference transcript, pp. 151-152), some respondents have also said that their warmwater shrimp has a superior taste.

than ocean-caught warmwater shrimp in terms of uniformity of size and flavor, availability, convenience, extent of peeling, and appearance. *** stated that some customers (especially chain restaurants) would prefer farmed warmwater shrimp.

When asked how often changes in the price of wild-caught warmwater shrimp affect the price of farm-raised warmwater shrimp, three purchasers said always, ten said usually, 15 said sometimes, and three said never. Purchasers were then asked if they could or do use wild-caught and farm-raised warmwater shrimp for the same end uses. *** said that wild-caught and farm-raised shrimp could be used for the same purposes only if customer specifications allowed, and added that more customers are requesting farm-raised shrimp only. *** said that when the same quality and size shrimp can be purchased for a competitive price, wild-caught and farm-raised are purchased interchangeably, but that wild-caught is often more expensive and not available in the value-added forms it needs. *** said that it could purchase either type for the same end uses, depending on which type was the better value. *** expressed a preference for wild-caught. *** said that wild-caught and farmed have separate markets, with *** stressing that availability, consistency, and quality considerations did not allow interchangeability of wild-caught and farm-raised shrimp. *** said that wild-caught and farm-raised shrimp were somewhat interchangeable, but that wild-caught tended to be more expensive due to it generally having higher count sizes. *** said that 65-70 percent of its customer base would use either wild-caught or farm-raised shrimp of comparable quality interchangeably, but 30-35 percent would not. *** said that wild-caught and farm-raised shrimp can be used for the same end uses, but that wild-caught shrimp prices are affected by farm-raised shrimp prices rather than the other way around. *** said that it could sometimes substitute farm-raised shrimp for wild-caught shrimp, but that wild-caught had too much flavor variation to substitute in the other direction. *** said that their customers can distinguish the flavors of wild-caught and (milder) farm-raised shrimp and demand one or the other. *** said that there is not much quality, chemical-free wild-caught shrimp available. *** also said that they do not buy wild-caught shrimp as farm-raised has many advantages including consistency, size, and year round availability. ***, though, said it would like to be able to use domestic wild-caught product. *** said that there is not enough wild-caught shrimp to meet its demand. *** stated that, at least to some extent, they could purchase wild-caught or farm-raised. *** said that it does purchase both wild-caught and farm-raised shrimp for some uses, but that ***. *** said that wild-caught and farm-raised shrimp do not compete with each other because the price for wild-caught is higher, and many restaurants do not want to pay the premium.

U.S. shrimp fishermen and processors are trying to develop a market for wild-caught shrimp through the efforts of the Wild American Shrimp Committee (WASI). Processors stated that WASI is attempting to market wild-caught shrimp as a premium product, but that full implementation is still a ways away.⁴⁸ In addition, Wal-Mart has begun selling U.S. shrimp marketed in bags marked with the U.S. state of origin, in an attempt to sell a premium product in the way wild salmon is successfully sold at a premium to farmed salmon.⁴⁹ However, one fisherman pointed out that similar efforts have been

⁴⁸ See, testimony of Richard Gollott, Treasurer, Golden Gulf and Jonathan D. Applebaum, President, Penguin Frozen Foods, hearing transcript, pp. 177-180.

⁴⁹ See, testimony of Peter Redmond, Vice President for Deli/Seafood of Wal-Mart, hearing transcript, pp. 232-233.

around since the 1980s, and have allegedly not slowed consumers from switching from U.S. wild-caught shrimp to imported farmed shrimp.⁵⁰

***.⁵¹

Species

Processors and importers mentioned some consumer preferences for particular species, but processors stressed that this variation was usually regional and not enough to command a large price premium.⁵² Importer Slade Gorton stated that regional consumer preferences for particular species had existed 20 years ago, and also stated that with proper marketing U.S. wild-caught shrimp could command a premium.⁵³ Some domestic processors stated that they do separate white and brown warmwater shrimp for headless sales but not otherwise.⁵⁴

When asked how often changes in the price of one species of warmwater shrimp affect the price of another species of warmwater shrimp, two purchasers said always, 11 said usually, 19 said sometimes, and two said never. Purchasers were then asked if they could or do use different species of warmwater shrimp for the same end uses. *** said it could only if allowed by customer specification. *** said that black tiger shrimp could be substituted for white shrimp. *** said that black tiger shrimp are considered unique and have a different flavor from white shrimp. *** said it could purchase different species for some end uses if the price of one species made it a better value. *** said that it could switch between farm-raised white shrimp and farm-raised black tiger shrimp. *** said that its customers (distributors) tend to sell multiple species of shrimp to end users who often use different species (depending on price) for the same end use. *** said that buyers try to compare prices between species, but that different species have different customers. *** said that it only buys one species. *** said that different species can be substituted, but still have different characteristics.

Size

When asked how often changes in the price of one size of warmwater shrimp affect the price of another size of warmwater shrimp, two purchasers said always, 12 said usually, and 20 said sometimes. Purchasers were then asked if they could or do use different sizes of warmwater shrimp for the same end uses. *** said it could not because using different sizes would affect the number of pieces per serving. *** said that they or other purchasers can and do use different sizes of warmwater shrimp, especially if the sizes are close and the prices are different. *** said that changing counts would affect the visual presentation of the product. *** said they do not usually use different sizes, but can. *** said that restaurants can usually change sizes depending on availability. *** said that they typically purchase the same specified size of warmwater shrimp. *** said that while other purchasers may make changes in the sizes they order, it does not as that would force menu changes, which are expensive. *** said that while it purchases many sizes of warmwater shrimp, its customers typically demand only one. *** said that it usually purchased the same sizes but that different sizes could be used for special promotions. *** said that some customers may switch sizes when price differentials are larger than normal.

⁵⁰ See, testimony of Kimberley Chauvin, owner of Mariah Jade Shrimp Company, hearing transcript, pp. 196-197.

⁵¹ Commission visit to ***.

⁵² See, testimony of Sal Versaggi, Owner, Versaggi Shrimp Company, conference transcript, p. 90.

⁵³ See, testimony of Wally Stevens, Slade Gorton, conference transcript, p. 146.

⁵⁴ See, testimony of Richard Gollott, Golden Gulf Coast Packing, and Andrew Blanchard, Pearl, conference transcript, pp. 63 and 80, respectively.

At the hearing, Darden stated that consistent count size is crucial in maintaining Red Lobster as a trusted brand, and that it cannot obtain consistently sized warmwater shrimp from domestic suppliers.⁵⁵

Frozen vs. canned

Canned warmwater shrimp is generally cooked while frozen warmwater shrimp usually is not.⁵⁶ In addition, canned warmwater shrimp is usually smaller sized shrimp, while frozen warmwater shrimp exists in a wider range of sizes and species. However, processors often stated that consumers did not draw huge distinctions between canned and frozen warmwater shrimp, and noted that canned and frozen warmwater shrimp can be used in some of the same recipes. Processors and respondents disagreed about how easy it would be to switch production from frozen to canned warmwater shrimp.⁵⁷

When asked how often changes in the price of frozen warmwater shrimp affect the price of canned warmwater shrimp, two purchasers said usually, eight said sometimes, and six said never. (Many purchasers expressed no knowledge of canned warmwater shrimp.) Purchasers were then asked if they could or do use frozen or canned warmwater shrimp for the same end uses. *** said that canned shrimp could be substituted for smaller frozen shrimp in some applications. *** said that frozen shrimp could have the same end uses as canned shrimp depending on consumer. *** said that frozen and canned warmwater shrimp could not be substitutes as quality and sizes would vary.

Overall, six purchasers (***) reported buying both canned and frozen warmwater shrimp. All the other purchasers reported buying only frozen, not canned, warmwater shrimp.

ELASTICITY ESTIMATES

Elasticity estimates are discussed below; parties were encouraged to comment on these estimates in their prehearing briefs.

U.S. Supply Elasticity

The domestic supply elasticity for warmwater shrimp depends on factors such as the level of excess capacity, the ability to shift production to alternate products, and the availability of alternate markets. Processors have rising inventories and low capacity utilization, but limited alternative production possibilities, an upward ceiling on raw materials, and no major exports. Analysis of these factors indicates that the domestic producers of warmwater shrimp have some ability to alter domestic shipments in response to a change in the relative price of warmwater shrimp. An estimate in the range of 3 to 6 is suggested.⁵⁸

⁵⁵ See, testimony of Bill Herzig, Vice President for Seafood Purchasing, Darden Restaurants, hearing transcript, pp. 227 and 307.

⁵⁶ U.S. canner Bumble Bee processes fresh shrimp the same day it receives it. See, testimony of David Cook, Vice President for Specialty Seafood Trade, Bumble Bee, hearing transcript, p. 89.

⁵⁷ See, testimony of Kevin Dempsey, Dewey Ballantine, and Kevin McClain, Chicken of the Sea, conference transcript, pp. 16 and 226, respectively.

⁵⁸ The prehearing report estimated the elasticity of U.S. supply to be in the range of 4 to 8. Dr. Chad Bown, economist for respondents, argued that U.S. supply was more inelastic, based on the landings of fresh shrimp. See testimony of Dr. Chad Bown, hearing transcript, pp. 252-253. Staff has reconsidered its earlier estimate to give more weight to the ceiling on potential U.S. production due to the limited supply of fresh shrimp. However, staff notes that its U.S. supply elasticity estimate is for frozen or canned warmwater shrimp, not fresh shrimp. While the level of fresh shrimp caught could limit the amount of shrimp available to be processed, data in these investigations

(continued...)

U.S. Demand Elasticity

The U.S. demand elasticity for warmwater shrimp depends on the availability of substitute products as well as the share of warmwater shrimp in the production cost of downstream products. While there are few exact substitutes for warmwater shrimp, purchasers can use other proteins in their sales of finished food products to consumers, and high current levels of demand for shrimp seem to be based on lower-than-historical prices. Based on the available information, the aggregate demand for warmwater shrimp is likely to be moderately elastic. An estimate in the range of -1 to -3 is suggested.

Substitution Elasticity

The elasticity of substitution depends on the extent of product differentiation between the domestic and imported products. Product differentiation depends on factors such as the range of products produced, quality, availability, and the reliability of supply. Based on available information, subject warmwater shrimp are substitutable for domestic warmwater shrimp in many end uses; nonetheless there are significant distinctions between U.S. and subject warmwater shrimp, and U.S. shrimp can not supply the current level of U.S. demand. Based on these factors, staff estimates the substitution elasticity between domestic warmwater shrimp and those imported from subject countries to be in the range of 2 to 5.⁵⁹

⁵⁸ (...continued)

indicate that U.S. processors do have excess capacity and relatively high levels of inventories which they could use to increase shipments of canned and frozen shrimp to the U.S. market. (For example, inventories have risen substantially since 2001, indicating that U.S. processors could increase shipments to the U.S. market.) Staff also notes that wild catch landings for the first six months of 2004 were over 15 percent lower than the same period of 2003 (see table IV-4). Since some fishermen indicated that they harvested less because the price of shrimp was lower (see, for example, transcript of the hearing at 62), this implies that the level of fresh shrimp is not totally fixed and supply is not totally price inelastic.

⁵⁹ Dr. Bown presented an econometric model to estimate the elasticity of substitution using pricing data from responses to Commission questionnaires. He estimated a lower elasticity of substitution (relative to that suggested by staff). While Dr. Bown's methodology is rigorous, there are data limitations in using the questionnaire data because of the relatively small number of observations. Dr. Bown also points to purchaser questionnaire responses where price is downplayed in purchasing decisions (see, prehearing brief of ASDA, exhibit 10). While staff acknowledges that purchasers of the subject warmwater shrimp often pointed to non-price factors as important, it is also important to note that there is also information from purchasers which indicates that price is important. For example, 27 purchasers reported price as a "very important" factor in their purchasing decisions and many purchasers stated that domestic and imported shrimp are interchangeable at least frequently. Based on all of the available information, staff believes that there is at least a moderate degree of substitutability between domestic and imported shrimp, most likely in the range of 2 to 5.

Dr. Bown also submitted an economic analysis using a Kelly model in which he determined that most of the decrease in production of frozen and canned warmwater shrimp is due to the decrease in demand for domestic product. Staff notes that the results of this model will depend heavily on the inputs used, and in particular, the elasticities used.

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 final margins of dumping was presented Part I of this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI.

U.S. PRODUCTION AND PRODUCERS

Warmwater shrimp is wild-caught in the United States in the Gulf of Mexico and the Southeastern Atlantic. Farm production is also largely concentrated in the same states. Table III-1 presents warmwater shrimp landings and farm production, by state, in 2003.

The Commission sent fishermen questionnaires to 190 firms identified in the petition as domestic shrimp fishermen. One hundred forty firms provided responses to the Commission's fishermen questionnaire.¹ One hundred thirty firms provided usable data and are believed to have accounted for approximately 6.5 percent of U.S. wild-caught landings of shrimp during 2003.² Data for the U.S. fishermen and a list of U.S. fishermen that responded to the Commission's fishermen questionnaire are presented in appendix F.

Table III-1

Warmwater shrimp: Wild-catch landings and farm production, by state, 2003

State	Wild-Catch Landings (thousands of pounds live weight)	Farm Production (thousands of pounds live weight)
Louisiana	125,602	--
Texas	79,169	8,900
Florida	24,250	2,000
Mississippi	16,490	--
Alabama	15,770	40
North Carolina	6,167	--
South Carolina	6,551	1,000
Georgia	5,495	--
Hawaii	--	1,000
Arizona	--	400
Arkansas	--	40

Source: Official statistics of the National Marine Fisheries Service and estimates of the U.S. Marine Shrimp Farming Program.

¹ On August 28, 2004, counsel for the Louisiana Shrimp Association submitted 1,028 letters from fishermen in support of the petition, and an additional 2,500 letters from fishermen have been received directly by the Commission.

² The number of fishermen returning questionnaires may have been impacted by the severe 2004 hurricane season.

The Commission sent processor questionnaires to 125 firms identified in the petition as domestic processors of shrimp. Thirty-nine firms responded to the Commission's processor questionnaire, of which 37 provided usable data.³ In 2003, these firms accounted for approximately *** percent of U.S. production of shrimp based on live (head-on shell-on) weight, or *** percent of U.S. production of shrimp based on headless shell-on weight. Presented in table III-2 is a list of the U.S. shrimp processors that responded to the Commission's processor questionnaire. Also presented is information concerning each company's position on the petition, production locations, annual average number of days the firm operated, toll agreements since January 1, 2001, share of commercial shipments of domestically harvested shrimp that were wild-caught and farm-produced, and their share of reported 2003 domestic production of shrimp.

Presented in table III-3 are reported changes in processors' operations since January 1, 2001. Table III-4 presents information from *** U.S. processors that reported production of other products on equipment and machinery used in the production of warmwater shrimp, shares of warmwater shrimp production on the same equipment, production of other products using the same production and related workers employed to produce warmwater shrimp, and shares of warmwater shrimp production using the same workers. These firms accounted for only *** percent of production in 2003. The vast majority of domestic production is accounted for by companies that produce warmwater shrimp with dedicated equipment and workers.

In the preliminary phase of the investigations, counsel for the petitioner raised the issue that appropriate circumstances exist to exclude several related parties from the domestic industry. The Commission found that two firms, ***, do not engage in sufficient production-related activities to be considered domestic producers.⁴ The Commission also found that two other firms, ***, should be excluded from the domestic industry as related parties.⁵ The data for these four firms are presented separately in the report and are collectively referred to as the "previously excluded parties."

Also in the preliminary phase of the investigations, three firms which petitioner sought to exclude from the domestic industry, ***, were unable to break out their substantial production of breaded shrimp from production of subject shrimp and, therefore, their questionnaire data were not used in the preliminary phase report. In these final phase investigations, *** have provided the Commission with questionnaire responses that contain data for subject product only. Petitioner continues to seek to exclude these firms from the domestic industry in the final phase. The data for *** are presented separately in the report and are collectively referred to as the "targeted related parties."

³ ***.

⁴ See "Views of the Commission" in *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Investigations Nos. 731-TA-1063-1068 (Preliminary), Publication 3672, February 2004, pp. 17-18.

⁵ *Ibid.*, pp. 18-19.

Table III-2

Warmwater shrimp: U.S. processors, their positions on the petition, U.S. production locations, annual average number of days the firms operated, toll agreements, shares of commercial shipments of domestically harvested warmwater shrimp, and shares of reported 2003 production

Firm	Position	Production location (s)	Annual average number of days firm operated	Toll agreements since January 1, 2001	Share of 2003 commercial shipments of domestically harvested warmwater shrimp (percent)		Share of 2003 reported production (percent)
					Farmed	Wild caught	
Bama Sea Products	Support	Florida	***	***	***	***	***
Bon Secour	Support	Alabama	***	***	***	***	***
Bumble Bee Seafoods	Support	Louisiana	***	***	***	***	***
Carson & Co.	Support	Alabama	***	***	***	***	***
C.F. Gollot & Son Seafood	Support	Mississippi	***	***	***	***	***
Custom Pack	Support	Mississippi	***	***	***	***	***
David Gollot Seafood	Support	Mississippi	***	***	***	***	***
Deep Sea Foods	Support	Alabama	***	***	***	***	***
Fisherman's Reef Shrimp	Support	Texas	***	***	***	***	***
***	***	***	***	***	***	***	***
***	***	***	***	***	***	***	***
Golden Gulf Coast	Support	Mississippi	***	***	***	***	***
Gollott Brothers Seafood	Support	Mississippi	***	***	***	***	***
Gulf Crown Seafood	Support	Louisiana	***	***	***	***	***
Gulf Fish	Support	Louisiana	***	***	***	***	***
Gulf Island Shrimp	Support	Louisiana	***	***	***	***	***
Gulf Shrimp	Support	Florida	***	***	***	***	***
Hi-Seas of Dulac	Support	Louisiana	***	***	***	***	***
JBS Packing	Support	Texas	***	***	***	***	***
***	***	***	***	***	***	***	***
***	***	***	***	***	***	***	***
Louisiana Shrimp & Packing	Support	Louisiana	***	***	***	***	***
Ocean Select Seafood	Support	Louisiana	***	***	***	***	***

Table continued on following page.

Table III-2--Continued

Warmwater shrimp: U.S. processors, their positions on the petition, U.S. production locations, annual average number of days the firms operated, toll agreements, shares of commercial shipments of domestically harvested warmwater shrimp, and shares of reported 2003 production

Firm	Position	Production location(s)	Annual average number of days firm operated	Toll production since January 1, 2001	Share of 2003 commercial shipments of domestically harvested of warmwater shrimp (percent)		Share of 2003 reported production (percent)
					Farmed	Wild caught	
Ocean Springs Seafood Marketing	Support	Mississippi	***	***	***	***	***
***	***	***	***	***	***	***	***
Paul Piazza	Support	Louisiana	***	***	***	***	***
Pearl/Indian Ridge Shrimp	Support	Louisiana	***	***	***	***	***
Port Royal Seafood	Support	South Carolina	***	***	***	***	***
***	***	***	***	***	***	***	***
Sea Pearl Seafood	Support	Alabama	***	***	***	***	***
Seabrook Seafood	Support	Texas	***	***	***	***	***
***	***	***	***	***	***	***	***
***	***	***	***	***	***	***	***
***	***	***	***	***	***	***	***
Tidelands Seafood	Support	Louisiana	***	***	***	***	***
Triple T Enterprises	Support	Louisiana	***	***	***	***	***
True World Foods	Support	Alabama	***	***	***	***	***
Vincent Piazza	Support	Louisiana	***	***	***	***	***
Weems Brothers Seafood	Support	Mississippi	***	***	***	***	***
Total							100.0
Source: Compiled from data submitted in response to Commission questionnaires.							

Table III-3

Warmwater shrimp: U.S. processors and changes in operations since January 1, 2001

* * * * *

Table III-4

Warmwater shrimp: U.S. producers, production of other products on equipment and machinery used in the production of warmwater shrimp, shares of warmwater shrimp production on the same equipment, production of other products using the same production and related workers employed to produce warmwater shrimp, and shares of warmwater shrimp production using the same workers, 2003

* * * * *

U.S. PROCESSORS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data on U.S. processors' capacity, production, and capacity utilization are presented in table III-5. Total U.S. capacity increased *** percent from 2001 to 2003, and in January-June 2004 was *** percent above January-June 2003.⁶ Total U.S. production of warmwater shrimp decreased by *** percent from 2001 to 2003, and dropped by *** percent in January-June 2004 compared with January-June 2003. Capacity utilization decreased by *** percentage points from 2001 to 2003, and declined by *** percentage points in January-June 2004 compared with January-June 2003. U.S. producers reported the following constraints on their production: lack of sales, low production of domestic wild caught shrimp, fewer boats working, unable to obtain raw material, sales and available markets, credit lines from banks for inventory, labor shortage in 2003, drop in dock side price, customer demand for quality and cost effective shrimp, regulated seasons, no turnover of inventory, falling prices throughout whole season, packaging equipment capabilities, freezing capacity, record high fuel prices, and available hours in the day.

Table III-5

Warmwater shrimp: Reported U.S. production capacity, production, and capacity utilization, 2001-03, January-June 2003, and January-June 2004

* * * * *

U.S. PROCESSORS' U.S. SHIPMENTS AND EXPORT SHIPMENTS

Data on domestic producers' shipments of warmwater shrimp are presented in table III-6. U.S. shipments decreased by *** percent from 2001 to 2003, and further decreased by *** percent in January-June 2004 compared with January-June 2003. The value of U.S. shipments decreased by *** percent from 2001 to 2003, and further decreased by *** percent in January-June 2004 compared with January-June 2003. The unit value of U.S. shipments decreased by *** percent from 2001 to 2003, and further decreased by *** percent in January-June 2004 compared with January-June 2003. Two U.S. processors reported internal consumption.⁷ Four U.S. processors reported transfers to related firms.⁸ Seven U.S. processors reported export shipments, ***.⁹

⁶ "Total" data discussed in Part III cover all processors, including previously excluded parties and targeted related parties.

⁷ ***.

⁸ ***.

⁹ ***.

Table III-6
Warmwater shrimp: U.S. processors' shipments, by type, 2001-03, January-June 2003, and January-June 2004

* * * * *

U.S. PROCESSORS' IMPORTS AND PURCHASES OF IMPORTS

Nine U.S. processors, ***, reported that they imported shrimp.^{10 11} Table III-7 presents those U.S. processors' direct imports and purchases of warmwater shrimp from subject sources.¹²

Table III-7
Warmwater shrimp: U.S. processors' imports and purchases from subject countries, 2001-03, January-June 2003, and January-June 2004

* * * * *

U.S. PROCESSORS' INVENTORIES

Data on U.S. processors' end-of-period inventories of warmwater shrimp for the period examined are presented in table III-8. U.S. processors' inventories increased *** percent from 2001 to 2003, and further increased *** percent in January-June 2004 compared with January-June 2003.

Table III-8
Warmwater shrimp: U.S. processors' end-of-period inventories, 2001-03, January-June 2003, and January-June 2004

* * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. processors on the number of production and related workers ("PRWs") engaged in the production of warmwater shrimp, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in these investigations are presented in table III-9.

Table III-9
Warmwater shrimp: Average number of production and related workers producing warmwater shrimp, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, 2001-03, January-June 2003, and January-June 2004

* * * * *

¹⁰ ***.

¹¹ ***.

¹² ***.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to 75 firms believed to be importers of warmwater shrimp, as well as to all U.S. producers.¹ Questionnaire responses were received from 47 companies that in 2003 are believed to account for 67.8 percent of U.S. imports from Brazil, 62.4 percent from China, 60.0 percent from Ecuador, 51.4 percent from India, 73.7 percent from Thailand, and 68.4 percent from Vietnam. The largest responding importers of warmwater shrimp are ***. A list of U.S. importers of warmwater shrimp, the countries they import from, and their shares of reported 2003 imports are presented in table IV-1.

Table IV-1

Warmwater shrimp: U.S. importers, countries they import from, and shares of 2003 imports

* * * * *

U.S. IMPORTS

U.S. imports of warmwater shrimp are presented in table IV-2.² Thailand is the largest exporter of subject warmwater shrimp to the United States, accounting for 26.4 percent of total imports in 2003, followed by China (15.9 percent),³ Vietnam (11.7 percent), India (9.3 percent), Ecuador (6.9 percent), and Brazil (4.5 percent).

NEGLIGENCE

The Tariff Act provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition—in this case December 2002 to November 2003. The shares (in *percent*) of the total quantity of U.S. imports for each of the subject countries for the period of December 2002 to November 2003 are shown in table IV-3.

¹ The Commission sent questionnaires to those firms identified in the petition, firms identified by the U.S. Customs and Border Protection (“Customs”) as possible importers, and firms identified in the foreign producer questionnaires.

² Imports of warmwater shrimp are from official statistics under HTS statistical reporting 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, 1605.20.1010, 1605.20.1030, and 1605.20.1040. Imports from Canada, Chile, Denmark, Greenland, and Iceland are considered to be coldwater shrimp and therefore are not included.

³ ZG, ***, was determined by Commerce to have a *de minimis* margin of 0.07 percent. 69 FR 71003, December 8, 2004. In all tables dealing with imports, ZG’s imports are identified as “China nonsubject.”

Table IV-2

Warmwater shrimp: U.S. imports (ZG imports presented as China nonsubject), by sources, 2001-03, January-June 2003, and January-June 2004

Source	Calendar year			January-June	
	2001	2002	2003	2003	2004
Quantity (1,000 pounds)					
Brazil	21,638	39,074	48,023	30,245	14,143
China	***	***	***	***	***
Ecuador	56,585	63,351	73,112	43,856	45,272
India	71,794	96,654	99,180	41,812	40,486
Thailand	296,422	247,651	281,011	103,681	129,823
Vietnam	72,818	96,996	124,503	47,017	44,548
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Other sources	273,533	258,802	270,888	107,741	143,630
Subtotal (nonsubject)	***	***	***	***	***
Total	852,677	908,482	1,066,168	409,368	474,670
Value (1,000 dollars)¹					
Brazil	67,115	93,061	103,100	65,977	29,292
China	***	***	***	***	***
Ecuador	222,543	200,371	214,873	131,559	119,927
India	266,916	367,436	412,087	173,804	155,433
Thailand	1,288,839	988,432	996,171	385,787	376,144
Vietnam	389,556	487,952	602,915	238,406	221,936
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Other sources	1,200,942	975,411	977,973	384,979	455,388
Subtotal (nonsubject)	***	***	***	***	***
Total	3,623,717	3,407,963	3,744,881	1,471,239	1,493,784
Unit value (per pound)¹					
Brazil	\$3.10	\$2.38	\$2.15	\$2.18	\$2.07
China	***	***	***	***	***
Ecuador	3.93	3.16	2.94	3.00	2.65
India	3.72	3.80	4.15	4.16	3.84
Thailand	4.35	3.99	3.54	3.72	2.90
Vietnam	5.35	5.03	4.84	5.07	4.98
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Other sources	4.39	3.77	3.61	3.57	3.17
Subtotal (nonsubject)	***	***	***	***	***
Average	4.25	3.75	3.51	3.59	3.15
Table continued on next page.					

Table IV-2--Continued

Warmwater shrimp: U.S. imports (ZG imports presented as China nonsubject), by sources, 2001-03, January-June 2003, and January-June 2004

Source	Calendar year			January-June	
	2001	2002	2003	2003	2004
Share of quantity (percent)					
Brazil	2.5	4.3	4.5	7.4	3.0
China	***	***	***	***	***
Ecuador	6.6	7.0	6.9	10.7	9.5
India	8.4	10.6	9.3	10.2	8.5
Thailand	34.8	27.3	26.4	25.3	27.4
Vietnam	8.5	10.7	11.7	11.5	9.4
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Other sources	32.1	28.5	25.4	26.3	30.3
Subtotal (nonsubject)	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
Share of value (percent)					
Brazil	1.9	2.7	2.8	4.5	2.0
China	***	***	***	***	***
Ecuador	6.1	5.9	5.7	8.9	8.0
India	7.4	10.8	11.0	11.8	10.4
Thailand	35.6	29.0	26.6	26.2	25.2
Vietnam	10.8	14.3	16.1	16.2	14.9
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Other sources	33.1	28.6	26.1	26.2	30.5
Subtotal (nonsubject)	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
¹ Landed, duty-paid. ² Less than 0.05 percent.					
Note.—Because of rounding, figures may not add to the totals shown.					
Source: Compiled from official Commerce statistics and questionnaire of ZG.					

Table IV-3**Warmwater shrimp: U.S. imports and shares of total imports, by source, December 2002-November 2003**

Country	Imports (1,000 pounds)	Share of total imports (percent)
Brazil	48,589	4.6
China	165,603	15.6
Ecuador	72,164	6.8
India	98,324	9.2
Thailand	279,343	26.3
Vietnam	125,426	11.8
Subtotal	789,448	74.2
All other countries ¹	273,878	25.8
Total	1,063,326	100.0

¹ Imports from Canada, Chile, Denmark, Greenland, and Iceland excluded.

Note.—Because imports from ZG are included, imports from China are overstated. ***.

Source: Compiled from official Commerce Statistics.

APPARENT U.S. CONSUMPTION

Data on U.S. consumption of warmwater shrimp are presented in table IV-4.⁴ The quantity of U.S. consumption increased by 20.4 percent from 2001 to 2003 and increased by 14.0 percent in January-June 2004 compared with January-June 2003. The value of U.S. consumption decreased irregularly by 2.3 percent from 2001 to 2003 and was essentially unchanged in January-June 2004 compared with January-June 2003.

U.S. MARKET SHARES

Market shares for warmwater shrimp are presented in table IV-5. The quantity and value of the U.S. producers' market share decreased steadily during the period examined.

⁴ U.S. production is based on wild catch landings and farmed production. Wild catch landings is based on official statistics of the National Marine Fisheries Service. Farmed production is based on estimates by the U.S. Marine Shrimp Farming Program.

Table IV-4

Warmwater shrimp: U.S. producers' U.S. shipments, U.S. imports, by sources, and U.S. consumption, 2001-03, January-June 2003, and January-June 2004

Item	Calendar year			January-June	
	2001	2002	2003	2003	2004
<i>Quantity (1,000 pounds)</i>					
Wild catch landings	279,225	255,894	276,926	102,039	85,796
Farmed production	10,000	12,300	13,200	6,600	5,500
Domestic production	289,225	268,194	290,126	108,639	91,296
Converted domestic production	181,923	168,694	182,489	68,334	57,425
Exports ¹	27,983	30,628	37,039	22,036	12,843
U.S. shipments	153,940	138,066	145,450	46,298	44,582
U.S. imports from--					
Brazil	21,638	39,074	48,023	30,245	14,143
China	***	***	***	***	***
Ecuador	56,585	63,351	73,112	43,856	45,272
India	71,794	96,654	99,180	41,812	40,486
Thailand	296,422	247,651	281,011	103,681	129,823
Vietnam	72,818	96,996	124,503	47,017	44,548
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Nonsubject countries	273,533	258,802	270,888	107,741	143,630
Subtotal (nonsubject)	***	***	***	***	***
All countries	852,677	908,482	1,066,168	409,368	474,670
Total U.S. consumption	1,006,617	1,046,548	1,211,618	455,666	519,252
Table continued on next page.					

Table IV-4--Continued

Warmwater shrimp: U.S. producers' U.S. shipments, U.S. imports, by sources, and U.S. consumption, 2001-03, January-June 2003, and January-June 2004

Item	Calendar year			January-June	
	2001	2002	2003	2003	2004
Value (1,000 dollars)					
U.S. shipments ²	906,707	662,717	679,252	226,397	203,742
U.S. imports ³ from--					
Brazil	67,115	93,061	103,100	65,977	29,292
China	***	***	***	***	***
Ecuador	222,543	200,371	214,873	131,559	119,927
India	266,916	367,436	412,087	173,804	155,433
Thailand	1,288,839	988,432	996,171	385,787	376,144
Vietnam	389,556	487,952	602,915	238,406	221,936
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Nonsubject countries	1,200,942	975,411	977,973	384,979	455,388
Subtotal (nonsubject)	***	***	***	***	***
All countries	3,623,717	3,407,963	3,744,881	1,471,239	1,493,784
Total U.S. consumption	4,530,424	4,070,680	4,424,133	1,697,636	1,697,526

¹ Exports include the following 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, 1605.20.1010, 1605.20.1025, and 1605.20.1040.

² The value of U.S. shipments has been estimated by using an average wholesale price for headless shell-on shrimp.

³ Landed, duty-paid.

Note.—Because of rounding, figures may not add to the totals shown. Wild catch landings and farmed production are presented in pounds of live (head-on shell-on) weight. With respect to interim wild catch data, National Marine Fisheries Service makes revisions each month in order to publish the best available data. Such revisions usually result in an upward adjustment to the amount of the catch; hence, the January-June 2004 data, in the end, may be understated. U.S. production has been converted to pounds of headless shell-on weight. Import and export quantities are in actual reported official statistics and have not been converted to headless shell-on equivalent weight, therefore imports may be slightly overstated relative to U.S. shipments. Additionally, to the extent official statistics contain any imports of “dusted” or “battered” shrimp (which Commerce excluded from the scope of investigations in its final determinations), imports may be slightly overstated. Imports from Canada, Chile, Denmark, Greenland, and Iceland are considered to be of coldwater shrimp and therefore are excluded from the import data.

Source: Compiled from official Commerce statistics; Wild catch landings – 2001 - 2003: National Marine Fisheries Service “Fisheries of the United States” (annual yearbook, various issues) statistics, January-June 2003 and January-June 2004: compiled from monthly landings data retrieved from: http://www.st.nmfs.gov/st1/commercial/landings/monthly_landings.html, and U.S. Marine Shrimp Farming Program statistics (email from Tony Ostrowski, Director, U.S. Marine Shrimp Farming Program, dated November 2, 2004).

Table IV-5

Warmwater shrimp: Apparent U.S. consumption and market shares, 2001-03, January-June 2003, and January-June 2004

Item	Calendar year			January-June	
	2001	2002	2003	2003	2004
Quantity (1,000 pounds)					
U.S. consumption	1,006,617	1,046,548	1,211,618	455,666	519,252
Value (1,000 dollars)					
U.S. consumption	4,530,424	4,070,680	4,424,133	1,697,636	1,697,526
Share of quantity (percent)					
U.S. shipments	15.3	13.2	12.0	10.2	8.6
U.S. imports from--					
Brazil	2.1	3.7	4.0	6.6	2.7
China	***	***	***	***	***
Ecuador	5.6	6.1	6.0	9.6	8.7
India	7.1	9.2	8.2	9.2	7.8
Thailand	29.4	23.7	23.2	22.8	25.0
Vietnam	7.2	9.3	10.3	10.3	8.6
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Nonsubject countries	27.2	24.7	22.4	23.6	27.7
Subtotal (nonsubject)	***	***	***	***	***
All countries	84.7	86.8	88.0	89.8	91.4
Share of value (percent)					
U.S. shipments	20.0	16.3	15.4	13.3	12.0
U.S. imports from--					
Brazil	1.5	2.3	2.3	3.9	1.7
China	***	***	***	***	***
Ecuador	4.9	4.9	4.	7.7	7.1
India	5.9	9.0	9.3	10.2	9.2
Thailand	28.4	24.3	22.5	22.7	22.2
Vietnam	8.6	12.0	13.6	14.0	13.1
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Nonsubject countries	26.5	24.0	22.1	22.7	26.8
Subtotal (nonsubject)	***	***	***	***	***
All countries	80.0	83.7	84.6	86.7	88.0

¹ Less than 0.05 percent.

Note.—Because of rounding, figures may not add to the totals shown. Import quantities are in actual reported official statistics and have not been converted to headless shell-on equivalent weights, therefore import penetration may be slightly overstated. Additionally, to the extent official statistics contain any imports of "dusted" or "battered" shrimp (which Commerce excluded from the scope of investigations in its final determinations), import penetration may be slightly overstated. Imports from Canada, Chile, Denmark, Greenland, and Iceland are considered to be of coldwater shrimp and therefore are excluded from the import data.

Source: Compiled from official Commerce statistics; Wild catch landings – 2001 - 2003: National Marine Fisheries Service "Fisheries of the United States" (annual yearbook, various issues) statistics, January-June 2003 and January-June 2004: compiled from monthly landings data retrieved from: http://www.st.nmfs.gov/st1/commercial/landings/monthly_landings.html, and U.S. Marine Shrimp Farming Program statistics (email from Tony Ostrowski, Director, U.S. Marine Shrimp Farming Program, dated November 2, 2004).

RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of warmwater shrimp is presented in table IV-6. Imports from subject countries were equivalent to 316.2 percent of U.S. production during 2001. This level increased to 468.6 percent during 2003 and to 485.2 percent during January-June 2004.

Table IV-6

Warmwater shrimp: Ratio of U.S. imports to U.S. production, by sources, 2001-03, January-June 2003, and January-June 2004

Item	Calendar year			January-June	
	2001	2002	2003	2003	2004
Ratio of U.S. imports to converted domestic production (percent)					
Brazil	11.8	22.8	28.6	44.4	20.9
China	***	***	***	***	***
Ecuador	30.9	36.9	43.6	64.4	66.9
India	39.2	56.4	59.1	61.4	59.8
Thailand	161.9	144.4	167.6	152.3	191.8
Vietnam	39.8	56.6	74.2	69.1	65.8
Subtotal (subject)	***	***	***	***	***
China nonsubject	***	***	***	***	***
Nonsubject countries	149.4	150.9	161.5	158.3	212.2
Subtotal (nonsubject)	***	***	***	***	***
All countries	465.8	529.8	635.7	601.4	701.2
Source: Compiled from official Commerce statistics, National Marine Fisheries statistics, and U.S. Marine Shrimp Farm Program statistics.					

CRITICAL CIRCUMSTANCES

On May 19, 2004, petitioners alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of warmwater shrimp from China. With respect to China, Commerce, in its final determination, found that critical circumstances exist for two of the mandatory respondent exporters, Section A respondents, and exporters receiving the PRC-wide rate.⁵

Commerce determines that critical circumstances exist if there is a reasonable basis to believe or suspect that: (1) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (2) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales; and (3) there have been massive imports of the subject merchandise over a relatively short period.

With respect to the first criterion, Commerce was not aware of any antidumping order in any country on warmwater shrimp from China. With regard to the second criterion, Commerce normally considers margins of 25 percent or more for export price (EP) sales or 15 percent or more for constructed export price (CEP) transactions sufficient to impute knowledge of dumping. In this instance, because the dumping margins of Yelin and Allied, and the Section A respondents, are greater than 25 percent for EP and 15 percent for CEP, Commerce found there is a reasonable basis to impute to importers knowledge of dumping with respect to all imports from China.⁶ In determining whether there are “massive imports” over a relatively short period, Commerce based its analysis on a comparison of each respondent’s export volume for the months December 2002 through August 2003 to volume during the months September 2003 through May 2004. For all other exporters (Section A and PRC-wide), Commerce performed the analysis using import statistics.

As noted, Commerce determined that critical circumstances exist with respect to imports from mandatory respondents Allied and Yelin, Section A respondents (Asian Seafood et al),⁷ and exporters receiving the PRC-wide rate. Monthly exports to the United States by Allied and Yelin and total monthly imports into the United States from China (from official Commerce import statistics, less monthly exports from Allied, Yelin, Red Garden, and ZG) are shown in table IV-7 (from December 2002 through June 2004).

Table IV-7

Warmwater shrimp: Exports from China to the United States by specific exporters and total China imports, monthly, December 2002-May 2004

* * * * *

⁵ 69 FR 42669, July 16, 2004 and 69 FR 71001, December 8, 2004. Allied and Yelin were mandatory respondents. Section A respondents are those firms that submitted voluntary Section A questionnaires during the course of Commerce’s investigation. Commerce found that critical circumstances do not exist for two of the mandatory respondents, Red Garden and ZG.

⁶ In making its determination, Commerce noted: “In this case, the volume of imports of certain frozen and canned warmwater shrimp from the PRC increased 51.57 percent from the critical circumstances base period (December 2002 through August 2003) to the critical circumstances comparison period (September 2003 through May 2004).” 69 FR 42670, July 16, 2004. In its final determination, Commerce simply affirmed its earlier finding. 69 FR 71001, December 8, 2004. Although Red Garden’s final LTFV margin was above 25 percent, Commerce made no comment in this regard. Red Garden’s preliminary LTFV margin was 7.67 percent.

⁷ For a complete listing of the Section A respondents see table I-2.

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) the degree of fungibility, including specific customer requirements and other quality related questions; (2) presence of sales or offers to sell in the same geographical markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Degree of fungibility and channels of distribution are discussed in Parts I and II of this report; geographical markets and presence in the market are discussed below.

Geographical Markets

Warmwater shrimp products produced in the United States are shipped nationwide. While imports of warmwater shrimp from the subject countries may enter specific Customs districts, the product is then generally sold nationwide. Table IV-8, based on Commerce statistics for the period 2001-03, presents U.S. import quantities of warmwater shrimp, by the subject countries, according to the Customs districts through which they entered.

Simultaneous Presence in the Market

Warmwater shrimp produced in the United States was present in the market throughout the period for which data were collected. Table IV-9 presents monthly U.S. imports of warmwater shrimp during calendar year 2003 and January-June 2004. Based on official U.S. import statistics, there were U.S. imports of warmwater shrimp from each of the subject countries in each month during January 2003-June 2004.

Table IV-8
Warmwater shrimp: U.S. imports, by subject countries and by customs districts, 2001-03

Customs district	Brazil			China ¹			Ecuador		
	2001	2002	2003	2001	2002	2003	2001	2002	2003
	Quantity (1,000 pounds)								
Baltimore, MD	64	0	47	419	270	357	1,015	50	195
Boston, MA	0	0	127	778	857	2,253	323	572	795
Buffalo, NY	0	26	31	47	61	297	2	113	127
Charleston, SC	17	0	137	42	0	119	25	60	0
Chicago, IL	0	0	0	244	121	504	0	0	36
Cleveland, OH	0	0	0	32	192	335	0	0	78
Columbia-Snake, OR	0	0	0	0	0	61	0	0	0
Dallas-Fort Worth, TX	0	0	0	0	0	382	0	0	0
Detroit, MI	0	38	17	17	124	297	12	214	128
Great Falls, MT	0	0	0	0	0	0	0	0	0
Honolulu, HI	0	0	0	0	0	0	0	0	0
Houston-Galveston, TX	0	0	259	1,251	1,697	2,809	1,844	1,743	2,580
Laredo, TX	12	0	0	29	9	37	23	35	0
Los Angeles, CA	3,835	6,524	5,943	51,526	89,529	128,335	17,031	20,507	22,324
Miami, FL	958	2,326	3,225	1,051	2,621	4,931	19,222	19,538	19,724
Mobile, AL	0	0	0	36	44	0	0	0	0
New Orleans, LA	88	0	0	288	75	198	50	41	0
New York, NY	16,433	29,928	38,035	2,174	6,586	16,963	16,579	19,182	23,863
Norfolk, VA	0	175	42	86	0	4,669	0	0	426
Ogdensburg, NY	0	0	0	0	3	0	0	0	0
Pembina, ND	0	0	0	0	0	0	0	0	0
Philadelphia, PA	151	0	0	32	44	33	0	0	0
Portland, ME	0	0	0	0	0	0	0	0	0
San Diego, CA	0	0	0	0	0	3	0	190	137
San Francisco, CA	0	0	0	261	435	855	90	74	0
San Juan, PR	0	0	0	507	821	944	0	0	0
Savannah, GA	0	0	0	110	32	82	45	27	30
Seattle, WA	35	0	5	489	176	258	16	0	0
St. Albans, VT	43	0	0	0	0	0	0	0	0
Tampa, FL	0	56	155	467	2,255	4,730	309	1,006	2,669
Virgin Islands of the U.S.	0	0	0	0	0	0	0	0	0
Total	21,638	39,074	48,023	59,887	105,954	169,452	56,585	63,351	73,112

Table continued on next page.

Table IV-8--Continued
Warmwater shrimp: U.S. imports, by subject countries and by customs districts, 2001-03

Customs district	India			Thailand			Vietnam		
	2001	2002	2003	2001	2002	2003	2001	2002	2003
	Quantity (1,000 pounds)								
Baltimore, MD	13	80	55	243	295	124	0	36	0
Boston, MA	144	71	523	8,642	5,147	7,355	1,981	4,122	6,955
Buffalo, NY	46	46	23	219	145	202	27	12	0
Charleston, SC	36	70	60	0	450	0	0	0	0
Chicago, IL	0	0	36	1,358	1,351	2,672	71	44	33
Cleveland, OH	883	1,105	1,515	8,912	5,375	1,509	206	738	586
Columbia-Snake, OR	0	0	0	83	16	0	0	0	0
Dallas-Fort Worth, TX	0	0	0	132	0	893	0	0	255
Detroit, MI	40	50	8	595	530	40	23	104	7
Great Falls, MT	0	0	0	100	0	0	0	0	0
Honolulu, HI	247	503	538	164	119	181	0	0	0
Houston-Galveston, TX	0	0	256	1,216	796	1,730	150	30	43
Laredo, TX	5	0	36	1	0	0	0	0	0
Los Angeles, CA	51,559	62,266	50,603	200,843	173,118	192,856	50,440	60,925	79,592
Miami, FL	1,290	1,943	1,634	10,447	8,772	16,259	4,550	3,941	4,833
Mobile, AL	0	0	0	0	97	0	0	0	0
New Orleans, LA	35	33	71	131	0	0	145	399	364
New York, NY	14,910	25,701	36,046	40,847	38,752	39,528	12,738	23,437	27,107
Norfolk, VA	126	846	2,959	2,102	1,280	5,248	1,222	1,381	1,424
Ogdensburg, NY	25	24	0	960	304	40	0	0	7
Pembina, ND	0	0	0	9	0	0	0	0	0
Philadelphia, PA	0	0	36	295	1,460	172	0	0	64
Portland, ME	0	0	0	28	0	0	0	0	0
San Diego, CA	0	0	0	0	0	0	0	0	0
San Francisco, CA	0	0	36	306	115	218	97	482	604
San Juan, PR	72	71	281	85	142	141	0	0	51
Savannah, GA	12	302	37	0	235	0	0	0	15
Seattle, WA	0	46	213	540	340	515	54	357	242
St. Albans, VT	0	0	0	24	4	5	11	0	0
Tampa, FL	2,352	3,496	4,214	18,141	8,808	11,322	1,105	988	2,321
Virgin Islands of the U.S.	0	0	0	1	0	0	0	0	0
Total	71,794	96,654	99,180	296,422	247,651	281,011	72,818	96,996	124,503

¹ Because imports from ZG are included, imports from China are overstated.
Source: Compiled from official statistics of the U.S. Department of Commerce.

Table IV-9
Warmwater shrimp: U.S. imports, by source and month, January 2003-June 2004

Month	Brazil	China	Ecuador	India	Thailand	Vietnam	Subtotal	All other sources	Total
Quantity (1,000 pounds)									
January 2003	3,440	10,693	5,314	9,641	13,675	9,461	52,224	20,211	72,435
February 2003	4,491	5,923	5,983	7,857	15,658	6,780	46,691	18,061	64,752
March 2003	5,303	2,932	6,289	7,057	17,941	5,697	45,219	16,622	61,840
April 2003	6,051	3,817	6,675	6,386	20,103	6,586	49,619	15,633	65,252
May 2003	6,105	4,016	9,814	5,039	16,441	7,406	48,821	17,000	65,820
June 2003	4,856	7,634	9,783	5,831	19,863	11,087	59,055	20,214	79,269
July 2003	4,095	21,012	6,493	8,265	21,140	13,391	74,397	28,193	102,590
August 2003	3,624	23,849	4,994	10,838	25,296	13,527	82,129	27,454	109,584
September 2003	4,058	22,481	4,629	12,048	30,410	14,072	87,697	25,702	113,399
October 2003	2,818	23,975	3,974	9,973	36,716	15,266	92,722	32,772	125,494
November 2003	1,397	23,939	3,182	7,732	36,543	11,834	84,627	25,960	110,587
December 2003	1,786	19,180	5,983	8,513	27,224	9,396	72,081	23,066	95,147
January 2004	1,476	19,538	6,458	10,000	23,761	9,132	70,366	21,550	91,916
February 2004	2,487	21,403	8,133	14,734	48,898	13,159	108,814	21,309	130,123
March 2004	2,646	11,550	9,960	8,653	32,224	7,452	72,485	21,536	94,022
April 2004	4,347	2,238	9,474	1,964	9,559	2,758	30,340	25,874	56,214
May 2004	1,812	841	5,524	2,099	6,768	4,724	21,767	25,430	47,197
June 2004	1,375	1,198	5,723	3,036	8,613	7,323	27,269	27,930	55,198
Note--Because imports from ZG are included, imports from China are overstated.									
Source: Compiled from official statistics of the Department of Commerce.									

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Transportation Costs to the U.S. Market

Transportation costs for warmwater shrimp from subject countries to the United States (excluding U.S. inland costs) are estimated to be approximately 6.7 percent of the total cost for warmwater shrimp from Brazil, 4.6 percent of the total cost for warmwater shrimp from China, 4.7 percent of the total cost for warmwater shrimp from Ecuador, 3.7 percent of the total cost for warmwater shrimp from India, 4.9 percent of the total cost for warmwater shrimp from Thailand, and 2.6 percent of the total cost for warmwater shrimp from Vietnam.¹

U.S. Inland Transportation Costs

Twenty-eight processors and 31 importers² reported that their firms usually arrange transportation, with only one processor and eight importers reporting that their purchasers arrange transportation. Both processors and importers generally estimated transportation costs in the range of 2 to 8 percent. However, two processors explained that transportation costs are often priced per pound.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that, over January 2001 through June 2004, the nominal value of the Brazilian real depreciated at first, and then appreciated. Nominal values for the Chinese, Ecuadorian, Indian, Thai, and Vietnamese currencies were mostly fluctuating within a narrow range or rising. Both nominal and real values of the currencies are presented in figure V-1.

¹ These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value for August 2003 through July 2004.

² Several firms submitted both processor and importer questionnaires. In the interest of not counting companies twice, they were assigned either to “processor” or “importer” for the purposes of this chapter. *** were categorized as processors while *** were categorized as importers.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates between the Brazilian, Chinese, Ecuadorian, Indian, Thai, and Vietnamese currencies and the U.S. dollar, by quarters, January 2001-June 2004

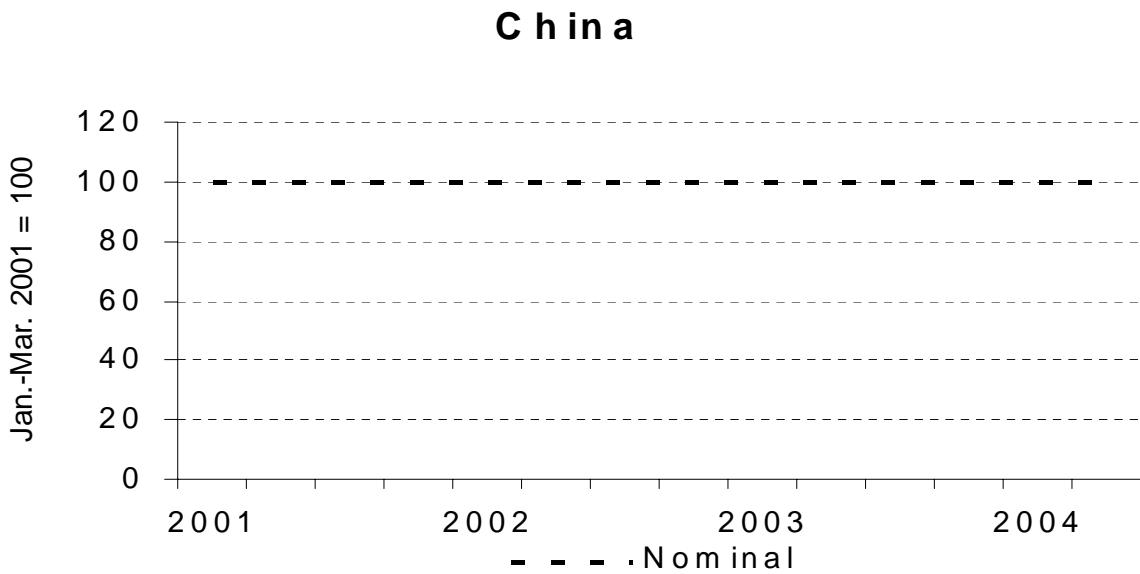
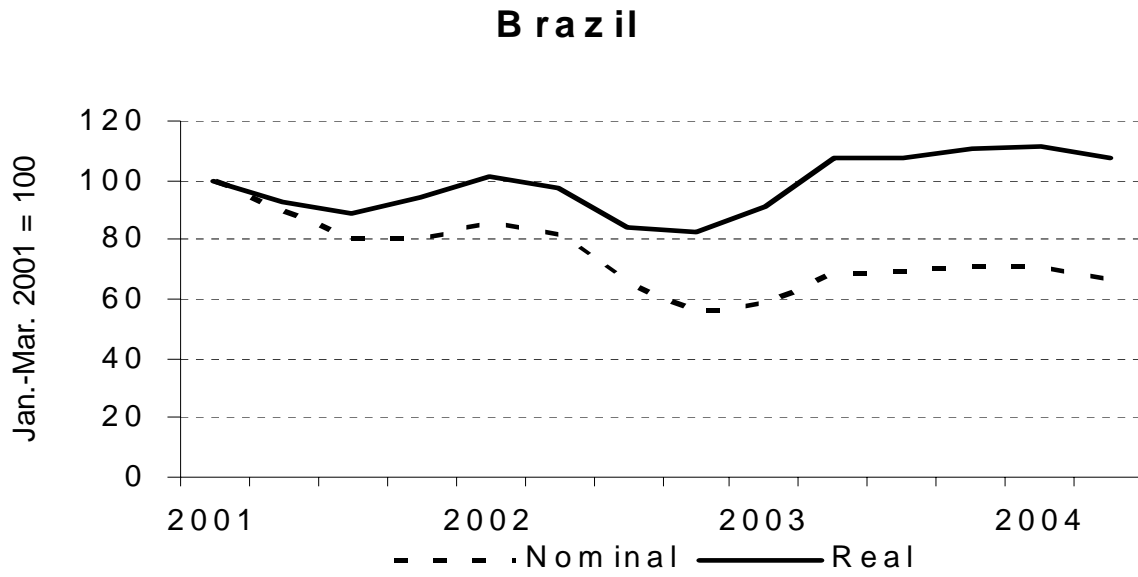


Figure continued on next page.

Figure V-1--Continued

Exchange rates: Indices of the nominal and real exchange rates between the Brazilian, Chinese, Ecuadorian, Indian, Thai, and Vietnamese currencies and the U.S. dollar, by quarters, January 2001-June 2004

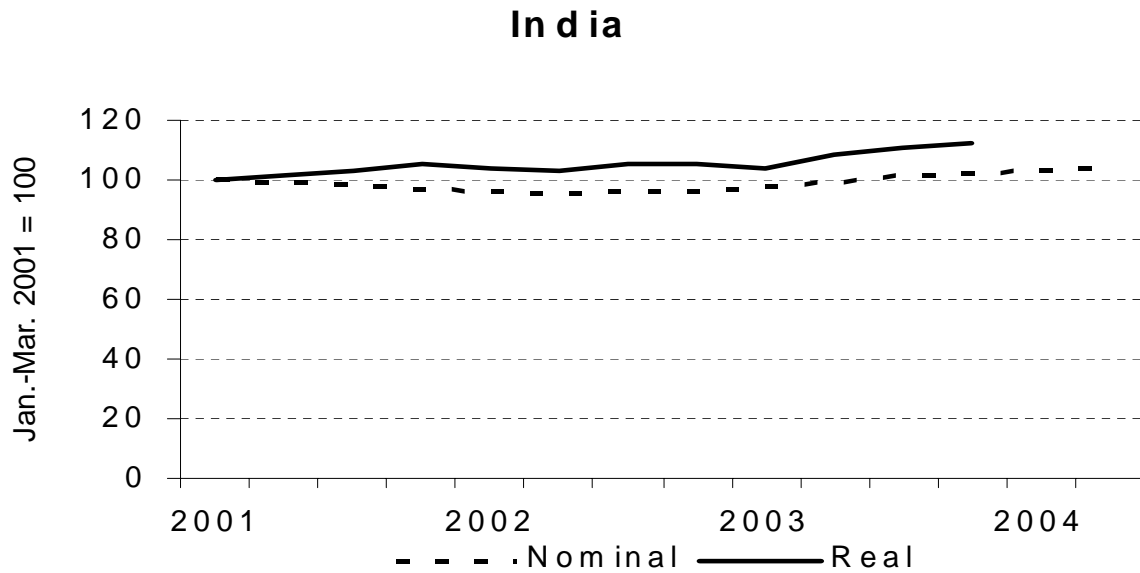
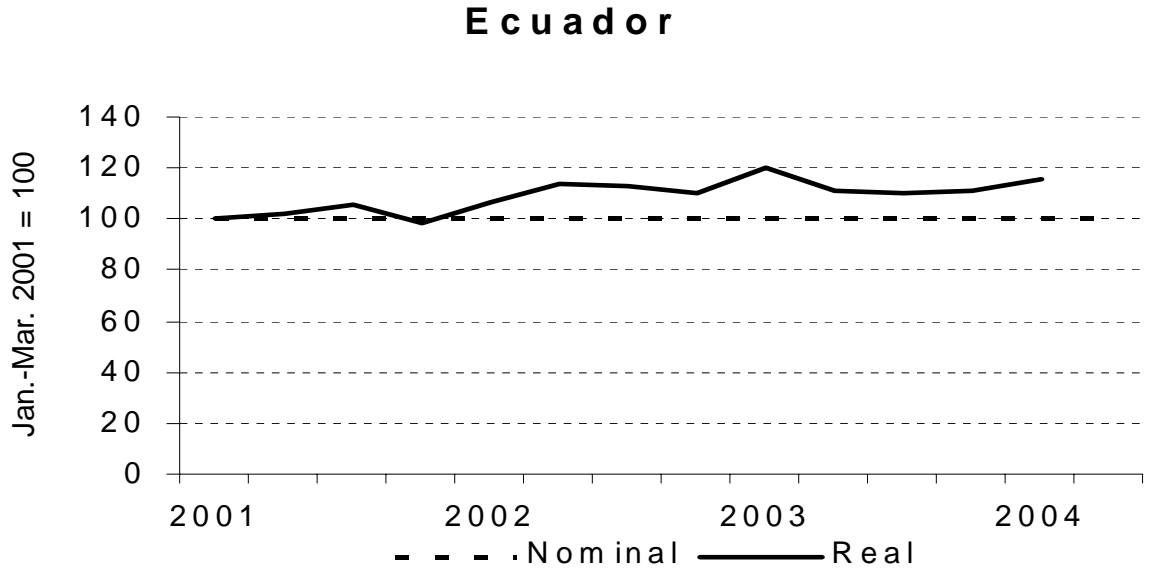
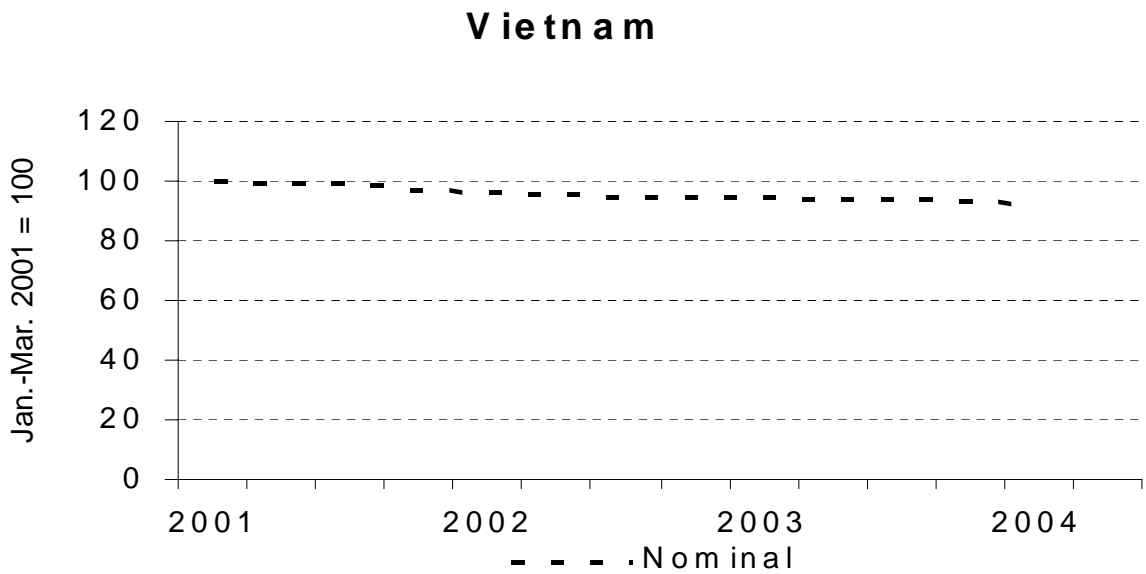
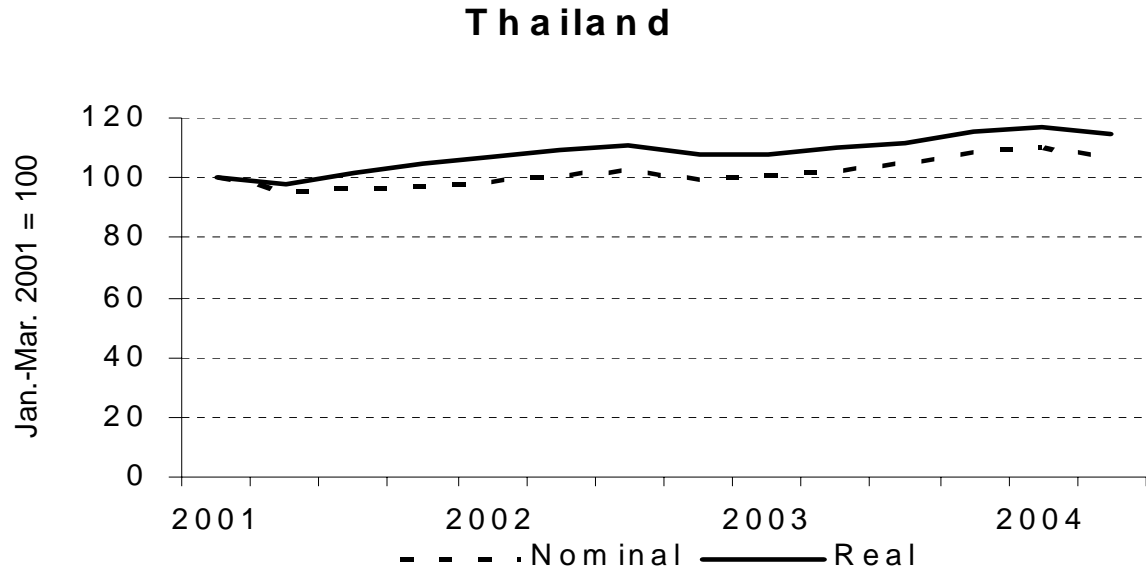


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Figure V-1--Continued

Exchange rates: Indices of the nominal and real exchange rates between the Brazilian, Chinese, Ecuadorian, Indian, Thai, and Vietnamese currencies and the U.S. dollar, by quarters, January 2001-June 2004



Source: International Monetary Fund, *International Financial Statistics*, August 2004 and June 2003.

PRICING PRACTICES

Pricing Methods

Warmwater shrimp are usually sold in the spot market (though a significant short-term contract market exists) with prices subject to frequent (usually weekly) changes according to market conditions (which are often generally known among market participants). Processors reported a variety of pricing methods, including price lists, standard mark-ups over cost, and transaction-by-transaction negotiation. Ten processors reported using their own price list, with an additional two reporting that they consulted Urner Barry (an industry price report). However, many processors who reported using price lists often reported that the price list was a basis for negotiation rather than a fixed list. Price lists may be issued as frequently as once per week, and may contain different prices for different sizes of shrimp, as well as information about species, freezing method (block or IQF), availability, and extent of peeling. Among importers, 10 reported using price lists, with an additional 10 reporting that they consulted industry publications (such as Urner Barry) or other importers' price lists. The other importers reported using transaction-by-transaction negotiation or responding to the market situation. However, as with the processors, even importers who reported using a price list often reported that the price list was a basis for negotiation rather than a fixed list.

Twenty-four processors reported that 90 percent or more of their sales were spot sales. One more reported 65 percent spot sales, with two reporting that 90 percent or more of their sales were on short-term (one year or less) contracts. *** stated that it could not compete with imports on contracts. Among importers, 18 reported that 90 percent of their sales were spot sales, and an additional six reported that 50 percent to 90 percent of their sales were spot sales. Thirteen more importers reported that a majority of their sales were short-term contracts, while one reported half spot sales and half short-term contracts. *** reported that 70 percent of its sales were long-term contracts; three other importers reported some long-term contracts but for no more than 10 percent of their sales.

For short-term contracts, seven processors and 25 importers reported that contracts usually fix both price and quantity, although two importers and two processors stated that contracts may fix only price or quantity. Short-term contracts were generally described as two to six months, although both importers and processors mentioned some nine-, 10-, and 12-month contracts. Five processors and 11 importers reported that contracts might be renegotiated at least occasionally, but four processors and 20 importers said that contracts were not renegotiated. In addition, one processor and five importers said that their contracts contained meet or release provisions,³ while eight processors and 25 importers said their contracts did not. For long-term contracts, three importers reported that contracts fix both price and quantity. Long-term contracts were described as one to two years by four importers (no processors reported long-term contracts).

Eight processors and seven importers reported offering volume discounts. Processors also reported discounts for cash payment and because of import price pressure. Some importers also reported case-by-case discounts, but overall, 12 processors and 29 importers reported offering no discounts or limited discounts.

When asked to identify price leaders in the warmwater shrimp market, ten purchasers said there were none, with *** describing the shrimp market as "competitive" and "diverse" enough that no single firm could affect price. Sixteen purchasers did list at least one company as a price leader. Ocean Garden was cited as a leader for Mexican shrimp, Red Chamber was cited as a leader for Chinese shrimp, and Penguin was cited as a leader for U.S. shrimp. Other companies cited as price leaders by more than one purchaser include Mazzetta, McMarine, Rubicon, and Expack. Price leaders lead by being the first to move prices up or down.

³ Two of these importers said that these provisions were FDA/Customs release.

The Global Aquaculture Alliance (GAA) described U.S. warmwater shrimp prices as having fallen in the 1980s as global supplies of farmed shrimp rose, then stabilizing or rising when farmed shrimp ran into difficulty with disease, and then perhaps falling again as the international farmed shrimp industry recovered and reduced its costs.⁴

PRICE DATA

The Commission requested U.S. processors and importers of warmwater shrimp to provide quarterly data for the total quantity and value of warmwater shrimp that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 2001-June 2004. The products for which pricing data were requested are as follows:

- Product 1:** Frozen warmwater shrimp or prawns, all species, 71 to 90 count, raw, headless, peeled (whether or not deveined), tail-off, block frozen (cut or not cut)
- Product 2:** Frozen warmwater shrimp or prawns, all species, 41 to 50 count, raw, P&D (peeled and deveined), tail-off, IQF (cut or not cut)
- Product 3:** Frozen warmwater shrimp or prawns, all species, 26 to 30 count, raw, P&D (peeled and deveined), tail-on, block frozen (cut or not cut)
- Product 4:** Frozen, cooked warmwater shrimp or prawns, all species, 51 to 60 finished count, headless, shell-on, IQF
- Product 5:** Frozen, cooked warmwater shrimp or prawns, all species, 26 to 30 finished count, P&D (peeled and deveined), tail-on, IQF
- Product 6:** Frozen warmwater shrimp or prawns, all species, 61 to 70 count, raw, headless, shell-on, block frozen
- Product 7:** Frozen warmwater shrimp or prawns, all species, 31 to 40 count, raw, headless, shell-on, block frozen
- Product 8:** Frozen warmwater shrimp or prawns, all species, 26 to 30 count, raw, headless, shell-on, block frozen
- Product 9:** Frozen warmwater shrimp or prawns, all species, 10 to 15 count, raw, headless, shell-on, block frozen
- Product 10:** Canned shrimp, tiny size, all species, count 90-220 per can

⁴ See, testimony of George Chamberlain, Global Aquaculture Alliance, hearing transcript, pp. 285-292.

Twenty-seven U.S. processors and 33 importers⁵ provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.⁶ Pricing data reported by these firms accounted for approximately 16.4 percent of U.S. processors' reported shipments of warmwater shrimp, 12.8 percent of imports from Brazil, 6.8 percent of imports from China,⁷ 8.1 percent of imports from Ecuador, 5.2 percent of imports from India, 5.6 percent of imports from Thailand, and 9.5 percent of imports from Vietnam in 2003.

Price Comparisons

Tables G-1 to G-10 and figures G-1 to G-20 summarize the pricing data. Some importers could not completely separate their data by subject country of origin, and so their data are presented with all countries together in these tables. Finally, U.S. processor data are compared to all import data in appendix G.

Most pricing products show substantial price declines over the period April-June 2001 through April-June 2004, as shown in table V-1. (This second quarter to second quarter analysis was performed in all the discussions below to minimize any seasonal effect while using the most recent data available.) Import volumes over the period January 2001 to April 2004 generally rose, but there are numerous instances of overselling, as shown in table V-2. Ranges of underselling and overselling are presented in table V-3.

U.S. prices showed a price decline in seven of the ten products over the period April-June 2001 to April-June 2004, with not enough data in the other three products to make a comparison. Import prices also showed a general decline from April-June 2001 to April-June 2004. Generally, import volumes rose over the period April-June 2001 to April-June 2004.

There are two points to note in examining these pricing data. First, some processors and importers were unable to provide data for the full period, meaning that conclusions about pricing volumes over the period may be somewhat muted or exaggerated (to an unknown extent). Second, volumes vary widely from one quarter and product to another, meaning that an unweighted comparison of occurrences of margins of underselling or overselling may not reflect how important a particular product is to the overall U.S. warmwater shrimp market.

⁵ Importers *** could not completely separate their pricing data into individual subject countries of origin. Thus, their data is included in the "all subject" portions of the pricing tables and charts but not in the individual country charts. ***.

⁶ Staff made numerous changes to the submitted pricing data, including dropping any quarter of data with a price less than \$0.50 per pound or more than \$20.00 per pound. Staff attempted to contact purchasers whose pricing data fell outside these ranges. Other changes have come since the prehearing report, including dropping ***. The largest change to the price data used in the prehearing report is the exclusion of processor data submitted by ***. *** were not used as ***. *** were not used as *** did not submit usable trade data and was thus not included in the domestic industry database. Importer pricing data from *** were used. *** were also not used because *** has been targeted for exclusion from the domestic industry by petitioners. If any of the firms excluded by staff are included by the Commission, staff can revise its pricing database. The exclusion of these processors has caused some substantial changes in the pricing data for products 2, 3, 4, and 5.

⁷ The pricing data includes data submitted by ***, one of the importers that imported from Chinese producer ZG, found by Commerce to have a *de minimis* LTFV margin. It is unknown if pricing data from *** include data from ZG.

Table V-1**Warmwater shrimp: Price declines from April-June 2001 through April-June 2004, by country and pricing product**

Product	United States	Brazil	China	Ecuador	India	Thailand	Vietnam	All subject
	<i>Percent decline</i>							
1	33.4	12.8	24.3	40.0	--	24.6	--	34.1
2	30.7	--	39.9	24.1	18.3	36.4	30.8	30.2
3	9.2	--	--	--	--	21.2	21.4	22.9
4	--	--	--	--	--	46.6	--	45.3
5	--	--	--	36.1	27.0	19.8	-16.3	11.0
6	17.9	31.4	21.2	40.4	26.7	21.2	24.6	34.0
7	30.9	52.0	39.4	44.9	31.2	36.7	21.4	36.4
8	36.6	49.5	23.9	46.9	18.0	28.7	17.7	26.2
9	39.7	34.2	--	31.4	14.3	13.8	21.4	23.5
10	--	--	37.6	--	--	11.7	--	17.4

Note.— A negative number indicates a price increase.

Source: Tables G-1 through G-10.

Table V-2**Warmwater shrimp: Instances of underselling/overselling in Commission pricing data, by country and pricing product**

Product	Brazil	China	Ecuador	India	Thailand	Vietnam	Total	All subject
	<i>Number of quarters of underselling (overselling)</i>							
1	4 (9)	5 (9)	0 (14)	0 (6)	6 (8)	2 (10)	17 (56)	3 (11)
2	0 (6)	6 (8)	0 (14)	0 (14)	2 (12)	3 (11)	11 (65)	2 (12)
3	--	8 (4)	2 (1)	6 (3)	9 (5)	9 (5)	34 (18)	10 (4)
4	--	6 (0)	--	3 (2)	6 (0)	3 (1)	18 (3)	6 (0)
5	--	--	--	--	--	--	--	--
6	12 (2)	14 (0)	13 (1)	14 (0)	14 (0)	12 (0)	79 (3)	12 (2)
7	9 (5)	14 (0)	10 (4)	12 (2)	10 (4)	10 (4)	65 (19)	13 (1)
8	4 (10)	13 (1)	6 (8)	10 (4)	11 (3)	9 (5)	53 (31)	11 (3)
9	4 (9)	2 (0)	2 (12)	10 (4)	11 (3)	12 (2)	41 (30)	8 (6)
10	--	0 (10)	--	--	9 (0)	5 (1)	14 (11)	4 (6)
Total	33 (41)	68 (32)	33 (54)	55 (35)	78 (35)	65 (39)	332 (236)	69 (45)

Source: Tables G-1 through G-10.

Table V-3

Warmwater shrimp: Ranges of underselling/overselling in Commission pricing data, by country and pricing product

Product	Brazil	China	Ecuador	India	Thailand	Vietnam	Total	All subject
	<i>Minimum percent underselling (overselling)</i> <i>Maximum percent underselling (overselling)</i>							
1	(33.8) 18.0	(19.4) 19.5	(72.5) (6.6)	(33.2) (1.4)	(15.8) 13.5	(19.9) 6.8	(72.5) 19.5	(19.3) 11.1
2	(171.5) (31.5)	(30.7) 36.4	(52.3) (11.3)	(48.8) (3.7)	(36.4) 17.8	(37.1) 4.5	(171.5) 36.4	(23.6) 15.9
3	--	(32.6) 55.9	(37.8) 12.3	(51.5) 36.4	(25.4) 83.8	(27.4) 28.8	(51.5) 83.8	(27.3) 37.8
4	--	15.9 37.8	--	(18.4) 29.5	4.2 35.9	(7.5) 28.1	(18.4) 37.8	8.9 36.9
5	--	--	--	--	--	--	--	--
6	(17.5) 26.0	1.5 29.7	(3.4) 30.0	3.9 25.0	0.6 23.4	5.3 34.3	(17.5) 34.3	(6.3) 27.3
7	(9.9) 29.2	5.1 29.6	(9.6) 16.8	(7.6) 16.1	(6.9) 19.8	(6.0) 15.4	(9.9) 29.6	(3.8) 17.7
8	(21.8) 18.2	(0.7) 28.2	(16.6) 11.0	(8.8) 22.6	(12.5) 20.0	(9.1) 22.2	(21.8) 28.2	(6.9) 17.7
9	(34.0) 25.9	5.5 16.8	(29.8) 10.7	(12.9) 27.5	(15.2) 22.0	(6.2) 18.5	(34.0) 27.5	(8.6) 19.8
10	--	(86.1) (3.4)	--	--	7.3 19.4	(9.4) 9.2	(86.1) 19.4	(9.9) 7.1
Total	(171.5) 29.2	(86.1) 55.9	(72.5) 30.0	(51.5) 36.4	(36.4) 83.8	(37.1) 28.8	(171.5) 83.8	(27.3) 37.8

Note.— A negative number indicates overselling.

Source: Tables G-1 through G-10.

Purchasers' Reported Average Unit Value Trends

Purchasers were also asked to report their annual purchases of warmwater shrimp from each subject country and the United States. From this question, purchasers' average unit values for annual purchases of warmwater shrimp could also be calculated and compared, as shown in table V-4. These average unit values, unlike the pricing data, do not reflect differences in product mix (e.g., size and extent of processing).

Table V-4
Warmwater shrimp: Trends in purchasers' reported average unit values

Country	Average unit values up 2001-03 (number of purchasers)	Average unit values down 2001-03 (number of purchasers)	Average unit values up 2002-03 (number of purchasers)	Average unit values down 2002-03 (number of purchasers)
Brazil	1	3	0	4
China	4	10	3	11
Ecuador	0	11	1	12
India	3	7	6	4
Thailand	2	15	7	11
Vietnam	2	9	7	7
United States	2	15	4	16

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

LOST SALES AND LOST REVENUES

The Commission requested U.S. processors of warmwater shrimp to report any instances of lost sales or revenues they experienced due to competition from imports of warmwater shrimp from subject countries since January 1, 2001. Most processors (including petitioners) reported that they could not provide any because sales negotiations are usually conducted by telephone and the competitors are not usually known.⁸

One processor, ***, provided information about lost sales. ***.

*** also provided some incomplete information, and said that most of its customers will still buy peeled shrimp from it but not headless. *** added that the only way it can sell headless shrimp is to lower prices below import prices, which usually means pricing lower than its own cost. It estimated that 90 percent of its customers are using imported warmwater shrimp.

⁸ See petition volume II, pp. 28-29 and footnote 75 and responses to Commission questionnaires.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

Thirty-six domestic firms¹ provided useable financial results of their toll and non-toll operations processing frozen and canned warmwater shrimp. These firms are believed to account for the vast majority of the domestic industry's processing volume during 2003. While five firms² reported internal transfers of processed shrimp and two firms³ reported internal consumption, the quantity and value of these affiliated party transactions were generally small, accounting for less than *** percent of total sales (quantity and value) from 2001 through June 2004. Accordingly, the data are not being presented separately.

Three producers – *** – exited the shrimp processing industry during the period examined. ***. Differences between the data in this posthearing report and the data in the prehearing report are due to (1) the receipt of *** questionnaire response, (2) data changes submitted by ***, and (3) changes to *** and *** data as a result of verification (see verification reports for details).

OPERATIONS OF U.S. WARMWATER SHRIMP PROCESSORS

In addition to the non-toll processing operations of domestic processors (whereby the processor buys shrimp, processes it, and then sells it to other unrelated parties), there is a considerable amount of toll processing done by the domestic industry. Toll processing occurs when the firm that owns the shrimp (the tollee) arranges for an unrelated processor (the toller) to process the shrimp for a fee, and then the tollee arranges for the final sale of the finished product to another party. Some processors are both non-toll processors and toll processors. The differences between the two types of processors become evident when the financial results of the two types of processors are reviewed. Using 2003 data as an example, the sales revenue reported by non-toll processors is \$3.40 per pound, while the costs include the cost of the purchased shrimp (\$2.58 per pound), the costs of processing (\$0.52 per pound), and selling and administrative costs (\$0.28 per pound).⁴ These are in contrast to the financial results reported by toll processors, where the revenues are the processing fees *** while the costs are processing costs *** and SG&A expenses ***.⁵

Based upon questionnaire responses, toll processing accounted for a steadily decreasing portion of the total amount of shrimp processed. Toll processing accounted for approximately 27 percent of the total quantity of shrimp processed in 2001, 24 percent in 2002, 19 percent in 2003, and 10 percent during the first half of 2004. The interim period percentage is most likely skewed downwards because *** of its total production the second half the year. The tabulation below presents the quantity of shrimp that were toll processed in 2003.

* * * * *

Aggregate income-and-loss data for processors (except previously excluded and targeted related parties) on their operations processing shrimp (both non-toll and toll) are presented in table VI-1. In

¹ The producers and their fiscal year ends are as follows: March 31– ***.

² ***.

³ ***.

⁴ See appendix I, table I-8.

⁵ See appendix I, table I-7.

Table VI-1

Warmwater shrimp: Results of processors (except previously excluded and targeted related parties) on their processing operations, fiscal years 2001-03, January-June 2003, and January-June 2004

* * * * *

sum, the financial results of these processors deteriorated from 2001 to 2003. Sales quantities, sales values, and operating profits all decreased (sales quantities and operating profits irregularly), and the number of firms reporting operating losses increased from 10 to 16. The key factor in this decline was the decrease in unit revenues relative to the decrease in unit costs. The January to June 2004 financial results were mixed when compared to the January to June 2003 results. Sales quantities and values both declined measurably, yet operating profits increased, whether measured on an absolute, per-unit, or percentage of sales basis. Also, the number of firms reporting operating losses was halved, from 18 to 9. As with the full-year data, the key was the decrease in unit revenues relative to the decrease in unit costs, except that in the interim periods unit costs declined faster than unit revenues.

Aggregate income-and-loss data for the processors (previously excluded) on their operations processing shrimp are presented in table VI-2, and aggregate income-and-loss data for the processors (targeted related parties) on their operations processing shrimp are presented in table VI-3.

Table VI-2

Warmwater shrimp: Results of processors (previously excluded) on their processing operations,¹ fiscal years 2001-03, January-June 2003, and January-June 2004

* * * * *

Table VI-3

Warmwater shrimp: Results of processors (targeted related parties) on their processing operations, fiscal years 2001-03, January-June 2003, and January-June 2004

* * * * *

Aggregate income-and-loss data for all domestic processors on their operations processing shrimp are presented in table VI-4. This table is a combination of the data in tables VI-1 through VI-3. Also, selected financial data (data on a company-by-company basis, data on toll operations, and data on non-toll operations) are presented in appendix I.

Table VI-4

Warmwater shrimp: Results of all domestic processors on their processing operations,¹ fiscal years 2001-03, January-June 2003, and January-June 2004

* * * * *

The variance analysis showing the effects of prices and volume on the non-targeted processors' non-toll processing operations, and of costs and volume on their total cost, is shown in table VI-5. The analysis confirms that from 2001 to 2003 profitability decreased as the per-unit revenues (price variance) declined faster than the per-unit operating costs (net cost/expense variance). From January to June 2003 to January to June 2004, the opposite was true, as profitability increased because per-unit revenues (price variance) decreased less than the per-unit operating costs (net cost/expense variance).

Table VI-5

Warmwater shrimp: Variance analysis of processors (except previously excluded and targeted related parties) on their processing operations between fiscal years 2001-03 and January-June 2003-04

* * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. processors to describe any actual negative effects on their return on investment, or their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam. Their comments are presented in appendix H.

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Domestic shrimp processors' capital expenditures and research and development (R&D) expenses are presented in table VI-6. Capital expenditures were *** in the latter periods. ***.

Aggregate R&D expenses for 2001 to 2003 were largely attributable to *** reported very large R&D expenditures in 2004.

Table VI-6

Warmwater shrimp: U.S. processors' capital expenditures and research and development expenses, fiscal years 2001-03, January-June 2003, and January-June 2004

* * * * *

ASSETS AND RETURN ON INVESTMENT

Data on domestic shrimp processors' assets and their return on investment (defined as operating income divided by total assets) are presented in table VI-7. The value of the non-targeted processors' total assets declined slightly from 2001 to 2003 while the values for the previously excluded and the targeted related processors ***.

Table VI-7

Warmwater shrimp: U.S. processors' value of assets and return on investment, fiscal years 2001-03

* * * * *

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). 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.

Generally speaking, common to the six subject countries, the vast majority of the imported frozen or canned warmwater shrimp came from farmed, rather than wild-caught, inputs;¹ there were very limited home markets;² and the most important export markets were the United States, the EU, and Japan.^{3 4}

THE INDUSTRY IN BRAZIL

Table VII-1 presents data provided by Brazilian producers/exporters through their counsel with respect to their warmwater shrimp operations in Brazil. Thirteen firms provided useable data. The exports to the United States of these firms were equivalent to 46.7 percent of subject U.S. imports from Brazil in 2003.

¹ More Indian producers/exporters reported using wild-caught inputs than producers/exporters from any of the other subject countries; nevertheless, the majority of Indian exports came from the farmed product (particularly for those companies shipping to the United States).

² In 2003, Vietnam had the largest home market (share of shipments) at 13.8 percent; followed by Ecuador, 3.3 percent; Brazil, 3.2 percent; China, 2.6 percent; Thailand, 1.4 percent; and India, 0.6 percent.

³ Canada, Australia, New Zealand, Malaysia, and other Pacific Rim countries were other frequently cited markets.

⁴ At the conference in the preliminary phase of the investigations, petitioner suggested that increased testing in the EU and Japan for unacceptable antibiotics (i.e., chloramphenicol) and the EU's revocation of the tariff preference that Thailand's shrimp products had enjoyed under the EU GSP would lead to more subject product being shipped to the United States (none of the other subject countries lost their EU GSP tariff treatment concerning shrimp). See, testimony of Kevin Dempsey, Dewey Ballantine, Sal Versaggi, Owner, Versaggi Shrimp Company, and Richard Gollott, Golden Gulf Coast Packing, conference transcript, pp. 89-98.

The respondents, as a group, denied petitioner's allegations. They note that the use of chloramphenicol that led to the increased testing was a mistaken and no longer used option in response to white spot disease and state that EU and Japanese testing is not an impediment to subject countries increasing their exports to the EU and Japan. See, testimony of George Chamberlain, GAA; Warren Connelly, Akin Gump; Jose Cyriac, Marine Products Export Development Authority of India; Matthew Nicely, Wilkie Farr; Kenneth Pierce, Wilkie Farr, conference transcript, pp. 220-224. Thailand's loss of GSP status was unconnected to food safety issues. Staff interview with Kenneth Pierce, Wilkie Farr, February 4, 2004. According to respondents, the "EU is likely to restore Thailand's GSP status, which it removed in 1999, in mid-2005. Restoration will help make the EU a more attractive market to Thai exporters, who were by far the largest exporters to the U.S. during the POI." ASDA posthearing brief, app. A, in response to a question from Vice-Chairman Deanna Tanner Okun, p. A-57.

The range of tariffs presently applicable in the EU are: 4.2 to 7.0 percent for Brazil, China, India, and Vietnam; 0.0 to 3.6 percent for Ecuador; and 12.0 to 20.0 percent for Thailand. Japanese tariff rates range from 1.0 to 5.3 percent for each the subject countries. Petitioner's postconference brief, p. A-35.

Table VII-1

Warmwater shrimp: Brazilian production capacity, production, shipments, and inventories, 2001-03, January-June 2003, January-June 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-June		2004	2005
				2003	2004		
Quantity (1,000 pounds)							
Capacity	26,213	34,874	58,080	27,447	29,875	60,459	62,140
Production	24,080	42,591	63,569	30,114	32,998	66,888	72,230
End of period inventories	707	2,364	2,672	6,800	3,403	2,339	1,441
Shipments:							
Internal consumption	0	0	0	0	0	0	0
Home market	1,941	2,209	2,237	1,279	1,123	2,503	2,841
Exports to--							
The United States	10,044	18,072	23,431	14,946	8,566	16,076	16,987
All other markets	12,110	22,394	44,271	15,076	25,547	48,099	52,675
Total exports	22,154	40,466	67,702	30,022	34,113	64,175	69,663
Total shipments	24,095	42,675	69,939	31,301	35,236	66,679	72,504
Ratios and shares (percent)							
Capacity utilization	62.2	73.7	71.8	73.8	75.7	72.7	73.8
Inventories to production	2.9	5.6	4.2	11.3	5.2	3.5	2.0
Inventories to total shipments	2.9	5.5	3.8	10.9	4.8	3.5	2.0
Share of total quantity of shipments:							
Internal consumption	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Home market	8.1	5.2	3.2	4.1	3.2	3.8	3.9
Exports to--							
The United States	41.7	42.3	33.5	47.7	24.3	24.1	23.4
All other markets	50.3	52.5	63.3	48.2	72.5	72.1	72.7
Total exports	91.9	94.8	96.8	95.9	96.8	96.2	96.1
<p>Note.—Because of rounding, figures may not add to the totals shown. Capacity utilization figures are calculated from firms providing both capacity and production data.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>							

THE INDUSTRY IN CHINA

Table VII-2 presents data provided by Chinese producers/exporters through their counsel with respect to their warmwater shrimp operations in China.⁵ Twenty-eight firms provided useable data. Together, their exports to the United States were equivalent to 54.9 percent of subject U.S. imports from China in 2003.⁶ One-half of the responding Chinese firms began their warmwater shrimp operations during the period examined – five in 2002, seven in 2003, and two in 2004.

Table VII-2

Warmwater shrimp: Chinese production capacity, production, shipments, and inventories, 2001-03, January-June 2003, January-June 2004, and projected 2004-05

* * * * *

THE INDUSTRY IN ECUADOR

Table VII-3 presents data provided by Ecuadorian producers/exporters through their counsel with respect to their warmwater shrimp operations in Ecuador. Nine firms, all of which exported to the United States, provided useable data. The exports to the United States of these firms were equivalent to 58.4 percent of subject U.S. imports from Ecuador in 2003.

THE INDUSTRY IN INDIA

Table VII-4 presents data provided by Indian producers/exporters through their counsel or directly with respect to their warmwater shrimp operations in India. Ninety-six firms, 83 of which exported to the United States, provided useable data.⁷ The shipments of these firms to the United States were equivalent to 81.7 percent of subject U.S. imports from India in 2003. Two Indian respondents provided data with respect to their canned shrimp operations. Such data are presented in appendix D. Information provided by the Indian respondents shows that *** percent of the Indian exports to the United States were canned product in 2003.

THE INDUSTRY IN THAILAND

Table VII-5 presents data provided by Thai producer/exporters through their counsel or directly with respect to their warmwater shrimp operations in Thailand. Thirty-seven firms, all of which exported to the United States, provided useable data. Together, their exports to the United States were equivalent to 95.4 percent of subject U.S. imports from Thailand in 2003. Three Thai respondents provided data with respect to their canned shrimp operations. Such data are presented in appendix D. Information provided by the Thai respondents shows that 0.1 percent of the Thai exports to the United States were canned product in 2003.

⁵ ***.

⁶ None of the Chinese firms provided data with regard to canned shrimp operations.

⁷ In addition to the useable questionnaires, counsel for SEAI submitted certifications indicating no production or exportation from 81 additional Indian firms.

Table VII-3
Warmwater shrimp: Ecuadoran production capacity, production, shipments, and inventories, 2001-03,
January-June 2003, January-June 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-June		2004	2005
				2003	2004		
Quantity (1,000 pounds)							
Capacity	156,116	156,116	156,116	78,058	78,058	157,116	159,116
Production	60,636	73,490	89,156	42,708	53,996	106,283	115,523
End of period inventories	2,201	2,380	4,266	3,985	3,874	4,680	4,906
Shipments:							
Internal consumption	660	1,315	1,400	930	1,123	1,614	2,056
Home market	2,010	4,130	2,921	1,507	1,832	3,092	2,840
Exports to--							
The United States	30,981	39,317	42,679	25,157	25,707	43,289	45,096
All other markets	28,353	28,543	40,267	13,509	25,428	57,583	65,310
Total exports	59,335	67,859	82,946	38,666	51,135	100,871	110,406
Total shipments	62,005	73,304	87,266	41,103	54,090	105,577	115,303
Ratios and shares (percent)							
Capacity utilization	38.8	47.1	57.1	54.7	69.2	67.6	72.6
Inventories to production	3.6	3.2	4.8	4.7	3.6	4.4	4.2
Inventories to total shipments	3.6	3.2	4.9	4.8	3.6	4.4	4.3
Share of total quantity of shipments:							
Internal consumption	1.1	1.8	1.6	2.3	2.1	1.5	1.8
Home market	3.2	5.6	3.3	3.7	3.4	2.9	2.5
Exports to--							
The United States	50.0	53.6	48.9	61.2	47.5	41.0	39.1
All other markets	45.7	38.9	46.1	32.9	47.0	54.5	56.6
Total exports	95.7	92.6	95.0	94.1	94.5	95.5	95.8
Note.--Because of rounding, figures may not add to the totals shown.							
Source: Compiled from data submitted in response to Commission questionnaires.							

Table VII-4

Warmwater shrimp: Indian production capacity, production, shipments, and inventories, 2001-03, January-June 2003, January-June 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-June		2004	2005
				2003	2004		
Quantity (1,000 pounds)							
Capacity	553,493	581,692	560,721	320,291	312,323	591,523	591,613
Production	187,550	208,376	213,684	96,730	100,570	215,658	216,660
End of period inventories	23,204	24,998	30,778	26,277	29,883	31,912	34,380
Shipments:							
Internal consumption	12,520	11,929	18,279	8,599	6,376	9,502	6,090
Home market	275	287	1,225	1,244	1,372	3,316	3,440
Exports to--							
The United States	59,710	84,426	81,023	33,920	35,398	73,793	79,333
All other markets	111,726	114,730	118,271	54,409	61,243	135,021	145,797
Total exports	171,436	199,156	199,293	88,330	96,641	208,814	225,130
Total shipments	184,230	211,372	218,798	98,172	104,388	221,631	234,659
Ratios and shares (percent)							
Capacity utilization	30.2	33.0	35.3	27.4	29.0	33.5	33.1
Inventories to production	12.4	12.0	14.4	13.6	14.9	14.8	15.9
Inventories to total shipments	12.6	11.8	14.1	13.4	14.3	14.4	14.7
Share of total quantity of shipments:							
Internal consumption	6.8	5.6	8.4	8.8	6.1	4.3	2.6
Home market	0.1	0.1	0.6	1.3	1.3	1.5	1.5
Exports to--							
The United States	32.4	39.9	37.0	34.6	33.9	33.3	33.8
All other markets	60.6	54.3	54.1	55.4	58.7	60.9	62.1
Total exports	93.1	94.2	91.1	90.0	92.6	94.2	95.9
Note.—Because of rounding, figures may not add to the totals shown.							
Source: Compiled from data submitted in response to Commission questionnaires.							

Table VII-5

Warmwater shrimp: Thai production capacity, production, shipments, and inventories, 2001-03, January-June 2003, January-June 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-June		2004	2005
				2003	2004		
Quantity (1,000 pounds)							
Capacity	466,924	460,205	481,922	242,146	210,122	405,522	485,622
Production	406,796	346,654	412,995	168,413	135,738	334,114	430,177
End of period inventories	65,549	79,183	105,608	99,918	83,183	84,303	79,344
Shipments:							
Internal consumption	3,394	2,614	3,242	1,851	3,567	4,938	5,181
Home market	5,937	4,683	5,623	2,682	3,184	7,784	8,910
Exports to--							
The United States	247,469	219,852	268,014	98,970	103,754	223,666	250,184
All other markets	133,189	110,851	111,990	45,003	48,115	119,427	170,905
Total exports	380,658	330,703	380,004	143,973	151,869	343,093	421,088
Total shipments	389,989	338,000	388,869	148,506	158,620	355,815	435,180
Ratios and shares (percent)							
Capacity utilization	87.1	75.3	85.7	69.6	64.6	82.4	88.6
Inventories to production	16.1	22.8	25.6	29.7	30.6	25.2	18.4
Inventories to total shipments	16.8	23.4	27.2	33.6	26.2	23.7	18.2
Share of total quantity of shipments:							
Internal consumption	0.9	0.8	0.8	1.2	2.2	1.4	1.2
Home market	1.5	1.4	1.4	1.8	2.0	2.2	2.0
Exports to--							
The United States	63.5	65.0	68.9	66.6	65.4	62.9	57.5
All other markets	34.2	32.8	28.8	30.3	30.3	33.6	39.3
Total exports	97.6	97.8	97.7	96.9	95.7	96.4	96.8
Note.—Because of rounding, figures may not add to the totals shown.							
Source: Compiled from data submitted in response to Commission questionnaires.							

THE INDUSTRY IN VIETNAM

Table VII-6 presents data provided by Vietnamese producers/exporters through their counsel with respect to their warmwater shrimp operations in Vietnam. Thirty-six firms, all of which exported to the United States, provided useable data. The shipments to the United States for these firms were equivalent to 97.1 percent of subject U.S. imports from Vietnam in 2003.⁸

Table VII-6
Warmwater shrimp: Vietnamese production capacity, production, shipments, and inventories, 2001-03, January-June 2003, January-June 2004, and projected 2004-05

Item	Actual experience					Projections	
	2001	2002	2003	January-June		2004	2005
				2003	2004		
Quantity (1,000 pounds)							
Capacity	186,067	241,085	283,062	141,301	142,498	285,283	291,043
Production	163,402	207,190	264,077	115,432	112,196	251,824	267,278
End of period inventories	17,748	27,737	31,085	31,135	28,854	28,961	21,391
Shipments:							
Internal consumption	6,636	6,313	10,365	4,190	6,523	7,456	4,928
Home market	17,014	24,350	39,741	20,172	21,236	40,351	35,401
Exports to--							
The United States	65,762	95,170	120,937	48,505	33,533	74,769	82,356
All other markets	90,117	85,095	116,127	51,619	59,272	140,729	160,432
Total exports	155,879	180,265	237,064	100,125	92,804	215,498	242,788
Total shipments	179,530	210,928	287,170	124,487	120,564	263,305	283,118
Ratios and shares (percent)							
Capacity utilization	87.8	85.9	93.3	81.7	78.7	88.3	91.8
Inventories to production	10.9	13.4	11.8	13.5	12.9	11.5	8.0
Inventories to total shipments	9.9	13.1	10.8	12.5	12.0	11.0	7.6
Share of total quantity of shipments:							
Internal consumption	3.7	3.0	3.6	3.4	5.4	2.8	1.7
Home market	9.5	11.5	13.8	16.2	17.6	15.3	12.5
Exports to--							
The United States	36.6	45.1	42.1	39.0	27.8	28.4	29.1
All other markets	50.2	40.3	40.4	41.5	49.2	53.4	56.7
Total exports	86.8	85.5	82.6	80.4	77.0	81.8	85.8
Note.--Because of rounding, figures may not add to the totals shown.							
Source: Compiled from data submitted in response to Commission questionnaires.							

⁸ During the preliminary phase investigations, information provided by the Vietnamese respondents showed that 0.1 percent of the Vietnamese exports to the United States was canned product in 2002. In the final phase investigations, none of the Vietnamese respondents provided information with regard to canned shrimp operations.

U.S. INVENTORIES OF PRODUCT FROM THE SUBJECT COUNTRIES

Inventories of product reported by U.S. importers are presented in table VII-7.

Table VII-7

Warmwater shrimp: U.S. importers' end-of-period inventories of imports, 2001-03, January-June 2003, and January-June 2004

Item	Calendar year			January-June	
	2001	2002	2003	2003	2004
Imports from Brazil:					
Inventories (<i>1,000 pounds</i>)	960	1,644	1,617	1,350	2,414
Ratio to imports (<i>percent</i>)	5.2	6.1	5.0	3.3	12.1
Ratio to U.S. shipments of imports (<i>percent</i>)	5.6	6.2	4.9	3.3	14.4
Imports from China:¹					
Inventories (<i>1,000 pounds</i>)	5,142	12,258	21,574	10,539	14,725
Ratio to imports (<i>percent</i>)	11.9	16.2	20.4	14.9	18.8
Ratio to U.S. shipments of imports (<i>percent</i>)	12.5	18.3	23.3	14.0	15.4
Imports from Ecuador:					
Inventories (<i>1,000 pounds</i>)	2,796	4,123	5,414	3,248	4,064
Ratio to imports (<i>percent</i>)	9.3	11.0	12.3	6.1	9.6
Ratio to U.S. shipments of imports (<i>percent</i>)	10.1	12.1	13.5	6.5	10.0
Imports from India:					
Inventories (<i>1,000 pounds</i>)	7,512	6,607	11,156	7,752	7,059
Ratio to imports (<i>percent</i>)	23.3	13.3	21.9	17.2	15.8
Ratio to U.S. shipments of imports (<i>percent</i>)	28.6	13.2	26.6	19.2	15.1
Imports from Thailand:					
Inventories (<i>1,000 pounds</i>)	42,126	41,959	55,742	43,180	46,537
Ratio to imports (<i>percent</i>)	20.2	23.3	26.9	25.3	31.1
Ratio to U.S. shipments of imports (<i>percent</i>)	21.1	21.5	27.8	24.1	24.1
Imports from Vietnam:					
Inventories (<i>1,000 pounds</i>)	10,417	12,989	17,885	16,121	20,500
Ratio to imports (<i>percent</i>)	23.0	20.0	21.0	20.6	35.9
Ratio to U.S. shipments of imports (<i>percent</i>)	27.2	20.7	22.6	22.8	35.9
Imports from subject countries (total):					
Inventories (<i>1,000 pounds</i>)	68,953	79,581	113,388	82,190	95,300
Ratio to imports (<i>percent</i>)	18.2	18.3	21.6	17.9	24.3
Ratio to U.S. shipments of imports (<i>percent</i>)	19.7	18.3	23.2	18.0	21.2
Table continued on next page.					

Item	Calendar year			January-June	
	2001	2002	2003	2003	2004
Imports from all other sources:					
Inventories (1,000 pounds)	19,760	20,734	20,168	14,874	18,722
Ratio to imports (percent)	21.1	20.7	21.2	14.0	14.6
Ratio to U.S. shipments of imports (percent)	21.5	20.6	22.5	13.1	13.7
Imports from all sources:					
Inventories (1,000 pounds)	88,713	100,314	133,556	97,064	114,021
Ratio to imports (percent)	18.8	18.8	21.5	17.2	21.9
Ratio to U.S. shipments of imports (percent)	20.1	18.7	23.1	17.0	19.5
<p>¹ Because inventories may include product imported from ZG, inventory levels for China may be slightly overstated.</p> <p>Note.--Ratios are based on firms that provided both inventory data and import and/or shipment data. January-June ratios are based on annualized shipment data.</p> <p>Source: Compiled from data submitted in response to Commission questionnaires.</p>					

ANTIDUMPING DUTY ORDERS IN THIRD-COUNTRY MARKETS

There are no antidumping duty orders on warmwater shrimp in effect in third-country markets for any of the countries subject to these investigations.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

**INTERNATIONAL TRADE
COMMISSION**

**[Investigations Nos. 731-TA-1063-1068
(Final)]**

**Certain Frozen or Canned Warmwater
Shrimp and Prawns From Brazil,
China, Ecuador, India, Thailand, and
Vietnam**

AGENCY: United States International
Trade Commission.

ACTION: Scheduling of the final phase of
antidumping investigations.

SUMMARY: The Commission hereby gives
notice of the scheduling of the final
phase of antidumping investigations
Nos. 731-TA-1063-1068 (Final) under
section 735(b) of the Tariff Act of 1930
(19 U.S.C. 1673d(b)) (the Act) to
determine whether an industry in the
United States is materially injured or
threatened with material injury, or the
establishment of an industry in the

United States is materially retarded, by reason of less-than-fair-value imports from Brazil, China, Ecuador, India, Thailand, and Vietnam of certain frozen or canned warmwater shrimp and prawns, provided for in subheadings 0306.13.00 and 1605.20.10 of the Harmonized Tariff Schedule of the United States (HTSUS).¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective: July 16, 2004 (China and Vietnam); August 4, 2004 (Brazil, Ecuador, India, and Thailand).

FOR FURTHER INFORMATION CONTACT: Jim McClure ((202) 205-3191), Office of

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "certain warmwater shrimp and prawns, whether frozen or canned, 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 or canned form.

"The frozen or canned warmwater shrimp and prawn products included in the scope of the investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 the 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 the investigation.

"Excluded from the scope are (1) breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

"The products covered by this scope are currently classifiable under the following HTSUS 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, 1605.20.10.30, and 1605.20.10.40."

Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on December 31, 2003, by the Ad Hoc Shrimp Trade Action Committee, Washington, DC.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified

in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 15, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 1, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 19, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 23, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 22, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 8, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 8, 2004. On December 27, 2004, the Commission will make available to

parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 29, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Dated: August 13, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04-18985 Filed 8-18-04; 8:45 am]

BILLING CODE 7020-02-P

IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3208.

Final Determination

We determine that certain frozen and canned warmwater shrimp from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV") as provided in section 735 of Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

SUMMARY: On July 16, 2004, the Department of Commerce published its preliminary determination of sales at LTFV, partial affirmative preliminary determination of critical circumstances and postponement of the final determination in the antidumping investigation of certain frozen and canned warmwater shrimp from the PRC. On September 1, 2004, the Department of Commerce published an

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China

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

EFFECTIVE DATE: December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Office

amended preliminary determination of sales at less than fair value ("LTFV").

During the investigation, the Department examined sales information from four shrimp processors that were selected as Mandatory Respondents.¹ In addition, fifty-three companies requested separate rates and we refer to them, collectively, as the Section A Respondents.² We invited interested

¹ Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific (H.K.) Co., Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. (collectively, "Allied"), Yelin Enterprise Co. Hong Kong ("HK Yelin") and its suppliers, Shantou Yelin Frozen Seafood Co., Ltd., Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd., and Fuqing Yahua Aquatic Food Co., Ltd. (collectively, "Yelin"), Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden") and Zhanjiang Guolian Aquatic Products Co., Ltd. ("Zhanjiang Guolian").

² Asian Seafoods (Zhanjiang) Co., Ltd. ("Asian Seafoods"); Beihai Zhengwu Industry Co., Ltd. ("Beihai Zhengwu"); Chaoyang Qiaofeng Group Co., Ltd. ("Shantou/Chaoyang Qiaofeng" (Group) Co., Ltd.) ("Shantou/Chaoyang Qiaofeng"); Chenghai Nichi Lan Food Co., Ltd.; Dalian FTZ Sea-Rich International Trading Co., Ltd. ("Dalian FTZ Sea-Rich"); Dongri Aquatic Products Freezing Plants ("Dongri Aquatic"); Fuqing Dongwei Aquatic Products Industry Co., Ltd. ("Fuqing Dongwei"); Fuqing Longwei Aquatic Foodstuff Co., Ltd. (Longwei Aquatic Foodstuff Co., Ltd.) ("Fuqing Longwei"); Gallant Ocean (Liangiang) Co., Ltd. ("Gallant Ocean"); Hainan Fruit Vegetable Food Allocation Co., Ltd. ("Hainan Fruit Vegetable Food"); Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatic Products Co., Ltd. ("Hainan Golden"); Jinfu Trading Co., Ltd. ("Jinfu Trading"); Kaifeng Ocean Sky Industry Co., Ltd. ("Kaifeng"); Leizhou Zhulian Frozen Food Co., Ltd. ("Leizhou Zhulian"); Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd./Shengping Shantou ("Meizhou"); Pingyang Xinye Aquatic Products Co., Ltd. ("Pingyang Xinye"); Savvy Seafood Inc. ("Savvy"); Shanghai Linghai Fisheries Economic & Trading Co., Ltd. ("Shanghai Linghai"); Shanghai Taoen International Trading Co., Ltd. ("Shanghai Taoen"); Shantou Freezing Aquatic Product Food Stuffs Co. ("Shantou Freezing"); Shantou Jinhang Aquatic Industry Co., Ltd. ("Shantou Jinhang"); Shantou Jinyuan District Mingfeng Quick-Frozen Factory ("Mingfeng"); Shantou Ocean Freezing Industry & Trade General Corporation ("Shantou Ocean"); Shantou Ruiyuan Industry Co., Ltd. ("Shantou Ruiyuan"); Shantou Sez Xu Hao Fastness Freeze Aquatic Factory Co., Ltd. ("Shantou Sez Xuhao"); Shantou Shengping Oceanstar Business Co., Ltd. ("Shantou Shengping Oceanstar"); Shantou Wanya Food Factory Co., Ltd. ("Shantou Wanya"); Shantou Yuexing Enterprise Company ("Shantou Yuexing"); Taizhou Zhonghuan Industrial Co., Ltd. ("Taizhou Zhonghuan"); Xuwen Hailang Breeding Co., Ltd. ("Xuwen Hailang"); Yantai Wei-Cheng Food Co., Ltd. ("Yantai Wei-Cheng"); Zhanjiang Bobogo Ocean Co., Ltd. ("Zhanjiang Bobogo"); Zhanjiang Newpro Food Co., Ltd. ("Zhanjiang Newpro"); Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd. ("Zhanjiang Evergreen"); Zhanjiang Go-Harvest Aquatic Products Co. Ltd. ("Zhanjiang Go-harvest"); Zhanjiang Runhai Foods Co., Ltd. ("Zhanjiang Runhai"); Zhanjiang Universal Seafood Corp. ("Zhanjiang Universal"); Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd. ("Zhejiang Cereals"); Zhejiang Daishan Baofa Aquatic Product Co., Ltd. ("Daishan"); Zhejiang Evernew Seafood Corp., Ltd. ("Zhejiang Evernew"); Zhejiang Taizhou Lingyang Aquatic Products Co. Ltd. ("Lingyang"); Zhejiang Zhenglong Foodstuffs Co., Ltd. ("Zhejiang Zhenlong");

parties to comment on our preliminary determination and amended preliminary determination. Based on our analysis of the comments we received, we have made changes to our calculations for the four Mandatory Respondents. As a result of those changes, the rate assigned to companies which received a separate rate has also changed.

Case History

The Department of Commerce ("Department") published its preliminary determination in this investigation on June 24, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances 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"). On September 1, 2004, the Department published an amended preliminary determination. See *Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 53409 (September 1, 2004) ("Amended Preliminary Determination").

Since the publication of the *Preliminary Determination*, the following events have occurred. The Department conducted verification of the Mandatory Respondents: Allied on August 23, and 25 through 27, 2004; Red Garden/Shantou Jinyuan District Mingfeng Quick-Frozen Factory ("Mingfeng") (one of Red Garden's suppliers during the POI) on August 15 through 19, 2004; Yelin on August 27, and August 31 through September 2, 2004; and Zhanjiang Guolian on August 16 through 20, 2004; and the two Section A Respondents, Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. ("Meizhou") on August 23, 2004, and Shantou Ocean Freezing on August 25 through 26, 2004, in the PRC. See the "Verification" Section below for additional information.

We received comments from the Ad Hoc Shrimp Trade Action Committee,

Zhoushan Cereals, Oils & Foodstuffs Import & Export Co., Ltd. ("Zhoushan Cereals"); Zhoushan Diciaryuan Aquatic Products Co., Ltd. ("Zhoushan Diciaryuan"); Zhoushan Haichang Food Co., Ltd. ("Zhoushan Haichang"); Zhoushan Huading Seafood Co., Ltd. ("Zhoushan Huading"); Zhoushan Industrial Co., Ltd. ("Zhoushan Industrial"); Zhoushan Lizhou Fishery Co., Ltd. ("Zhoushan Lizhou"); Zhoushan Putuo Huafa Sea Products Co., Ltd. ("Zhoushan Putuo"); Zhoushan Xifeng Aquatic Co., Ltd. ("Zhoushan Xifeng"); Zhoushan Zhenyang Developing Co., Ltd. ("Zhoushan Zhenyang"); and ZJ CNF Sea Products Engineering Ltd./CNF Zhangjiang (Tong Lian) ("ZJ CNF Sea Products").

Versaggi Shrimp Corporation and Indian Ridge Shrimp Company, hereinafter referred to collectively as "Petitioners", a number of respondents and other interested parties to this investigation that addressed issues including: Mandatory Respondent Selection; Section A Respondents; Scope; and other issues.

On October 19, 2004, parties submitted case briefs. On October 26, 2004, parties submitted rebuttal briefs. On November 5, 2004, the Department held a public hearing in accordance with section 351.310(d)(l) of the Department's regulations.

Representatives for the Mandatory and Section A Respondents, the Petitioners, the PRC government and the PRC Chamber of Commerce were in attendance. On November 23, 2004, the Department convened a public hearing on scope issues.

Mandatory Respondents

On July 16, 2004, the following companies submitted sales reconciliation documentation: Zhangjian Guolian; Yelin³; Allied; and Red Garden. On July 27, 2004, the Department sent the 4th supplemental questionnaires addressing certain deficiencies in Section C and D responses to: Allied, Zhanjiang Guolian, Red Garden and Yelin.

On July 28, 2004, the Department granted Zhanjiang Guolian's request for an extension to submit surrogate value data with an extension until August 4, 2004. On July 29, 2004, the Department documented the submission of new information by Allied. See *Memorandum to the File from Julia Hancock Regarding the Submission of New Information* (July 29, 2004).

On August 2, 2004, the Department received and granted an extension request from Red Garden for submitting its supplemental questionnaire response. On August 3, 2004, the Department received and granted an extension request from Zhanjiang Guolian for responding to the Department's supplemental questionnaire. On August 3, 2004, the Department received the 4th supplemental questionnaire response from Allied and the Department also received Yelin's response to the

³ Yelin Enterprise Co. Hong Kong, a Hong Kong exporter of subject merchandise and its wholly or partially owned subsidiaries, Shantou Yelin Frozen Seafood Co. (Shantou, China), Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd. (Hailing, China), and Fuqing Yihua Aquatic Food Co., Ltd. (Fuqing China), Chinese producers and/or resellers of merchandise subject to this investigation, and Ocean Duke Corporation, the U.S. importing and resale affiliate of HK Yelin (collectively referred to as "Yelin," unless otherwise identified).

Department's 2nd supplemental Section A questionnaire.

On August 4, 2004, the Department received Meizhou's request for an extension of the deadline to respond to the Department's request for submission of a sales reconciliation package. The Department granted this request on August 6, 2004. The Department also received Zhanjiang Guolian's response to the Department's 4th supplemental questionnaire dated July 27, 2004.

On August 9, 2004, the Department received Yelin's supplemental information prior to verification and Meizhou's sales reconciliation information. The Department also sent verification outlines to Zhanjiang Guolian, Allied, Meizhou, Shantou Ocean, and Red Garden and its suppliers, Mingfeng and Shantou Longfeng Foodstuff Co., Ltd. ("Longfeng").

On August 11, 2004, the Department received Petitioners' pre-verification comments regarding Red Garden and Zhanjiang Guolian. On August 12, 2004, the Department received Allied's, Yelin's and Red Garden's supplemental questionnaire responses.

On August 16, 2004, the Department received Yelin's 3rd supplemental questionnaire response, Red Garden's and Zhanjiang Guolian's pre-verification corrections and a notice of intent to participate in the hearing from Petitioners. On August 17, 2004, the Department received Petitioners' pre-verification comments regarding Meizhou. On August 19, 2004, the Department sent a verification agenda outline to Yelin and its suppliers. On August 20, 2004, the Department received Petitioners' pre-verification comments regarding Yelin.

On August 26, 2004, the Department received a letter from Yelin requesting that their August 9, 2004 submission be removed from the record. On August 31, 2004, the Department received corrections to Allied's pre-verification corrections and revisions to Yelin's August 9, 2004 submission. On September 7, 2004, the Department received revised exhibits from Yelin to its August 9, 2004 submission.

On September 8, 2004, the Department received Zhanjiang Guolian's, Allied's, Yelin's Red Garden's and Petitioners' surrogate value data, as well as additional surrogate information from the Mandatory Respondents. On September 15, 2004, the Department received Petitioners' comments on Yelin's September 7, 2004 submission. On September 16, 2004, the Department removed Yelin's September 7, 2004 submission from the record.

On September 20, 2004, the Department received Zhanjiang Guolian's, Allied's and Yelin's additional factual information. On September 20, 2004, the Department received Petitioners' factual information rebuttal to the respondents' data as well as a request for an extension of the briefing schedule. On September 22, 2004, the Department released verification reports for Meizhou, Red Garden, Mingfeng, and Shantou Ocean. On September 24, 2004, the Department released the verification reports for Allied and Zhanjiang Guolian. On October 12, 2004, the Department released Yelin's verification report.

On November 8, 2004, the Department sent letters to Zhanjiang Guolian, Allied and Yelin concerning the verifications of those companies. On November 23, 2004, Petitioners submitted comments on Red Garden's November 19, 2004 response, arguing that Red Garden submitted more than minor corrections.

Section A Respondents

On July 19, 2004, the following companies submitted new factual information regarding their separate rates claim: Shantou Yuexing; Zhanjiang Go-Harvest, Shantou/Chaoyang Qiaofeng, Zhanjiang Runhai, Fuqing Longwei, Shantou Jinhang; Zhanjiang Evergreen; and Fuqing Dongwei. On July 21, 2004, the Department sent out second supplemental Section A questionnaires to the following respondents: Shantou Ocean, Beihai Zhengwu, Zhoushan Lizhou, Zhoushan Cereals, Zhanjiang Bobogo, Yantai Wei-Cheng, Shantou/Chaoyang Qiaofeng, Dongri Aquatic, Shantou Yuexing, Zhanjiang Newpro, Zhoushan Huading, Pingyang Xinye and Xuwen Hailang.

On July 26, 2004, the Department received a request for an extension of time to answer the Department's 2nd supplemental Section A questionnaire from Beihai Zhengwu. On July 28, 2004, the Department received extension requests from GDLSK Respondents.⁴

On August 2, 2004, the Department sent 2nd supplemental Section A questionnaires to the following companies: Shantou Ocean, Shantou/Chaoyang Qiaofeng, Xuwen Hailang, and the Department sent and received 2nd supplemental Section A questionnaire responses the same day from Dongri Aquatic, Shantou Freezing, Zhanjiang Newpro and Shantou Yuexing. On August 4, 2004, the Department received 2nd supplemental Section A responses from Zhoushan Cereals, Zhoushan Lizhou, Zhoushan

Huading, Pingyang Xinye, Yantai Wei-Cheng and Beihai Zhengwu. On August 4, 2004, the Department received Zhanjiang Bobogo's 2nd supplemental Section A response.

On September 3, 2004, the Department received case briefs from the following exporters who did not receive a separate rate in the *Preliminary Determination*: Shantou/Chaoyang Qiaofeng, Fuqing Dongwei, Fuqing Longwei, Leizhou Zhulian, Shantou Freezing, Shantou Jinhang, Shantou Ruiyuan, Zhanjiang Evergreen, Zhanjiang Go-harvest, and Zhanjiang Runhai. On October 18, 2004, the Department received Hainan Golden's case brief.

On October 19, 2004, the Department received case briefs from: Jinfu Trading, Zhangjian Guolian, Zhoushan Haichang, Asian Seafoods, Shantou Sez Xuhao, Zhejiang Evernew, Zhejiang Zhenglong, Zhoushan Industrial, Zhoushan Putuo, Zhoushan Xifeng, Daishan, Zhoushan Zhenyang, Yelin, Allied, Lingyang, Kaifeng, Shanghai Linghai, Zhoushan Dicyuan, Red Garden, Zhejiang Cereals, Taizhou Zhonghuan and Petitioners. On October 26, 2004, the Department received rebuttal briefs from Savvy, Zhanjiang Bobogo, Jinfu Trading, Zhangjian Guolian, Zhoushan Haichang, Zhejiang Evernew, Zhejiang Zhenglong, Zhoushan Industrial, Zhoushan Putuo, Zhoushan Xifeng, Daishan, Zhoushan Zhenyang, Yelin, Allied, Lingyang, Kaifeng, Shanghai Linghai, Zhoushan Dicyuan, Zhejiang Cereals, Taizhou Zhonghuan, Meizhou, Mingfeng, and Longfeng. On November 19, 2004, the Department received Red Garden's post-verification response.

Scope Comments by Interested Parties

On July 16, 2004, the Department received a scope exclusion request on behalf of Xian-Ning Seafood Co. Ltd. ("Xian-Ning") asking the Department to determine whether shrimp scampi is outside the scope of the antidumping investigation. On August 2, 2004, the Department received scope comments from Eastern Fish/Long John Silver ("Eastern Fish/LJS"). On September 24, 2004, the Department received Lee Kum Kee's request to determine whether shrimp sauce is outside the scope of this investigation. The Department scheduled a scope hearing for November 8, 2004, but postponed the hearing until November 23, 2004. On October 20, 2004, the Department received case briefs regarding dusted shrimp from Eastern Fish/LJS and Xian-Ning and also received a notice of intent from them to participate in the hearing. On October 25, 2004, the Department received a rebuttal brief from Eastern

⁴ Allied and Yelin (collectively "GDLSK Respondents").

Fish/LJS. On November 2, 2004, the Department received a letter from the American Breaded Shrimp Processors Association ("ABSPA") objecting to the decision to cancel the hearing on scope issues. On November 4, 2004, the Department also sent a letter to ABSPA notifying them that they did not submit any case or rebuttal briefs in the scope issues and that they could not make any presentations in the scope hearing because they did not submit any case or rebuttal briefs. On November 18, 2004, Department officials met with Petitioners on the appropriate surrogate values for raw shrimp and whether or not to exclude dusted and battered shrimp from the scope of the investigations involving all of the countries in the shrimp investigations (Brazil, Ecuador, India, Thailand, PRC and Vietnam). On November 22, 2004, Department of Commerce officials met with representatives of Xian-Ning, to discuss their scope exclusion request for shrimp scampi.

Analysis of Comments Received

The issue of separate rates raised in the case and rebuttal briefs by parties in this investigation are addressed in the Final Separate Rates Memorandum, dated November 29, 2004 ("*Final Separate Rates Memorandum*"), which is hereby adopted by this notice. The various scope issues are discussed in the "Scope Comments" section of this notice and the separate scope memoranda referenced in that section. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, dated November 29, 2004, which is hereby adopted by this notice ("*Decision Memorandum*"). A list of the issues which parties raised and to which we respond in the *Decision Memorandum* is attached to this notice as an Appendix. The *Decision Memorandum* is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room B-099, and is accessible on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the memorandum are identical in content.

Scope Comments

On November 29, 2004, the Department made a scope determination with respect to Lee Kum Kee's shrimp sauce. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and*

Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Lee Kum Kee's Shrimp Sauce ("Shrimp Sauce Scope Memo"), dated November 29, 2004. Based on the information presented by interested parties, the Department determines that Lee Kum Kee's shrimp sauce is excluded from the scope of this investigation. See *Shrimp Sauce Scope Memo* at 8.

On November 29, 2004, the Department made a scope determination with respect to shrimp scampi. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Shrimp Scampi ("Shrimp Scampi Scope Memo")*, dated November 29, 2004. Based on the information presented by interested parties, the Department determines that shrimp scampi is included in the scope of this investigation. See *Shrimp Scampi Scope Memo* at 8.

Additionally, on November 29, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Memo2")*, dated November 29, 2004. Based on the information presented by interested parties, the Department determines that (1) certain dusted shrimp, produced from fresh (or thawed-from-frozen) and peeled shrimp to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied so that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour and the non-shrimp content of the end product constitutes between 4 to 10 percent of the product's total weight after being dusted, but prior to being frozen and is subjected to individually quick frozen freezing immediately after application of the dusting layer; and (2) battered shrimp, when dusted in accordance

with the definition of dusting, coated with a wet viscous layer containing egg and/or milk, and par-fried are excluded from the scope of this investigation. See *Dusted/Battered Scope Memo* at 28.

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 (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

⁵ "Tails" in this context means the tail fan, which includes the telson and the uropods.

whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this investigation are currently classified under the following HTSUS subheading: 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written descriptions of the scope of this investigation is dispositive.

The Department has issued nine decisions regarding the scope of the merchandise covered by this investigation: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of the this investigation; (4) on July 2, 2004, the Department found *Macrobrachium Rosenbergii* and organic shrimp included within the scope of this investigation; (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation; (6) on November 29, 2004, the Department found that shrimp sauce is excluded from the scope of this investigation; (7) on November 29, 2004, the Department found Xian-Ning Seafood Co., Ltd.'s scampi shrimp included within the scope of this investigation; (8) on November 29, 2004, the Department found certain dusted shrimp⁶ are outside the scope of this

⁶Dusted shrimp is a shrimp-based product that (1) 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) So that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour; and (4) The non-shrimp content of the end product constitutes between 4 to 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) Is subjected to IQF freezing immediately after application of the dusting layer. See *Memorandum from Edward C. Yang, NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and*

investigation; and (9) on November 29, 2004, the Department found certain battered shrimp⁷ are outside the scope of this investigation.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Mandatory Respondents and certain Section A Respondents for use in our final determination. See the Department's verification reports on the record of this investigation in the CRU with respect to Allied, Red Garden, Yelin, Zhanjiang Guolian, Shantou Ocean, and Meizhou. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Period of Investigation

The period of investigation ("POI") is April 1, 2003, through September 30, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition. See Section 351.204(b)(1) of the Department's regulations.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) India is at a level of economic development comparable to that of the PRC; (2) Indian manufacturers produce comparable merchandise and are significant producers of frozen and canned warmwater shrimp; (3) India provides the best opportunity to use appropriate, publicly available data to value the factors of production. See *Preliminary Determination*, 69 FR at 42678; and see *Memorandum from Ron Lorentzen to James Doyle: Antidumping Duty Investigation on Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, dated March 10, 2004. We received no comments from interested parties concerning our selection of India as the surrogate country. For the final determination we have determined to continue to use India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the respondents' factors of production, when available and

Battered Shrimp ("Dusted/Battered Scope Memo"), dated November 29, 2004.

⁷Battered 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.

appropriate. We have obtained and relied upon publicly available information wherever possible. For a detailed description of the surrogate values that have changed as a result of comments the Department has received, see *Final Surrogate Value Memorandum* (November 29, 2004).

Separate Rates

In the *Preliminary Determination* and the *Amended Preliminary Determination* the Department found that several companies which provided responses to Section A of the antidumping questionnaire were eligible for a rate separate from the PRC-wide rate. For the final determination, we have determined that additional companies have qualified for separate-rate status. See *Final Separate Rates Memorandum*. For a complete listing of all the companies that received a separate rate, see the "Final Determination Margins" section below.

As discussed below, the Department applied adverse facts available with respect to Meizhou, because we have determined that Meizhou did not provide verifiable information to support its request for a separate rate. Accordingly, Meizhou has not overcome the presumption that it is part of the PRC-wide entity and its entries will be subject to the PRC-wide rate.

The margin we calculated in the *Preliminary Determination* for the companies receiving a separate rate was 49.09 percent. Because the rates of the selected Mandatory Respondents have changed since the *Preliminary Determination* and the *Amended Preliminary Determination*, we have recalculated the rate for Section A Respondents that are eligible for a separate rate. The rate is 55.23 percent. See *Memorandum to the File from John D. A. LaRose, Calculation of Section A Rates*, dated November 29, 2004.

Critical Circumstances

For this final determination there have been no changes to the preliminary affirmative critical circumstances determinations. As such, the Department continues to find that critical circumstances exist for the following entities: Allied, Yelin, all the Section A Respondents granted a separate rate, and the PRC-wide entity. Additionally, for this final determination we continue to find that critical circumstances do not exist with regard to imports of certain frozen and canned warmwater shrimp from the PRC for Zhanjiang Guolian or Red Garden. For further details regarding the Department's critical circumstances analysis from the *Preliminary*

Determination, please see the *Memo from Edward C. Yang, Office Director to Jeffrey A. May, Deputy Assistant Secretary for Import Administration, Regarding the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China—Partial Affirmative Preliminary Determination of Critical Circumstances*, dated July 2, 2004.

On October 6, 2004, Lingyang submitted three years of its company-specific export data for the Department's critical circumstances analysis. However, because the Department has determined that Lingyang is not entitled to a separate rate and continues to be part of the PRC-wide entity, we have not considered this data for the final determination. See *Final Determination for Sales at Less than Fair Value Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Section A Respondents Issues Memorandum from Julia Hancock, Case Analyst through James C. Doyle, Edward C. Yang* ("Final Section A Respondent Memo"), dated November 29, 2004 at Attachment II.

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non market-economy ("NME") country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Final Determination of Sales at Less than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the "Final Determination Margins" section below (except as noted). The information used to calculate this PRC-wide rate was corroborated independently with some small changes in accordance with section 776(c) of the Act. See *Memorandum to the File from Alex Villanueva, Senior Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Director, NME Unit, Preliminary Determination in the Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, Corroboration Memorandum* ("Corroboration Memo"), (July 2, 2004).

Facts Available

Red Garden's Partial Adverse Facts Available

For the final determination, the Department is applying partial facts available to Red Garden regarding a portion of its sales produced by Meizhou because it failed to provide the factors of production ("FOP") data that the Department had requested, in accordance with section 776(a)(2)(A) of the Act.

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In its August 5, 2004 submission and subsequent rebuttal brief, Red Garden chronicled its various attempts to obtain FOP information from Meizhou pertaining to its purchases of subject merchandise during the POI. However, at the Department's verification of Meizhou, the current ownership provided an inconsistent account of Red Garden's attempt to obtain this information from what Red Garden had previously reported to the Department. See *Red Garden's August 5, 2004 Supplemental Questionnaire Response* at Exhibit 1. On the basis of these inconsistent accounts of Red Garden's efforts, we find that Red Garden withheld information that had been requested by the Department and provided unverifiable information.

Furthermore, in accordance with section 776(b) of the Act, the Department found that Red Garden failed to cooperate to the best of its ability to comply with the Department's request for information, and, therefore, finds an adverse inference is warranted in determining the facts otherwise available.

During the time period that Meizhou completed its own responses, company officials had access to the records needed by Red Garden. See *Memorandum from John D.A. LaRose to Alex Villanueva, Acting Program Manager, regarding Verification of Sales and Factors of Production for Meizhou Aquatic Shantou Ocean Freezing Antidumping Duty Investigation of Certain Canned and Frozen Warmwater*

Shrimp from the People's Republic of China, (September 22, 2004). Thus, we find that Red Garden, despite its information to the contrary, by not contacting current ownership of Meizhou, or the ownership that was in place when Red Garden was responding to the Department's questionnaires, did not act to the best of its ability to obtain the FOP information from Meizhou. The Department determines that partial adverse facts is warranted for the portion of Red Garden's sales produced by Meizhou. Therefore, we are applying the PRC-wide rate to all of these sales by Red Garden during the POI.

Yelin's Partial Facts Available

For the final determination, the Department is applying partial facts available for Yelin's purchases of STPP used in the processing stage of subject merchandise production in accordance with sections 776(a)(1) and 776(a)(2)(D) of the Act.

When calculating its STPP usage, Yelin incorrectly allocated STPP usage over the shrimp input factor. See *Memorandum from John D.A. LaRose to Alex Villanueva, Acting Program Manager, regarding Verification of Sales and Factors of Production for Yelin Enterprise Co. Hong Kong, Antidumping Duty Investigation of Certain Canned and Frozen Warmwater Shrimp from the People's Republic of China* ("Yelin Verification Report"), dated October 12, 2004 at 22. It is inaccurate for Yelin to allocate this consumption over the shrimp input because it misrepresents the actual usage of STPP. In order for the Department to calculate the most accurate dumping margin for Yelin, normal value should be calculated using all of Yelin's FOPs during the POI. Because the STPP usage was not reported correctly, the reported usage by Yelin was not verifiable. At verification, the Department further explored the issue by requesting Yelin's purchase records for STPP. Yelin's audited financial records did not reflect STPP purchases. *Id.* Therefore, the Department determines that Yelin was unable to support its reported STPP usage rates.

In accordance with section 776(a)(2)(D) of the Act, the Department may determine that facts available apply due to the Department's inability to verify information provided by an interested party. Because Yelin was unable to support its purchases and usage of STPP, the Department is applying partial facts available for Yelin's factor usage for STPP. As facts available, the Department has calculated the factor usage ratio for STPP by taking the highest monthly volume figure of

STPP, multiplying that figure by six (for the six months in the POI) and dividing that by production of total finished product during the POI.

In addition, the Department is applying partial facts available regarding Yelin's sales of its by-product offset to normal value in the final determination. The Department at verification determined that Yelin's audited financial records did not reflect any by-product sales. See *Yelin Verification Report* at 22. In order for the Department to properly offset Yelin's normal value for its by-products sales, the Department would need evidence that Yelin actually sold the by-products during the POI. At verification, Yelin provided unofficial information regarding its by-product sales which could not be reconciled to its audited financial statements. In accordance with section 776(a)(2)(D) of the Act, because the Department was unable to verify information provided by Yelin, the Department is not making an adjustment to normal value for by-product sales.

Zhanjiang Guolian's Partial Facts Available

For the final determination, the Department is applying partial facts available regarding Zhanjiang Guolian's unreported consumption of diesel fuel. See *Memorandum from Irene Gorelik to Alex Villanueva, Acting Program Manager, regarding Verification of Sales and Factors of Production for Zhanjiang Guolian Aquatic Products Co., Ltd. Antidumping Duty Investigation of Certain Canned and Frozen Warmwater Shrimp from the People's Republic of China*, dated September 24, 2004. The Department learned during verification that this particular factor is used at an integral stage of Zhanjiang Guolian's farming and processing operations. Therefore, the Department finds that

diesel fuel is a significant expense related to transport of the primary input and must be included in the FOP database. In accordance with section 776(a)(1) of the Act, the Department may use the facts available if necessary information is not available on the record.

In its case brief submitted on October 19, 2004, Zhanjiang Guolian stated that diesel fuel was booked in the company's financial records as overhead. However, the Department found that the diesel fuel used by Zhanjiang Guolian is a significant material input for the production of subject merchandise. Zhanjiang Guolian did not report diesel fuel as a factor of production in the questionnaire dated February 25, 2004. Thus, since diesel fuel as an FOP is not on the record, the Department must make a determination using the facts available with regard to Zhanjiang Guolian's consumption of diesel fuel during the POI.

As facts available, the Department is using information from Zhanjiang Guolian obtained at verification to calculate the value for diesel fuel consumption. See *Preliminary Factor Valuation Memo* at Exhibit 6 and *Memorandum to James C. Doyle, Office Director, from John D.A. LaRose, Case Analyst, through Alex Villanueva, Acting Program Manager, Regarding Selection of Surrogate Factor Values for Allied Pacific, Yelin, Zhanjiang Guolian, and Red Garden* ("Final Factor Valuation Memorandum").

Changes Since the Preliminary Determination

Based on our findings at verification, additional information placed on the record of this investigation, and analysis of comments received, we have made adjustments to the calculation methodology for the final dumping margins in this proceeding. For

discussion of the company-specific changes made since the preliminary determination to the final margin programs, see *Final Analysis Memo for Allied, Final Analysis Memo for Red Garden, Final Analysis Memo for Yelin, and Final Analysis Memo for Zhanjiang Guolian*.

Margins for Cooperative Exporters Not Selected

For those exporters who responded to Section A of the Department's antidumping questionnaire, established their claim for a separate rate, and had sales of the merchandise under investigation, but were not selected as Mandatory Respondents in this investigation, the Department has calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 64 FR 24101 (May 11, 2001). For further discussion, see the *Preliminary Determination*.

Surrogate Values

The Department made changes to the surrogate values used to calculate the normal value from the *Preliminary Determination*. For a complete discussion of the surrogate values, see *Issues and Decisions Memorandum* at Comments 1, 2, 7 (B), and 9 (D) and (F).

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Company	Weighted-average margin (percent)
Allied Pacific Group ("Allied")	84.93
Yelin Enterprise Co Hong Kong ("Yelin")	82.27
Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden")	27.89
Zhanjiang Guolian Aquatic Products Co., Ltd. ("Zhanjiang Guolian")07 (<i>de minimis</i>)
PRC Wide Rate	112.81

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM PRC SECTION A RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Asian Seafoods (Zhanjiang) Co., Ltd.	55.23
Beihai Zhengwu Industry Co., Ltd.	55.23
Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng)	55.23

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM PRC SECTION A RESPONDENTS—Continued

Manufacturer/exporter	Weighted-average margin (percent)
Chenghai Nichi Lan Food Co., Ltd.	55.23
Dalian Ftz Sea-Rich International Trading Co., Ltd.	55.23
Dongri Aquatic Products Freezing Plants	55.23
Fuqing Dongwei Aquatic Products Industry Co., Ltd.	55.23
Gallant Ocean (Liangjiang) Co., Ltd.	55.23
Hainan Fruit Vegetable Food Allocation Co., Ltd.	55.23
Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatic Products Co., Ltd.	55.23
Kaifeng Ocean Sky Industry Co., Ltd.	55.23
Leizhou Zhulian Frozen Food Co., Ltd.	55.23
Pingyang Xinye Aquatic Products Co., Ltd.	55.23
Savvy Seafood Inc.	55.23
Shanghai Taoen International Trading Co., Ltd.	55.23
Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.)	55.23
Shantou Wanya Food Factory Co., Ltd.	55.23
Shantou Jinyuan District Mingfeng Quick-Frozen Factory	55.23
Shantou Ocean Freezing Industry and Trade General Corporation	55.23
Shantou Shengping Oceanstar Business Co., Ltd.	55.23
Shantou Yuexing Enterprise Company	55.23
Shantou Ruiyuan Industry Co., Ltd.	55.23
Shantou Freezing Aquatic Product Food Stuffs Co.	55.23
Shantou Jinhang Aquatic Industry Co., Ltd.	55.23
Xuwen Hailang Breeding Co., Ltd.	55.23
Yantai Wei-Cheng Food Co., Ltd.	55.23
Zhangjiang Newpro Food Co., Ltd.	55.23
Zhangjiang Bobogo Ocean Co., Ltd.	55.23
Zhanjiang Runhai Foods Co., Ltd.	55.23
Zhanjiang Go-Harvest Aquatic Products Co., Ltd.	55.23
Zhanjiang Universal Seafood Corp.	55.23
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.	55.23
Zhoushan Huading Seafood Co., Ltd.	55.23
Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.	55.23
Zhoushan Lizhou Fishery Co., Ltd.	55.23

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all entries of subject merchandise from Red Garden, that are entered, or withdrawn from warehouse, for consumption on or after the July 16, 2004, the date of publication of the *Preliminary Determination*. However, with respect to Allied, Yelin, all the Section A Respondents granted a separate rate, and all other PRC exporters, the Department will continue to direct CBP to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from the PRC that are entered, or withdrawn from warehouse, on or after 90 days before the July 16, 2004, the date of publication of the *Preliminary Determination*. With respect to Zhanjiang Guolian, the Department will not direct the CBP suspend liquidation of any entries of certain frozen and canned warmwater shrimp from the PRC as described in the “Scope of Investigation” section, that are entered, or withdrawn from warehouse, for consumption on or after

the date of publication of this notice in the **Federal Register**. The Department does not require any cash deposit or posting of a bond for Zhanjiang Guolian when the subject merchandise is produced and exported by Zhanjiang Guolian. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. 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. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess 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.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: November 29, 2004.

James J. Jochum,

*Assistant Secretary for Import
Administration.*

Appendix

I. General Issues:

Comment 1: Raw Shrimp Surrogate Value

Comment 2: Surrogate Value for Labor

Comment 3: Combination Rates

Comment 4: Weight Averaging the

Dumping Margins

Comment 5: Department's Offset

Methodology

II. Company-Specific Issues

Comment 6: Red Garden

A. Weighting Factor Between Mingfeng⁸

and Long Feng⁹

B. Partial Adverse Facts Available for Sales

Made using Meizhou¹⁰

C. Red Garden's Deposit Rate

Comment 7: Yelin & Allied Pacific

A. Critical Circumstances

B. Surrogate Financial Ratios

Comment 8: Yelin

A. Facts Available for Water, Electricity,

Diesel Fuel and Heavy Oil

B. Facts Available for Labor

C. Partial Facts Available for STPP¹¹

D. Denial of By-Products Offset

E. Rejected Submissions

Comment 9: Zhanjiang Guolian

A. Minor Corrections

B. Ice and Diesel Fuel

C. Land Lease

D. Surrogate Value for Shrimp Feed

E. Valuation of Integrated Factors of

Production

F. Surrogate Financial Ratios

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⁸ Shantou Jinyuan District Mingfeng Quick-Frozen Factory.

⁹ Shantou Long Feng Foodstuffs Co., Ltd.

¹⁰ Meizhou Aquatic Shantou Ocean Freezing.

¹¹ Sodium Tripolyphosphate.

("Vietnam"). On September 1, 2004, the Department of Commerce published an amended preliminary determination of sales at LTFV. The period of investigation ("POI") is April 1, 2003, through September 30, 2003.

The investigation covers four shrimp processors which are Mandatory Respondents¹ and 34 Section A Respondents.² We invited interested parties to comment on our preliminary determination and amended preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the four Mandatory Respondents.

DATES: Effective Date: December 8, 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.

Final Determination

We determine that certain frozen and canned warmwater shrimp from Vietnam is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of Tariff Act of 1930, as Amended ("the Act"). The estimated margins of sales at LTFV are

¹ Camau Frozen Seafood Processing Import Export Corporation ("Camimex"); Kim Anh Co., Ltd. ("Kim Anh"); Minh Phu Seafood Corporation ("Minh Phu"); Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai").

² Can Tho Animal Fisheries Product Processing Export Enterprise ("Cafatex"); Cai Doi Vam Seafood Import Export Company ("Cadovimex"); Sao Ta Foods Joint Stock Company ("Fimex VN"); Viet Hai Seafood Company ("Vietnam Fish-One"); Kiengiang Seafood Import Export Company ("Kisimex"); Soc Trang Aquatic Products and General Import Export Company ("Stapimex"); Coastal Fisheries Development Corporation ("Cofidec"); Phuong Nam Co., Ltd. ("Phuong Nam"); Cuu Long Seaproducts Company ("Cuulong Seapro"); Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Jostoco"); Can Tho Agriculture and Animal Products Import Export Company ("Cataco"); Nha Trang Fisheries Co. ("Nha Trang"); Nhatrang Seaproduct Company ("Nhatrang Seafoods"); Minh Hai Seaproducts Import and Export Corporation ("Seaprimex"); Thuan Phuoc Seafoods and Trading Corporation; Nha Trang Fisheries Joint Stock Company ("Nhatrang Fisco"); Danang Seaproducts Import Export Company ("Seaprodex Danang"); C.P. Vietnam Livestock; UTXI Aquatic Products Processing Company ("UTXI"); Viet Nhan Company; Investment Commerce Fisheries Corporation ("Incomfish"); Vinhloi Import Export Company ("VIMEXCO"); Bac Lieu Fisheries; Viet Foods Co., Ltd. ("Viet Foods"); Truc An Company ("Truc An"); Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods"); Hai Thuan Company ("Hai Thuan"); Phu Cuong Seafood Processing ("Phu Cuong"); Ngoc Sinh Company ("Ngoc Sinh"); Aquatic Product Trading Company ("APT"); Song Huong ASC Import-Export Company Ltd. ("ASC"); Hanoi Seaproducts Import Export Corp. ("Seaprodex Hanoi"); Pataya Food Industries (Vietnam) Ltd. ("Pataya VN"); and Amanda Foods (Vietnam) Ltd. ("Amanda").

shown in the "Final Determination Margins" section of this notice.

Case History

The Department of Commerce (the "Department") published its preliminary determination of sales at LTFV on July 16, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004) ("Preliminary Determination"). On September 1, 2004, the Department published an amended preliminary determination. *See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 53411 (September 1, 2004) ("Amended Preliminary Determination").

The Department conducted verification of the Mandatory Respondents and certain Section A Respondents' data in Vietnam. *See the "Verification" section below for additional information.*

We invited parties to comment on the *Preliminary Determination* and *Amended Preliminary Determination*. We received comments from the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation and Indian Ridge Shrimp Company, hereinafter referred to collectively as "Petitioners," the Respondents and other interested parties to this investigation.

On October 20, 2004, parties submitted case briefs. On October 29, 2004, parties submitted rebuttal briefs.

Since the *Preliminary Determination*, the following events have occurred:

Company Specific Comments

On July 16, 2004, the Department received the sales reconciliation from Camimex, Kim Anh, Seaprodex Minh Hai and Minh Phu.

On July 21, 2004, the Department received comments from the Respondents on the Department's Customs instructions.

On July 26, 2004, the Department sent supplemental questionnaires to Seaprodex Minh Hai and Camimex. On July 27, 2004 the Department sent supplemental questionnaires to Kim Anh and Minh Phu. On July 30, 2004 the Department received a request for an extension to respond to the supplemental questionnaires from Camimex, Kim Anh and Seaprodex Minh Hai and served the verification schedule on all interested parties. On

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam

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

SUMMARY: On July 16, 2004, the Department of Commerce published its preliminary determination of sales at less than fair value ("LTFV"), negative preliminary determination of critical circumstances, and postponement of the final determination in the antidumping investigation of certain frozen and canned warmwater shrimp from the Socialist Republic of Vietnam

August 2, 2004 the Department also granted an extension to Camimex, Kim Anh and Seaprodex Minh Hai for responding to the Department's July 26, 2004 supplemental questionnaires. On August 3, 2004 the Department received Minh Phu's supplemental questionnaire response.

On August 3, 2004, the Department received the Petitioners' rebuttal to the Respondents' July 21, 2004 comments regarding errors in the Department's Customs instructions.

On August 5, 2004, the Department granted an extension to Cafatex for submitting reconciliation information. On August 11, 2004, the Department received Cafatex's sales reconciliation information.

On August 10, 2004 the Department sent Seaprodex Minh Hai supplemental questionnaire.

On August 12, 2004, the Department received Seaprodex Minh Hai's supplemental questionnaire response, Kim Anh's 4th supplemental questionnaire response, and Camimex's supplemental questionnaire response.

On August 18, 2004, the Department sent a verification outline to Camimex and Seaprodex Minh Hai. On August 18, 2004 Camimex submitted pre-verification corrections and the Department sent verification agendas to Kim Anh, Minh Phu and Cafatex. The Department received Kim Anh's pre-verification corrections. On August 23, 2004 the Department received a request for an extension for serving verification exhibits Kim Anh, Cafatex and Seaprodex Minh Hai. On August 23, 2004 the Department amended the verification outline for Kim Anh.

On August 24, 2004, an analyst submitted an analysis of ministerial errors for both the Section A respondents and the mandatory respondents.

On August 31, 2004, the Department received Cafatex's pre-verification corrections. On September 7, 2004 the Department received Seaprodex Minh Hai's pre-verification corrections.

On September 8, 2004, the Department received additional surrogate value data from the Respondents.

On September 14, 2004, the Department received both Camimex and Minh Phu's pre-verification corrections.

On September 17, 2004 the Department set a deadline for rebuttal brief comments of September 20, 2004. On September 20, 2004 the Department received a request for an extension of the briefing schedule from the Petitioners as well as their submission of factual information.

On September 22, 2004 the Department received a letter from VSC opposing the Petitioner's request for an expanded briefing schedule. On September 23, 2004 the Department received Red Chamber's comments regarding alleged clerical errors in the *Preliminary Determination* regarding two Section A Respondents.

On September 27, 2004, an analyst wrote a memo to the file regarding the termination of Kim Anh's verification.

On October 4, 2004, the Department received a letter from Red Chamber removing their submission from the record.

On October 6, 2004, verification reports for Seaprodex Minh Hai and Cafatex were completed. On October 12, 2004 the verification report for Minh Phu was completed.

On October 13, 2004, the deadline for case briefs and rebuttal briefs was set as October 20, 2004 for case briefs and October 25, 2004 for rebuttal briefs. On October 15, 2004 the Department received a request for an extension for submitting rebuttal briefs from the Petitioners.

On October 20, 2004, the Department received case briefs from VSC, Xian-Ning, Eastern Fish/LJS, Red Chamber, and the Petitioners.

On October 25, 2004, the Department received a rebuttal brief from Eastern Fish Company. On October 26, 2004 the Department received a rebuttal brief from Xian-Ning. On October 29, 2004 the Department received rebuttal briefs from the Petitioners and VSC.

On November 8, 2004, the Department sent a letter to Seaprodex Minh Hai, Minh Phu and Camimex requesting that they resubmit their sales and FOP databases. On November 8, 2004 the Department sent a clarification letter to Camimex concerning the Department's November 8, 2004 letter requesting the resubmission of their sales and FOP databases.

Hearing

On August 3, 2004, the Department received a request for a hearing from the Respondents on the issues addressed in their case briefs.

On August 13, 2004, the Department received a request for a scope hearing from the American Breaded Shrimp Processors Association ("ABSPA"). On August 16, 2004 the Department received a notice of intent to participate in hearings from the Petitioners.

On October 20, 2004, the Department received a notice of intent to participate in the hearing from Eastern Fish Company. The Department sent a letter to all interested parties concerning a request for a hearing.

On November 2, 2004, the Department received a letter from ABSPA concerning the hearing on scope issues. Also on November 2, 2004 the Department sent a letter to all interested parties concerning the public hearing. On November 4, 2004 the Department sent a letter to all interested parties regarding presenters at the public hearing. On November 4, 2004 the Department also sent a letter to ABSPA notifying them that because they did not submit any case or rebuttal briefs on the scope issues and that they could not make any presentations in the scope hearing.

On November 5, 2004, the Department held a public hearing on issues concerning financial ratios, surrogate values, and the Mandatory Respondents.

On November 8, 2004, the Department postponed the public scope hearing. On November 23, 2004, the Department held its scope hearing.

Separate Rates

On August 18, 2004, the Department received additional information regarding separate rate status from: Phuong Nam, Bac Lieu Fisheries, Cam Ranh Seafoods, VIMEXCO, Ngoc Sinh, Nha Trang, UTXI, Truc An, Kisimex, Vietnam Fish-One, Hai Thuan, and Incomfish. On August 20, 2004 the Department received additional information regarding ASC, Viet Foods, APT, Cofidec, and Phu Cuong's requests for separate rate status.

Scope Comments by Interested Parties

On July 16, 2004, the Department received a scope exclusion request on behalf of Xian-Ning Seafood Co. Ltd., asking the Department to determine whether shrimp scampi is outside the scope of the antidumping investigation. On August 2, 2004 the Department received scope comments regarding dusted shrimp from Eastern Fish Company. On August 2, 2004 the Department received scope comments regarding dusted shrimp and battered shrimp from the Petitioners. On August 12, 2004 the Department received Eastern Fish Company's reply to the Petitioner's August 2, 2004 scope comments. On November 8, 2004 the Department placed Lee Kum Kee's request to determine whether shrimp sauce is outside the scope of this investigation on the record of this investigation.

Analysis of Comments Received

The issue of separate rates raised in the case and rebuttal briefs by parties in this investigation are addressed in the *Memorandum from Nicole Bankhead, Case Analyst through Alex Villanueva,*

Program Manager, to James Doyle, Office Director, Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Final Determination Separate Rates Memorandum for Section A Respondents (“Section A Memo”), dated November 29, 2004. The various scope issues are discussed in the “Scope Comments” section of this notice. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, dated November 29, 2004, which is hereby adopted by this notice (“Decision Memorandum”). A list of the issues which parties raised and to which we respond in the *Decision Memorandum* is attached to this notice as an Appendix. The *Decision Memorandum* is a public document and is on file in the Central Records Unit (“CRU”), Main Commerce Building, Room B-099, and is accessible on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the memorandum are identical in content.

Non-Market Economy Country Status

On November 8, 2002, the Department determined under section 771(18)(A) of the Act, after analyzing comments from interested parties, that based on the preponderance of evidence on the record related to economic reforms in Vietnam to date, analyzed as required under section 771(18)(B) of the Act, that Vietnam should be treated as a non-market economy country under the U.S. antidumping law, effective July 1, 2001. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4990 (January 31, 2003).

A designation as a non-market economy remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

Scope Comments

In the *Preliminary Determination*, the Department solicited comments from interested parties which would enumerate and describe a clear, administrable definition of dusted shrimp for the final determination. As noted above, we received comments on dusted and battered shrimp for the final determination. On November 29, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. See *Memorandum from Edward C. Yang*,

Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp (“Dusted/Battered Scope Memo2”), dated November 29, 2004. Based on the information presented by interested parties, the Department determines that (1) certain dusted shrimp, produced from fresh (or thawed-from-frozen) and peeled shrimp; to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; so that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour; and the non-shrimp content of the end product constitutes between 4 to 10 percent of the product’s total weight after being dusted, but prior to being frozen; and is subjected to individually quick frozen freezing immediately after application of the dusting layer; and (2) battered shrimp, when dusted in accordance with the definition of dusting, coated with a wet viscous layer containing egg and/or milk, and par-fried are excluded from the scope of this investigation. See *Dusted/Battered Scope Memo* at 28.

On November 29, 2004, the Department made scope determinations with respect to Lee Kum Kee’s shrimp sauce. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Lee Kum Kee’s Shrimp Sauce (“Shrimp Sauce Scope Memo”)*, dated November 29, 2004. Based on the information presented by interested parties, the Department determines that Lee Kum Kee’s shrimp sauce is excluded from the scope of this investigation. See *Shrimp Sauce Scope Memo* at 8.

Additionally, on November 29, 2004, the Department made scope determinations with respect to shrimp scampi. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and*

Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Shrimp Scampi (“Shrimp Scampi Scope Memo”), dated November 29, 2004. Based on the information presented by interested parties, the Department determines that shrimp scampi is included in the scope of this investigation. See *Shrimp Scampi Scope Memo* at 8.

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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.

³ “Tails” in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are (1) breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this investigation are currently classified under the following HTSUS subheading: 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written descriptions of the scope of this investigation is dispositive.

The Department has issued nine decisions regarding the scope of the merchandise covered by this investigation: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of the this investigation; (4) on July 2, 2004, the Department found *Macrobrachium rosenbergii* and organic shrimp included within the scope of this investigation; (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation; (6) on November 29, 2004, the Department found that shrimp sauce is excluded from the scope of this investigation; (7) on November 29, 2004, the Department found Xian-Ning Seafood Co., Ltd.'s scampi shrimp included within the scope of these investigation; (8) on November 29, 2004, the Department found certain dusted shrimp⁴ are outside the scope of this

⁴ Dusted shrimp is a shrimp-based product that (1) 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) So that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour; and (4) The non-shrimp content of the end product constitutes between 4 to 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) Is subjected to IQF freezing immediately after application of the dusting layer. See *Memorandum from Edward C.*

investigation; and (9) on November 29, 2004, the Department found certain battered shrimp⁵ are outside the scope of this investigation.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Mandatory Respondents and certain Section A Respondents for use in our final determination. See the Department's verification reports on the record of this investigation in the CRU with respect to Cafatex, Camimex, Kim Anh, Minh Phu and Seaprodex Minh. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the Respondents.

Additionally, during verification, Kim Anh informed the Department that it had decided not to participate further in its verification. See *Memorandum to the File from Nazak Nikaktahr, Verification of the Response of Kim Anh Co., Ltd. ("Kim Anh") with Regard to the Sales of Certain Frozen and Canned Warmwater Shrimp*, dated September 24, 2004.

Adverse Facts Available

Section 776(a)(2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides further that the Department may use an adverse inference when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Vietnam-Wide Rate

Because we begin with the presumption that all companies within a non-market economy ("NME")

Yang, NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Memo2"), dated November 29, 2004.

⁵ 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.

country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the Vietnam-wide rate—to all other exporters of subject merchandise from Vietnam. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706 (May 3, 2000). The Vietnam-wide rate applies to all entries of subject merchandise except for entries from the Respondents which are listed in the "Final Determination Margins" section below (except as noted). The information used to calculate this Vietnam-wide rate was corroborated independently with some small changes in accordance with section 776(c) of the Act. See *Memorandum to the File from Joe Welton, Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Director, NME Unit, Preliminary Determination in the Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam ("Vietnam")*: *Corroboration of the Vietnam-Wide Adverse Facts-Available Rate ("Corroboration Memo")*, dated July 2, 2004.

For the reasons set forth in the *Preliminary Determination* and reaffirmed in the *Decision Memorandum* at Comment 10, we continue to find that the use of adverse facts available for the Vietnam-wide rate is appropriate. As adverse facts available, the Vietnam-wide rate is not intended to be a reflection of the dumping margins applied as separate rates to the Respondent companies. Consistent with our *Preliminary Determination* and with previous cases in which the respondent is considered uncooperative, as adverse facts available, we have applied a rate of 25.76 percent, a rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department).

Kim Anh

Pursuant to section 776(a)(2)(D) of the Act, we are applying facts otherwise available to Kim Anh because it refused to allow the Department to verify the information it had submitted during the course of this investigation. Furthermore, based on the record evidence and pursuant to section 776(b) of the Act, the Department has determined that Kim Anh did not cooperate to the best of its ability to comply with the Department's requests

for information. Therefore, in accordance with section 776(b) of the Act, we find that Kim Anh does not qualify for a separate rate and that the use of adverse facts available to determine the margin for Kim Anh is warranted for the final determination in this investigation. Accordingly, Kim Anh will be subject to the Vietnam-wide rate (*see above*). This rate was corroborated in the final determination. *See Corroboration Memo; see also Comment 6 in the Decision Memorandum* for a further discussion of this issue.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected Bangladesh as the appropriate surrogate country to use in this investigation for the following reasons: (1) Bangladesh is at a level of economic development comparable to Vietnam; (2) Bangladeshi manufacturers produce comparable merchandise and are significant producers of frozen and canned warmwater shrimp; (3) Bangladesh provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Preliminary Determination*, 69 FR at 42678. We received no comments from interested parties concerning our selection of Bangladesh as the surrogate country during the briefing stage of this investigation. For the final determination, we have determined to continue to use Bangladesh as the surrogate country and, accordingly, have calculated normal value using Bangladeshi prices to value the Respondents' factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. For a detailed description of the surrogate values that have changed as a result of comments the Department has received, *see the Final Surrogate Value Memorandum* dated November 29, 2004.

Separate Rates

In the *Preliminary Determination* and the *Amended Preliminary Determination*, the Department found that several companies which provided responses to Section A of the antidumping questionnaire were eligible for a rate separate from the Vietnam-wide rate. For the final determination, we have determined that additional companies have qualified for separate-rate status. *See Section A Memo*. For a complete listing of all the companies that received a separate rate, *see the "Final Determination Margins" section below*.

The margin we calculated in the *Preliminary Determination* for these companies was 16.01 percent. Because the rates of the selected Mandatory Respondents have changed since the *Preliminary Determination* and the *Amended Preliminary Determination*, we have recalculated the rate for Section A Respondents that are eligible for a separate rate. The rate is 4.38 percent. *See Memorandum to the File from Paul Walker, Calculation of Section A Rate*, dated November 29, 2004.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM VIETNAM MANDATORY RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Camau Frozen Seafood Processing Import Export Corporation ⁶	4.99
Kim Anh Company Limited ⁷	25.76
Minh Phu Seafood Corporation ⁸	4.21
Minh Hai Joint Stock Seafoods Processing Company ⁹	4.13
Vietnam-Wide Margin	25.76

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM VIETNAM SECTION A RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Amanda Foods (Vietnam) Ltd. ¹⁰	4.38
Aquatic Products Trading Company ¹¹	4.38
Bac Lieu Fisheries Company Limited ¹²	4.38
Coastal Fisheries Development Corporation ¹³	4.38
Cai Doi Vam Seafood Import-Export Company ¹⁴	4.38
Cam Ranh Seafoods Processing Enterprise Company ¹⁵	4.38
Can Tho Agriculture and Animal Products Import Export Company ¹⁶	4.38
Cantho Animal Fisheries Product Processing Export Enterprise ¹⁷	4.38
C.P. Vietnam Livestock Co. Ltd.	4.38
Cuu Long Seaproducts Company ¹⁸	4.38
Danang Seaproducts Import Export Corporation ¹⁹	4.38
Hanoi Seaproducts Import Export Corporation ²⁰	4.38
Investment Commerce Fisheries Corporation ²¹	4.38

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM VIETNAM SECTION A RESPONDENTS—Continued

Manufacturer/exporter	Weighted-average margin (percent)
Kien Giang Sea-Product Import-Export Company ²²	4.38
Minh Hai Export Frozen Seafood Processing Joint-Stock Company ²³	4.38
Minh Hai Seaproducts Import Export Corporation ²⁴	4.38
Nha Trang Fisheries Joint Stock Company ²⁵	4.38
Nha Trang Seaproduct Company ²⁶	4.38
Pataya Food Industries (Vietnam) Ltd. ²⁷	4.38
Phu Cuong Seafood Processing and Import-Export Company Limited ²⁸	4.38
Sao Ta Foods Joint Stock Company ²⁹	4.38
Soc Trang Aquatic Products and General Import Export Company ³⁰	4.38
Song Huong ASC Import-Export Company Ltd. ³¹	4.38
Thuan Phuoc Seafoods and Trading Corporation ³²	4.38
UTXI Aquatic Products Processing Company ³³	4.38
Viet Foods Co., Ltd. ³⁴	4.38
Viet Nhan Company	4.38
Viet Hai Seafood Company Ltd. ³⁵	4.38
Vinh Loi Import Export Company ³⁶	4.38

Continuation of Suspension of Liquidation

Pursuant to 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border

⁶ Also known as Camimex and Seafood Factory No. 4.

⁷ Not a separate rate.

⁸ 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. & Minh Phat.

⁹ Also known as Seaprodex Minh Hai.

¹⁰ Also known as Amanda VN & Amanda.

¹¹ Also known as APT and A.P.T. Co.

¹² Also known as Bac Lieu, BACLIEUFIS, Bac Lieu Fis, Bac Lieu Fisheries Co. Ltd., Bac Lieu Fisheries Limited Company & Bac Lieu Fisheries Company Ltd.

¹³ Also known as COFIDEC.

¹⁴ Also known as Cadovimex.

¹⁵ Also known as Cam Ranh.

¹⁶ Also known as Cataco, Duyen Hai Foodstuffs Processing Factory, Caseafod, Coseafex & Cantho Seafood Export.

¹⁷ 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 & Taydo Seafood Enterprise.

¹⁸ Also known as Cuu Long Seapro.

Continued

Protection ("Customs") to continue to suspend liquidation of all entries of subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after July 16, 2004, the date of publication of the *Preliminary Determination*. Customs 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.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

¹⁹ Also known as Seaprodex Danang, Tho Quang Seafood Processing and Export Company & Tho Quang.

²⁰ Also known as Seaprodex Hanoi.

²¹ Also known as INCOMFISH, Investment Commerce Fisheries Corp., INCOMFISH Corp. & INCOMFISH Corporation.

²² Also known as KISIMEX, Kien Giang Seaproduct Import & Export Company, Kien Giang Seaproduct Import and Export Company, Kien Giang Seaproduct Import Export Co., Kien Giang Sea Product Import & Export Co., Kien Giang Sea Product Import and Export Company, Kien Giang Sea Product Import & Export Company, Kien Giang Sea Product Import & Export Co., & Kien Giang Sea Product Im. & Ex. Co.

²³ Also known as Minh Hai Jostoco.

²⁴ Also known as Seaprimexco.

²⁵ Also known as Nha Trang Fisco & Nhatrang Fisco.

²⁶ Also known as Nha Trang Seafoods.

²⁷ Also known as Pataya VN.

²⁸ Also known as Phu Cuong Seafoods Processing Import-Export Company Ltd., Phu Cuong Co., Phu Cuong, Phu Cuong Seafood Processing & Import-Export Co. Ltd., Phu Cuong Seafood Processing, Phu Cuong Co. Ltd. & Phu Cuong Seafood Processing Import & Export Company Limited.

²⁹ Also known as Fimex VN, Saota Seafood Factory and Sao Ta Seafood Factory.

³⁰ Also known as STAPIMEX.

³¹ Also known as Song Huong ASC Joint Stock Company, SOSEAFOOD, ASC, Song Huong Import Export Seafood Joint Stock Company, Song Huong Import-Export Seafood Joint Stock Company, Song Huong Import Export Seafood Company, Song Huong Import-Export Company, Song Huong Seafood Import Export Co., Song Huong Seafood Im-Export Co., SongHuong & Songhuong Joint Stock Company.

³² Also known as Frozen Seafoods Factory No. 32.

³³ Also known as UTXI, UTXI Co. Ltd., UT XI Aquatic Products Processing Company & UT-XI Aquatic Products Processing Company.

³⁴ Also known as Viet Foods, Nam Hai Exports Food Stuff Limited, Nam Hai Export Foodstuff Company Ltd., Vietfoods Co. Ltd., Viet Foods Company Limited & Vietfoods Company Limited.

³⁵ Also known as Vietnam FishOne, Vietnam Fish-One Company Co. Ltd., Vietnam Fish-One, Vietnam Fish-One Co. Ltd., Vietnam Fish One Co. Ltd., Vietnam Fish One Company Limited & Vietnam Fish-One Company Limited.

³⁶ Also known as VIMEXCO, Vinh Loi Import/Export Co., VIMEX, VinhLoi Import Export Company & Vinh Loi Import-Export Company.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. 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. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess 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 (*i.e.*, July 16, 2004).

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: November 29, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

Appendix

Comment 1: Raw Shrimp Price

Comment 2: The Department's Zeroing Methodology

Comment 3: Surrogate Value for Water

- A. Water Rates in Bangladesh
- B. Water Value Conversion Error

Comment 4: Financial Ratios

- A. Surrogate Company Financial Ratios
- B. By-Product Offset for Mandatory Respondents
- C. Inclusion of Factor X and Factor Y in Surrogate Financial Ratios

Comment 5: Company Specific Issues, Camimex

- A. Headless Shell-on ("HLSO")-to-Headless Shell-off ("HOSO") Conversion
- B. International Freight

Comment 6: Total Adverse Facts Available ("AFA") for Kim Anh Co. Ltd. ("Kim

Anh")

Comment 7: Company Specific Issues, Minh Phu

- A. HLSO-to-HOSO Conversion
- B. Cold Storage
- C. Partial AFA for Direct Labor

Comment 8: Company Specific Issues, SMH

- A. Market Economy Purchase
- B. Recalculation of a Surrogate Expense for SMH
- C. Calculation of Weighted-Average U.S. Prices and Normal Values on a CONNUM-Specific Basis for SMH
- D. HLSO-to-HOSO Conversion

Comment 9: Weight-Averaging Respondent Margins by Net U.S. Sales Value to Calculate Separate Rates

Comment 10: Calculation of Vietnam-Wide Margin

- A. The Department Should Eliminate the Country-Wide Rate In All Cases
- B. The Department Should Not Apply AFA to the Vietnam-Wide Rate
- C. The Department Chose an Incorrect AFA Rate

Comment 11: Separate Rate Calculation

Comment 12: The Department Should Amend Its Customs Instructions to Include Additional Company Names Discussed in Section A Responses

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investigated companies are listed below in the section entitled "Final Determination Margins."

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4007 or (202) 482-4929, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain frozen and canned warmwater shrimp from Brazil is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was published on August 4, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (*Preliminary Determination*). We amended the preliminary determination to correct certain ministerial errors made in the margin calculation for Empresa de Armazenagem Frigorifica Ltda. (EMPAF), which we determined to be significant under 19 CFR 351.224(g). See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 52860 (August 30, 2004).

Since the amended preliminary determination, the following events have occurred. During the period July through October 2004, various interested parties, including the petitioners,¹ submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp.

On September 1, 2004, Norte Pesca, S.A. withdrew from this investigation. During the period September 6—17, 2004, and September 29—October 1, 2004, we conducted the sales and cost verifications of the questionnaire responses of EMPAF and Central de

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-838]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil

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

EFFECTIVE DATE: December 23, 2004.

SUMMARY: On August 4, 2004, the Department of Commerce (the Department) published its preliminary determination of sales at less than fair value (LTFV) of certain frozen and canned warmwater shrimp from Brazil. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the

¹ The petitioners in this investigation are the Ad Hoc Shrimp Trade Action Committee (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

Industrializacao e Distribuicao de Alimentos Ltda. (CIDA).

On September 3, 2004, CIDA and the Association of Brazilian Shrimp Farmers (ABCC) requested a hearing. EMPAF requested a hearing on September 28, 2004. On October 20 and 26, 2004, Xian-Ning Seafood Co., Ltd., an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand, submitted case and rebuttal briefs, respectively.² We received case briefs on November 3, 2004, from the petitioners, CIDA, EMPAF, ABCC, and two other interested parties in this investigation, Eastern Fish Company, Inc. and Long John Silver's, Inc.³ On November 12, 2004, we received rebuttal briefs from the petitioners, CIDA, EMPAF, Eastern Fish Company, Inc. and Long John Silver's, Inc.⁴ On November 17, 2004, CIDA, EMPAF and ABCC withdrew their requests for a hearing.

On November 12, 2004, and November 15, 2004, pursuant to the Department's request, we received revised sales and cost databases from CIDA and EMPAF, respectively, which incorporated certain changes discovered in preparation for and during verification.

On November 23, 2004, the Department convened a public hearing on scope issues. On November 29, 2004, the Department made final scope determinations with respect to shrimp scampi and dusted and battered shrimp. See the November 29, 2004, Memoranda from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled, "Scope Clarification on Shrimp Scampi"; and "Scope Clarification on Dusted Shrimp and Battered Shrimp," respectively. See also the "Scope of Investigation" section of this notice, below, for further discussion.⁵

² These briefs related only to scope issues.

³ The briefs submitted by Eastern Fish Company, Inc. and Long John Silver's, Inc. related only to scope issues.

⁴ *Id.*

⁵ In addition to these scope determinations, the Department previously made five other scope determinations: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke Corporation, an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of this investigation; (4) on July 2, 2004, the Department found that *Macrobrachium rosenbergii* and organic shrimp are included within the scope of this investigation; and (5) on July 2,

Also on November 29, 2004, the Department clarified that a shrimp sauce produced by a company in the companion investigation of frozen and canned warmwater shrimp from the People's Republic of China, Lee Kum Kee (USA) Inc., is not covered by the scope of that investigation. See the November 29, 2004, Memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled, "Scope Clarification on Lee Kum Kee's Shrimp Sauce."

Period of Investigation

The period of investigation is October 1, 2002, through September 30, 2003.

Analysis of Comments Received

The various scope issues are discussed in the "Case History" section of this notice and the separate scope memoranda. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 17, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building (CRU). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁶ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater

shrimp and prawns through either freezing or canning 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 the 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 the investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); (5) dried shrimp and prawns; (6) dusted shrimp; and (7) 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 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.

2004, the Department found that peeled shrimp are included within the scope of this investigation.

⁶ "Tails" in this context means the tail fan, which includes the telson and the uropods.

The products covered by this scope are currently classifiable under the following HTSUS 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Use of Facts Available for Norte Pesca

On September 1, 2004, two weeks prior to the Department's planned verification of Norte Pesca's submitted cost and sales information, Norte Pesca notified the Department that it no longer intended to participate in this investigation. See *Letter from Norte Pesca to the U.S. Secretary of Commerce* on file in the CRU. As a result, we were unable to verify the information submitted by Norte Pesca. By ceasing to participate, Norte Pesca significantly impeded the investigation. Pursuant to sections 776(a)(2)(C) and (D) of the Act, if an interested party significantly impedes the investigation or provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Once we determine that the use of facts available is warranted, section 776(b) of the Act further permits us to apply an adverse inference if we make the additional finding that "a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information." By ceasing to participate in the investigation and precluding the verification of its submitted cost and sales information, Norte Pesca did not act to the best of its ability as required by section 776(b) of the Act. Consequently, we have determined to make an adverse inference in determining the dumping margin for Norte Pesca. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the*

Republic of Korea, 68 FR 47540 (August 11, 2003).

Section 776(b) of the Act authorizes the Department to use as adverse facts available (AFA) information derived from the petition, a final investigation determination, a previous administrative review, or any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Carbon and Certain Alloy Steel Wire Rod from Brazil, Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances*, 67 FR 55792 (August 30, 2002); *Static Random Access Memory Semiconductors from Taiwan, Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, (February 23, 1998). The Department applies AFA "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, at 870 (1994)(SAA)*.

As total AFA we have assigned to exports of the subject merchandise produced by Norte Pesca the rate of 67.80, which is the rate assigned to Norte Pesca in the preliminary determination. We find that this rate is sufficiently adverse to serve the purposes of facts available, explained above. See Memorandum to Louis Apple, Director, AD/CVD Operations, Office 2, Import Administration, Final Determination of Certain Frozen and Canned Warmwater Shrimp from Brazil: Use of Facts Available for Norte Pesca, dated December 17, 2004, on file in the CRU (AFA Memorandum).

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554 (February 4, 2000); See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and*

Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996).

As detailed in the AFA Memorandum, in selecting the AFA rate for Norte Pesca, we did not use either of the two highest of the three petition rates because we were unable to corroborate them with independent information reasonably at our disposal and we have an alternative that we find to be sufficiently adverse to effectuate the purpose of the AFA provision of the statute. We did not use the remaining petition rate because it was lower than Norte Pesca's preliminary margin, and as such would not accomplish the objectives of AFA, stated above. Thus, we assigned the rate of 67.80 percent, which was based on information submitted by Norte Pesca in its questionnaire responses and database submissions, and remains on the record of this investigation. Because this information was provided to us by the respondent, it is not considered to be secondary information, and therefore, needs not be corroborated. We conclude that this data, although unverified, continues to be the best information reasonably available to us to effectuate the purpose of AFA.

Collapsing CIDA With Its Affiliated Processor

CIDA and its processing company, Cia Exportadora de Produtos do Mar ("Produmar"), are two separate companies owned and operated by members of the same family. In the preliminary determination, consistent with 19 CFR 351.401(h) of the Department's regulations, we determined that Produmar was an affiliated toller rather than a manufacturer or producer, because it neither acquired ownership nor controlled the sale of the subject merchandise. See *Preliminary Determination* at 47087. Therefore, rather than collapsing these two entities and using Produmar's costs in our COP and CV calculations, we applied the "major input" rule, and used the transfer price for Produmar's processing services. We stated that given the nature of the affiliation between the entities at issue, we recognized that a related issue could arise as to whether there is a potential for manipulation of price or production and, if so, whether the two entities should receive the same dumping rate. Based on this recognition, we solicited comments from the parties as to whether to collapse CIDA and Produmar in the final determination.

Since the preliminary determination, and as detailed in the December 17, 2004, Issues and Decision Memorandum, the extent to which the two companies operate as a single entity has become apparent, such that we believe there to be significant potential for manipulation of price and production between CIDA and Produmar. Therefore, we have collapsed the two entities for the final determination. Accordingly, we have used the actual costs incurred by Produmar in valuing the processing services it provided to CIDA, and we have assigned the two companies a single dumping margin.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents (except for Norte Pesca as discussed above) for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from Brazil that are entered, or withdrawn from warehouse, for consumption on or after August 4, 2004, the publication date of the preliminary determination in the **Federal Register** or, in the case of EMPAF, August 30, 2004, the publication date of the amended preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Empresa de Armazenagem Frigorifica Ltda. (EMPAF) ...	10.70
Central de Industrializacao e Distribuicao de Alimentos Ltda. (CIDA)/Cia Exportadora de Produtos do Mar (Produmar)	9.69
Norte Pesca S.A.	67.80
All Others	10.40

In accordance with section 735(c)(5)(A) of the Act, we have based the “all others” rate on the weighted average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding. The “all others” rate is derived exclusive of all *de minimis* margins and margins based entirely on AFA.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess 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.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 17, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comments

General Issues

- Comment 1: Offsets for Non-Dumped Comparisons
- Comment 2: Calculation of the “All Others” Rate

Company-Specific Issues

CIDA

- Comment 3: Billing Adjustments

- Comment 4: Insurance Payments as an Offset to General and Administrative Expenses
- Comment 5: Collapsing CIDA with its Affiliated Processor
- Comment 6: Cost Allocation Methodology
- Comment 7: Ration and Larva Costs
- Comment 8: Loss on Sale of Fixed Assets
- Comment 9: ICMS Taxes
- Comment 10: Change in Raw Shrimp Inventory
- Comment 11: Prompt Payment Discounts

EMPAF

- Comment 12: Presumed Credit and IPI Export Credit Premium Revenue
- Comment 13: Brazilian Indirect Selling Expenses
- Comment 14: U.S. Indirect Selling Expenses
- Comment 15: Container Weight
- Comment 16: SPECIES Product Characteristic
- Comment 17: Accounting Errors Prior to the Cost Reporting Period
- Comment 18: Double Counting Indirect Selling Expenses
- Comment 19: Amortization of Pre-Operational Costs
- Comment 20: Allocation of Depreciation to Work-in-Process Inventory
- Comment 21: Other Adjustments to Shrimp Costs

Norte Pesca

- Comment 22: Adverse Facts Available Rate for Norte Pesca

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-331-802]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador

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

EFFECTIVE DATE: December 23, 2004.

SUMMARY: On August 4, 2004, the Department of Commerce (the Department) published its preliminary determination of sales at less-than-fair-value (LTFV) of certain frozen and canned warmwater shrimp from Ecuador. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins."

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Terre Keaton,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136, or (202) 482-1280, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain frozen and canned warmwater shrimp from Ecuador is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was published on August 4, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From Ecuador*, 69 FR 47091 (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. During the period July through October 2004, various interested parties, including the petitioners,¹ submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp.

In August and September 2004, we conducted sales and cost verifications of the questionnaire responses of the three respondents in this case, Exporklore S.A. (Exporklore), Exportadora De Alimentos S.A. (Expalsa), and Promarisco S.A. (Promarisco).

On August 13, 2004, the respondents requested a public hearing. We received case briefs on October 28, 2004, from the petitioners and the respondents. Promarisco resubmitted its brief on November 3, 2004, at the Department's request, in order to exclude unsolicited new factual information. In addition, in October 2004, Xian-Ning Seafood Co., Ltd., an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand, and two interested parties in this investigation, Eastern Fish Company, Inc., and Long John Silver's, Inc., submitted case and rebuttal briefs with respect to scope issues.

On November 5 and 10, 2004, pursuant to the Department's request,

Exporklore and Expalsa, respectively, submitted revised sales and cost databases which incorporated certain changes discovered in preparation for and during verification.

On November 23, 2004, the Department convened a public hearing on scope issues. On November 29, 2004, the Department made final scope determinations with respect to shrimp scampi and dusted and battered shrimp. See the November 29, 2004, Memoranda from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled "Scope Clarification on Shrimp Scampi"; and "Scope Clarification on Dusted Shrimp and Battered Shrimp," respectively. See also the "Scope of Investigation" section of this notice, below, for further discussion.²

Also on November 29, 2004, the Department clarified that a shrimp sauce produced by a company in the companion investigation of frozen and canned warmwater shrimp from the People's Republic of China, Lee Kum Kee (USA) Inc., is not covered by the scope of that investigation. See the November 29, 2004, Memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled "Scope Clarification on Lee Kum Kee's Shrimp Sauce."

Period of Investigation

The period of investigation is October 1, 2002, through September 30, 2003.

Analysis of Comments Received

The various scope issues are discussed in the "Case History" section of this notice and the separate scope memoranda. All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the appendix to this notice and addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J.

² In addition to these scope determinations, the Department previously made five other scope determinations: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke Corporation, an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of this investigation; (4) on July 2, 2004, the Department found that *Macrobrachium rosenbergii* and organic shrimp are included within the scope of this investigation; and (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation.

Jochum, Assistant Secretary for Import Administration, dated December 17, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 the investigation. In addition, food preparations, which are not "prepared

³ "Tails" in this context means the tail fan, which includes the telson and the uropods.

¹ The petitioners in this investigation are the Ad Hoc Shrimp Trade Action Committee (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); (5) dried shrimp and prawns; (6) dusted shrimp; and (7) 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 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 scope are currently classifiable under the following HTSUS 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures

including examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from Ecuador that are entered, or withdrawn from warehouse, for consumption on or after August 4, 2004, the publication date of the preliminary determination in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margin shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Exportadora De Alimentos S.A. (Expalsa)	2.62
Exporklore S.A.	2.35
Promarisco S.A.	4.48
All Others	3.26

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess 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.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 17, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comments

- Comment 1: Offsets for Non-Dumped Sales
- Comment 2: Exclusion of Substandard Shrimp from the U.S. Sales Databases
- Comment 3: "Container Weight" as Product Matching Characteristic
- Comment 4: "As Sold" Versus HLSO Basis for Price and Quantity
- Comment 5: "Packaging" Materials Versus "Packing" Materials
- Comment 6: Expalsa's and Promarisco's Inland Freight and Testing Expense Methodology
- Comment 7: Expalsa's Sales of Organic Shrimp
- Comment 8: Grade as a Model-Matching Criterion for Expalsa Sales
- Comment 9: Expalsa's Sales of "Non-Standard Mixes"
- Comment 10: Treatment of Expalsa's Expenses for Returned Shipments
- Comment 11: Expalsa's Post-Petition Filing Billing Adjustments
- Comment 12: Treatment of Certain Expalsa Sales to Italy as Samples
- Comment 13: Rebates on Expalsa's Italian Sales
- Comment 14: Cost Changes for Expalsa's Minor Corrections of Preservative Code
- Comment 15: Payments to Exporklore's Sales Agent as Rebates or Commissions
- Comment 16: Methodology for Calculating Exporklore's Payment to Agent for Italian Sales
- Comment 17: Ocean Freight Revenue and Expense Treatment on Exporklore C&F Sales
- Comment 18: Exporklore Bank Charges
- Comment 19: Exporklore's Raw Material Costs
- Comment 20: Currency Adjustment in Calculation of Exporklore's Financial Expense Ratio
- Comment 21: Treatment of Commissions Paid to Affiliates in Exporklore's Labor Costs
- Comment 22: Spain as the Appropriate Comparison Market for Promarisco
- Comment 23: Classification and Exclusion of Certain Promarisco Spanish Sales as Samples
- Comment 24: Billing Adjustments and Date of Sale for Certain Promarisco U.S. Long-Term Contract Sales
- Comment 25: Bonus Payment to Promarisco's Spanish Sales Agent
- Comment 26: Calculation of Promarisco's Indirect Selling Expense Ratio
- Comment 27: Adjustment for Unreconciled Differences in Promarisco's Cost of Manufacture
- Comment 28: Input Adjustment for Promarisco's Shrimp Purchases from Affiliated Farms

Comment 29: Adjustment of Promarisco's
G&A Expense Ratio to Exclude Packing
Expenses

[FR Doc. 04-28169 Filed 12-21-04; 10:32
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

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

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

EFFECTIVE DATE: December 23, 2004.

SUMMARY: On August 4, 2004, the Department of Commerce published its preliminary determination of sales at less than fair value of certain frozen and canned warmwater shrimp from India. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins."

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-4593, respectively.

SUPPLEMENTARY INFORMATION**Final Determination**

We determine that certain frozen and canned warmwater shrimp from India is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales of LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice. In addition, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise from India.

Case History

The preliminary determination in this investigation was published on August 4, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111 (Aug. 4, 2004) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. During the period July through October 2004, various interested parties, including the petitioners,¹ submitted comments on the scope of this and the companion investigations of certain frozen and canned warmwater shrimp.

From August through October 2004, we conducted verifications of the questionnaire responses of the three respondents in this case, Devi Sea Foods Limited (Devi), Hindustan Lever Limited (HLL), and Nekkanti Seafoods Limited (Nekkanti).

In October 2004, we received case and rebuttal briefs from the petitioners, the respondents, and Xian-Ning Seafood Co., Ltd. (Xian-Ning), an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand.² The Department held a public hearing on November 3, 2004, at the request of Devi, HLL, Nekkanti, and the American Breaded Shrimp Processors, an interested party in this investigation. On November 23, 2004, the Department convened a public hearing on scope issues.

On November 29, 2004, the Department made final scope determinations with respect to shrimp scampi and dusted and battered shrimp. See the November 29, 2004, memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification on Shrimp Scampi"; and "Scope Clarification on Dusted Shrimp and Battered Shrimp," respectively. See also the "Scope of Investigation" section of this notice, below, for further discussion.³

¹ The petitioners in this investigation are the Ad Hoc Shrimp Trade Action Committee (an *ad hoc* coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

² This brief related only to scope issues.

³ In addition to these scope determinations, the Department previously made five other scope determinations: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke Corporation, an interested party in this investigation, the Department found that its

Also on November 29, 2004, the Department clarified that a shrimp sauce produced by a company in the companion investigation of frozen and canned warmwater shrimp from the People's Republic of China, Lee Kum Kee (USA) Inc., is not covered by the scope of that investigation. See the November 29, 2004, Memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification on Lee Kum Kee's Shrimp Sauce."

Period of Investigation

The period of investigation (POI) is October 1, 2002, through September 30, 2003.

Analysis of Comments Received

The various scope issues are discussed in the "Case History" section of this notice and the separate scope memoranda. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 17, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁴ deveined or not

"Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of this investigation; (4) on July 2, 2004, the Department found that *Macrobrachium rosenbergii* and organic shrimp are included within the scope of this investigation; and (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation.

⁴ "Tails" in this context means the tail fan, which includes the telson and the uropods.

deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); (5) dried shrimp and prawns; (6) certain dusted shrimp; and (7) 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 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 HTSUS 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS 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.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Critical Circumstances

In our preliminary determination, we found that critical circumstances existed with respect to HLL's exports of the subject merchandise, but not for exports made by Devi, Nekkanti, or the companies subject to the "all others" rate. See *Preliminary Determination*, 69 FR at 47118–47119. We received comments on our preliminary finding of critical circumstances from HLL, which argues that we should no longer find that critical circumstances exist for it because the increase in imports shown in the Department's critical circumstances analysis was the result of seasonality. We also received comments from the petitioners, who support the preliminary finding of critical circumstances for HLL.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. See *Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (Nov. 27, 2000). With regard to imports of certain frozen

and canned warmwater shrimp from India, the petitioners make no statement concerning a history of dumping. We are not aware of any antidumping order in the United States or in any country on certain frozen and canned warmwater shrimp from India. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from India pursuant to section 735(a)(3)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 735(a)(3)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price (EP) sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. See *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (Oct. 19, 2001). Each of the respondents made only EP sales during the POI and the final dumping margin calculated for each respondent, including HLL, is less than 25 percent. Therefore, we determine that there is an insufficient basis to find that importers should have known that the respondents were selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales pursuant to section 735(a)(3)(A)(ii) of the Act.

Because the requirements of section 735(a)(3)(A) of the Act are not met, we determine that critical circumstances do not exist for imports of subject merchandise from India. For further discussion, see the Decision Memorandum at *Comment 20*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend

liquidation of all entries of certain frozen and canned warmwater shrimp from India that are entered, or withdrawn from warehouse, for consumption on or after August 4, 2004, the publication date of the preliminary determination in the **Federal Register**. However, because we find that critical circumstances do not exist with regard to imports by HLL of certain frozen and canned warmwater shrimp from India, we will instruct CBP to terminate the retroactive suspension of liquidation for HLL between May 6, 2004 (90 days prior to the date of publication of the preliminary determination), and August 4, 2004, which was instituted due to the preliminary affirmative critical circumstances finding for this respondent. CBP shall also release any bond or other security, and refund any cash deposit required, under section 733(d)(1)(B) of the Act with respect to HLL's entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2) of the Act. For entries on or after August 4, 2004, CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Devi Sea Foods Ltd.	5.02
Hindustan Lever Ltd.	13.42
Nekkanti Seafoods Ltd. ..	9.71
All Others	9.45

In accordance with section 735(c)(5)(A), we have based the "All Others" rate on the weighted average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an

antidumping duty order directing CBP officials to assess 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.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 17, 2004.

James Jochum,
Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Comments

1. Offsets for Non-Dumped Sales
2. Methodology for Calculating the "All Others" Rate
3. Use of Container Weight as a Matching Characteristic
4. Position of Species in the Matching Hierarchy
5. "As Sold" Versus "HLSO" Product Comparisons
6. Use of Forward Exchange Contracts to Make Currency Conversions
7. Revenue from the Duty Entitlement Passbook Scheme
8. Export House Revenue
9. Ministerial Errors in the Preliminary Determination
10. Selection of Comparison Market for Devi
11. Credit Expenses for Devi
12. Third Country Sale Outside the Ordinary Course of Trade for HLL
13. Glazing Adjustment for HLL
14. Filler Adjustment for HLL
15. Bank Charges for HLL
16. General and Administrative Expenses for HLL
17. Level at Which Financing Expenses Are Calculated for HLL
18. Offset to Financing Expenses for HLL
19. Cost Reconciliation for HLL
20. Critical Circumstances for HLL
21. Additional Revenue for Nekkanti

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-549-822]

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

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

EFFECTIVE DATE: December 23, 2004.

SUMMARY: On August 4, 2004, the Department of Commerce published its preliminary determination of sales at less than fair value of certain frozen and canned warmwater shrimp from Thailand. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins."

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0656 or (202) 482-0498, respectively.

SUPPLEMENTARY INFORMATION:**Final Determination**

We determine that certain frozen and canned warmwater shrimp from Thailand is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales of LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice. In addition, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise from Thailand.

Case History

The preliminary determination in this investigation was published on August 4, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical*

Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 47100 (Aug. 4, 2004) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. During the period July through October 2004, various interested parties, including the petitioners,¹ submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp.

In August and September 2004, we conducted verification of the questionnaire responses of the three respondents in this case, Andaman Seafood Co., Ltd., Chanthaburi Seafoods Co., Ltd., and Thailand Fishery Cold Storage Public Co., Ltd. (collectively "the Rubicon Group"); Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei); and the Union Frozen Products Co., Ltd. (UFP).

In October and November 2004, we received case briefs from the petitioners, the respondents, and the Government of Thailand and Xian-Ning Seafood Co., Ltd., interested parties in this investigation, and rebuttal briefs from the petitioners, the Rubicon Group, and Thai I-Mei. Two of the respondents (*i.e.*, the Rubicon Group and Thai I-Mei) and the American Breaded Shrimp Processors, an interested party, requested that a hearing be held by the Department. However, in November 2004, the Department canceled the hearing because the Rubicon Group and Thai I-Mei withdrew their requests. See the November 3, 2004, memorandum to the file from Alice Gibbons entitled, "Cancellation of Public Hearing in the Antidumping Duty Investigation on Certain Frozen and Canned Warmwater Shrimp from Thailand." On November 23, 2004, the Department convened a public hearing on scope issues.

On November 29, 2004, the Department made final scope determinations with respect to shrimp scampi and dusted and battered shrimp. See the November 29, 2004, Memoranda from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled "Scope Clarification on Shrimp Scampi"; and "Scope Clarification on Dusted Shrimp and Battered Shrimp," respectively. See also the "Scope of Investigation" section of this notice, below, for further discussion.²

¹ The petitioners in this investigation are the Ad Hoc Shrimp Trade Action Committee (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

² In addition to these scope determinations, the Department previously made five other scope

Also on November 29, 2004, the Department clarified that a shrimp sauce produced by a company in the companion investigation of frozen and canned warmwater shrimp from the People's Republic of China, Lee Kum Kee (USA) Inc., is not covered by the scope of that investigation. See the November 29, 2004, Memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled "Scope Clarification on Lee Kum Kee's Shrimp Sauce."

Period of Investigation

The period of investigation is October 1, 2002, through September 30, 2003.

Analysis of Comments Received

The various scope issues are discussed in the "Case History" section of this notice and the separate scope memoranda. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration to James Jochum, Assistant Secretary for Import Administration, dated December 17, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/fjn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

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

determinations: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke Corporation, an interested party in this investigation, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of this investigation; (4) on July 2, 2004, the Department found that *Macrobrachium rosenbergii* and organic shrimp are included within the scope of this investigation; and (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation.

on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); (5) dried shrimp and prawns; (6) dusted shrimp; and (7) 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

³ "Tails" in this context means the tail fan, which includes the telson and the uropods.

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 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 HTSUS 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS 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.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Critical Circumstances

In our preliminary determination, we found that critical circumstances did not exist with respect to imports of the subject merchandise from Thailand because the requirements of section 733(e)(1)(A) of the Act had not been met. See *Preliminary Determination*, 69 FR at 47109-10. For the final determination, we continue to find that critical circumstances do not exist for the same reasons, in accordance with section 735(a)(3)(A) of the Act.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection

(CBP) to continue to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from Thailand that are entered, or withdrawn from warehouse, for consumption on or after August 4, 2004, the publication date of the preliminary determination in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/manufacturer ⁴	Weighted-average margin percentage
Andaman Seafood Co., Ltd.	5.79
Chanthaburi Seafoods Co., Ltd.	5.79
Chanthaburi Frozen Food Co., Ltd.	5.79
Phattana Seafood Co., Ltd.	5.79
Thai I-Mei Frozen Foods Co., Ltd.	6.20
Thailand Fishery Cold Storage Public Co., Ltd.	5.79
Thai International Seafood Co., Ltd.	5.79
The Union Frozen Products Co., Ltd.	6.82
Wales & Company Universe, Ltd.	5.79
Y2K Frozen Food Co., Ltd.	5.79
All Others	6.03

In accordance with section 735(c)(5)(A) of the Act, we have based the "all others" rate on the weighted average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC

⁴ The following companies are part of the Rubicon Group and thus have been assigned the same dumping margin: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Phattana Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafood Co., Ltd., Wales & Company Universe, Ltd., and Y2K Frozen Food Co., Ltd.

determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess 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.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 17, 2004.

James Jochum,
Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memo

Comments

1. Offsets for Non-Dumped Sales
2. Revenue from the Thai Government Duty Compensation Program
3. Ministerial Errors in the Preliminary Determination
4. Exclusion of Broken Shrimp from the Margin Calculations
5. Whether to Grant a Constructed Export Price (CEP) Offset for the Rubicon Group
6. Allocation of Indirect Selling Expenses for the Rubicon Group
7. Treatment of Transportation Expenses for the Rubicon Group
8. Double Counting in the Calculation of Financial Ratios for the Rubicon Group
9. Verification Corrections for the Rubicon Group
10. Date-of-Sale Methodology for Thai I-Mei
11. Count Sizes for Thai I-Mei
12. Appropriate Denominator to Use for General and Administrative (G&A) and Interest Calculations for Thai I-Mei
13. Adverse Facts Available (AFA) Cost Adjustments for Thai I-Mei
14. Calculation of Constructed Value (CV) Profit for Thai I-Mei
15. Adjustment to Cost Offset Reported for UFP

[FR Doc. 04-28171 Filed 12-21-04; 8:45 am]

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APPENDIX B
CALENDAR OF THE PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam

InvS. Nos.: 731-TA-1063-1068 (Final)

Date and Time: December 1, 2004 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, SW, Washington, D.C.

CONGRESSIONAL WITNESS:

The Honorable Thad Cochran, United States Senator, State of Mississippi

STATE GOVERNMENT WITNESSES:

The Honorable John Roussel, Assistant Secretary, Louisiana Department of Wildlife and Fisheries, State of Louisiana

The Honorable Burton P. Guidry, Assistant Attorney General, Louisiana Department of Justice, State of Louisiana

The Honorable David J. Camardelle, Mayor, Town of Grand Isle, Louisiana; *and* President and Director, Grand Isle Independent Levee Board

The Honorable Kevin Belanger, CEO, South Central Planning & Development Commission, Houma, Louisiana

The Honorable Don Schwab, Terrebonne Parish President, Houma, Louisiana

The Honorable Charlotte A. Randolph, Lafourche Parish President, Thibodaux, Louisiana

**In Support of the Imposition of
Antidumping Duties:**

Dewey Ballantine LLP
Washington, D.C.
on behalf of

Ad Hoc Shrimp Trade Action Committee
Versaggi Shrimp Corporation
Indian Ridge Shrimp Company

Jonathan Applebaum, President, Penguin Frozen Foods
Andrew Blanchard, President, Pearl Inc.
Kimberly Chauvin, Owner, Mariah Jade Shrimp Company
Sal Versaggi, Owner, Versaggi Shrimp Company
David Cook, Vice President, Specialty Seafood Trade, Bumble Bee Seafoods
Patrick Staves, Assistant General Manager and Controller, Bumble Bee Seafoods
Richard Gollot, Secretary and Treasurer, Golden Gulf Coast Packing Company, Inc.
Phoung Dang, Commercial Shrimp Fisherman, Biloxi, Mississippi
Scott St. Pierre, Commercial Shrimp Fisherman, Golden Meadows, Louisiana
Craig Wallis, Commercial Shrimp Trawler Owner and Operator, Palacios, Texas
Susan Hester, Economist, Dewey Ballantine LLP

Bradford L. Ward)
Kevin M. Dempsey) – OF COUNSEL
Nathaniel M. Rickard)

**In Opposition to the Imposition of
Antidumping Duties:**

Akin, Gump, Strauss, Hauer & Feld LLP
Washington, D.C.
on behalf of

National Chamber of Aquaculture (Ecuador)
American Seafood Distributors Association

George Chamberlain, President, Global Aquaculture Alliance
Russ Mentzer, President and CEO, King & Prince Seafood Corporation
Bill Herzig, Vice President, Seafood Purchasing, Darden Restaurants, Inc.
Peter Redmond, Vice President/Divisional Merchandising Manager,
Deli/Seafood, Wal-Mart Stores, Inc.
Chad Bown, Assistant Professor, Economics, Brandeis University
Daniel W. Klett, Economist, Capital Trade, Inc.

Warren E. Connelly)
Jarrod Goldfeder) – OF COUNSEL

**In Opposition to the Imposition of
Antidumping Duties (continued):**

Sandler, Travis & Rosenberg, P.A.
Washington, D.C.
on behalf of

Coalition of Shrimp Exporters/Producers of South China
Seatech Corporation

Paula Stern, Chairwoman, The Stern Group
Lars Liabo, General Manager, Kontali Analyse AS
John Wendt, President, Seatech Corporation

Thomas V. Vakerics) – OF COUNSEL

deKieffer & Horgan
Washington, D.C.
on behalf of

Xian-Ning Seafood Co., Ltd.

John J. Kenkel) – OF COUNSEL

Willkie Farr & Gallagher LLP
Washington, D.C.
on behalf of

Thai Frozen Foods Association and its individual members
Vietnam Shrimp Committee of the Vietnam Association
of Seafood Exporters and Producers and its
individual member companies

Kenneth J. Pierce)
Matthew R. Nicely) – OF COUNSEL

Cameron & Hornbostel, LLP
Washington, D.C.
on behalf of

Association of Brazilian Shrimp Farmers (“ABCC”)

Eduardo Rodrigues, Manager, ABCC

Alexander W. Sierck) – OF COUNSEL

**In Opposition to the Imposition of
Antidumping Duties (continued):**

Garvey Schubert Barer
Washington, D.C.
on behalf of

Seafood Exporters Association of India (“SEAI”)

Nagesh Motamarri, Finance Director, Nekkanti Seafoods Limited
K. Shivakumar, Independent Consultant

Lizbeth R. Levinson) – OF COUNSEL

APPENDIX C
SUMMARY DATA

Table C-1

Warmwater shrimp and prawns: Summary data concerning the U.S. market, 2001-03, January-June 2003, and January-June 2004

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2001	2002	2003	January-June		2001-03	2001-02	2002-03	Jan.-June 2003-04
				2003	2004				
U.S. consumption quantity:									
Amount	1,006,617	1,046,548	1,211,618	455,666	519,252	20.4	4.0	15.8	14.0
Producers' share (1)	15.3	13.2	12.0	10.2	8.6	-3.3	-2.1	-1.2	-1.6
Importers' share (1):									
Brazil	2.1	3.7	4.0	6.6	2.7	1.8	1.6	0.2	-3.9
China (subject)	***	***	***	***	***	***	***	***	***
Ecuador	5.6	6.1	6.0	9.6	8.7	0.4	0.4	-0.0	-0.9
India	7.1	9.2	8.2	9.2	7.8	1.1	2.1	-1.0	-1.4
Thailand	29.4	23.7	23.2	22.8	25.0	-6.3	-5.8	-0.5	2.2
Vietnam	7.2	9.3	10.3	10.3	8.6	3.0	2.0	1.0	-1.7
Subtotal (subject)	***	***	***	***	***	***	***	***	***
China (nonsubject)	***	***	***	***	***	***	***	***	***
Other sources	27.2	24.7	22.4	23.6	27.7	-4.8	-2.4	-2.4	4.0
Subtotal (nonsubject)	***	***	***	***	***	***	***	***	***
Total imports	84.7	86.8	88.0	89.8	91.4	3.3	2.1	1.2	1.6
U.S. consumption value:									
Amount	4,530,423	4,070,679	4,424,132	1,697,635	1,697,526	-2.3	-10.1	8.7	-0.0
Producers' share (1)	20.0	16.3	15.4	13.3	12.0	-4.7	-3.7	-0.9	-1.3
Importers' share (1):									
Brazil	1.5	2.3	2.3	3.9	1.7	0.8	0.8	0.0	-2.2
China (subject)	***	***	***	***	***	***	***	***	***
Ecuador	4.9	4.9	4.9	7.7	7.1	-0.1	0.0	-0.1	-0.7
India	5.9	9.0	9.3	10.2	9.2	3.4	3.1	0.3	-1.1
Thailand	28.4	24.3	22.5	22.7	22.2	-5.9	-4.2	-1.8	-0.6
Vietnam	8.6	12.0	13.6	14.0	13.1	5.0	3.4	1.6	-1.0
Subtotal (subject)	***	***	***	***	***	***	***	***	***
China (nonsubject)	***	***	***	***	***	***	***	***	***
Other sources	26.5	24.0	22.1	22.7	26.8	-4.4	-2.5	-1.9	4.1
Subtotal (nonsubject)	***	***	***	***	***	***	***	***	***
Total imports	80.0	83.7	84.6	86.7	88.0	4.7	3.7	0.9	1.3
U.S. imports from:									
Brazil:									
Quantity	21,638	39,074	48,023	30,245	14,143	121.9	80.6	22.9	-53.2
Value	67,115	93,061	103,100	65,977	29,292	53.6	38.7	10.8	-55.6
Unit value	\$3.10	\$2.38	\$2.15	\$2.18	\$2.07	-30.8	-23.2	-9.9	-5.1
Ending inventory quantity	960	1,644	1,617	1,350	2,414	68.4	71.1	-1.6	78.9
China (subject):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Ecuador:									
Quantity	56,585	63,351	73,112	43,856	45,272	29.2	12.0	15.4	3.2
Value	222,543	200,371	214,873	131,559	119,927	-3.4	-10.0	7.2	-8.8
Unit value	\$3.93	\$3.16	\$2.94	\$3.00	\$2.65	-25.3	-19.6	-7.1	-11.7
Ending inventory quantity	2,796	4,123	5,414	3,248	4,064	93.6	47.5	31.3	25.1
India:									
Quantity	71,794	96,654	99,180	41,812	40,486	38.1	34.6	2.6	-3.2
Value	266,916	367,436	412,087	173,804	155,433	54.4	37.7	12.2	-10.6
Unit value	\$3.72	\$3.80	\$4.15	\$4.16	\$3.84	11.8	2.3	9.3	-7.6
Ending inventory quantity	7,512	6,607	11,156	7,752	7,059	48.5	-12.0	68.9	-8.9
Thailand:									
Quantity	296,422	247,651	281,011	103,681	129,823	-5.2	-16.5	13.5	25.2
Value	1,288,839	988,432	996,171	385,787	376,144	-22.7	-23.3	0.8	-2.5
Unit value	\$4.35	\$3.99	\$3.54	\$3.72	\$2.90	-18.5	-8.2	-11.2	-22.1
Ending inventory quantity	42,126	41,959	55,742	43,180	46,537	32.3	-0.4	32.8	7.8
Vietnam:									
Quantity	72,818	96,996	124,503	47,017	44,548	71.0	33.2	28.4	-5.3
Value	389,556	487,952	602,915	238,406	221,936	54.8	25.3	23.6	-6.9
Unit value	\$5.35	\$5.03	\$4.84	\$5.07	\$4.98	-9.5	-6.0	-3.7	-1.7
Ending inventory quantity	10,417	12,989	17,885	16,121	20,500	71.7	24.7	37.7	27.2
Subtotal (subject):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	***	***	***	***	***	***	***	***	***

Table continued on next page.

Table C-1--Continued

Warmwater shrimp and prawns: Summary data concerning the U.S. market, 2001-03, January-June 2003, and January-June 2004

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2001	2002	2003	January-June		2001-03	2001-02	2002-03	Jan.-June 2003-04
				2003	2004				
U.S. imports from:									
China (nonsubject):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity . . .	***	***	***	***	***	***	***	***	***
All other sources:									
Quantity	273,533	258,802	270,888	107,741	143,630	-1.0	-5.4	4.7	33.3
Value	1,200,942	975,411	977,973	384,979	455,388	-18.6	-18.8	0.3	18.3
Unit value	\$4.39	\$3.77	\$3.61	\$3.57	\$3.17	-17.8	-14.2	-4.2	-11.3
Ending inventory quantity . . .	19,760	20,734	20,168	14,874	18,722	2.1	4.9	-2.7	25.9
Subtotal (nonsubject):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity . . .	***	***	***	***	***	***	***	***	***
All sources:									
Quantity	852,677	908,482	1,066,168	409,368	474,670	25.0	6.5	17.4	16.0
Value	3,623,717	3,407,963	3,744,881	1,471,239	1,493,784	3.3	-6.0	9.9	1.5
Unit value	\$4.25	\$3.75	\$3.51	\$3.59	\$3.15	-17.4	-11.7	-6.4	-12.4
Ending inventory quantity . . .	88,713	100,314	133,556	97,064	114,021	50.5	13.1	33.1	17.5
U.S. processors:									
Average capacity quantity . . .	***	***	***	***	***	***	***	***	***
Production quantity	***	***	***	***	***	***	***	***	***
Capacity utilization (1)	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity . . .	***	***	***	***	***	***	***	***	***
Inventories/total shipments (1)	***	***	***	***	***	***	***	***	***
Production workers	***	***	***	***	***	***	***	***	***
Hours worked (1,000s)	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000s)	***	***	***	***	***	***	***	***	***
Hourly wages	***	***	***	***	***	***	***	***	***
Productivity (pounds per hour)	***	***	***	***	***	***	***	***	***
Unit labor costs	***	***	***	***	***	***	***	***	***
Net sales (3):									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS) . . .	***	***	***	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***	***	***	***
Operating income or (loss) . . .	***	***	***	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***	***	***	***
COGS/sales (1)	***	***	***	***	***	***	***	***	***
Operating income or (loss)/ sales (1)	***	***	***	***	***	***	***	***	***
Calculated U.S. shipments:									
Quantity	153,940	138,066	145,450	46,298	44,582	-5.5	-10.3	5.3	-3.7
Value	906,706	662,715	679,251	226,396	203,742	-25.1	-26.9	2.5	-10.0
Unit value	\$5.89	\$4.80	\$4.67	\$4.89	\$4.57	-20.7	-18.5	-2.7	-6.5

(1) "Reported data" are in percent and "period changes" are in percentage points.
 (2) Not available.
 (3) Unit income-and-loss calculations exclude ***, which reported values but not quantities.

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.

Source: Compiled from data submitted in response to Commission questionnaires, National Marine Fisheries Services statistics, and official Commerce statistics.

Table C-2

Warmwater shrimp and prawns (excluding canned): Summary data concerning the U.S. market, 2001-03, January-June 2003, and January-June 2004

* * * * *

Table C-3

Warmwater shrimp and prawns: Summary data concerning selected U.S. processors (1), 2001-03, January-June 2003, and January-June 2004

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2001	2002	2003	January-June		2001-03	2001-02	2002-03	Jan.-June 2003-04
				2003	2004				
U.S. processors':									
Average capacity quantity	304,995	304,820	305,195	152,883	152,883	0.1	-0.1	0.1	0.0
Production quantity	142,883	132,646	138,062	52,004	49,748	-3.4	-7.2	4.1	-4.3
Capacity utilization (2)	46.8	43.5	45.2	34.0	32.5	-1.6	-3.3	1.7	-1.5
U.S. shipments:									
Quantity	118,271	112,412	117,350	54,691	51,452	-0.8	-5.0	4.4	-5.9
Value	482,481	418,809	383,562	176,550	156,217	-20.5	-13.2	-8.4	-11.5
Unit value	\$4.08	\$3.73	\$3.27	\$3.23	\$3.04	-19.9	-8.7	-12.3	-5.9
Export shipments:									
Quantity	2,772	2,547	3,266	1,434	1,268	17.8	-8.1	28.2	-11.6
Value	9,141	7,763	8,499	3,708	3,308	-7.0	-15.1	9.5	-10.8
Unit value	\$3.30	\$3.05	\$2.60	\$2.59	\$2.61	-21.1	-7.6	-14.6	0.9
Ending inventory quantity	23,696	23,886	28,935	19,499	24,414	22.1	0.8	21.1	25.2
Inventories/total shipments (2)	19.6	20.8	24.0	34.7	46.3	4.4	1.2	3.2	11.6
Production workers	2,180	1,802	1,616	1,431	1,319	-25.9	-17.3	-10.3	-7.8
Hours worked (1,000s)	3,390	3,235	2,973	1,212	1,131	-12.3	-4.6	-8.1	-6.7
Wages paid (\$1,000s)	31,671	30,508	29,425	12,778	11,762	-7.1	-3.7	-3.5	-8.0
Hourly wages	\$9.30	\$9.39	\$9.86	\$10.50	\$10.36	6.0	0.9	5.0	-1.3
Productivity (pounds per hour)	40.1	39.3	44.6	40.9	42.3	11.0	-2.0	13.3	3.7
Unit labor costs	\$0.23	\$0.24	\$0.22	\$0.26	\$0.24	-4.7	3.0	-7.4	-4.8
Net sales (3):									
Quantity	139,732	130,434	136,862	54,806	50,098	-2.1	-6.7	4.9	-8.6
Value	499,628	433,306	406,055	181,668	156,598	-18.7	-13.3	-6.3	-13.8
Unit value	\$3.50	\$3.27	\$2.95	\$3.30	\$3.11	-15.6	-6.5	-9.8	-5.7
Cost of goods sold (COGS)	459,608	399,457	370,652	163,752	138,140	-19.4	-13.1	-7.2	-15.6
Gross profit or (loss)	40,020	33,849	35,403	17,916	18,458	-11.5	-15.4	4.6	3.0
SG&A expenses	35,659	33,980	34,179	15,886	14,170	-4.2	-4.7	0.6	-10.8
Operating income or (loss)	4,361	(131)	1,224	2,030	4,288	-71.9	(4)	(4)	111.2
Capital expenditures	5,942	5,557	2,651	1,895	989	-55.4	-6.5	-52.3	-47.8
Unit COGS	\$3.22	\$3.01	\$2.70	\$2.97	\$2.74	-16.3	-6.6	-10.4	-7.7
Unit SG&A expenses	\$0.24	\$0.25	\$0.25	\$0.28	\$0.28	4.0	4.0	-0.1	-1.3
Unit operating income or (loss)	\$0.04	\$0.02	\$0.01	\$0.04	\$0.09	-73.9	-61.2	-32.7	107.9
COGS/sales (2)	92.0	92.2	91.3	90.1	88.2	-0.7	0.2	-0.9	-1.9
Operating income or (loss)/ sales (2)	0.9	(0.0)	0.3	1.1	2.7	-0.6	-0.9	0.3	1.6

(1) Excluding data for previously excluded, targeted related parties, and ***.

(2) "Reported data" are in percent and "period changes" are in percentage points.

(3) Unit income-and-loss calculations exclude ***, which reported values but not quantities.

(4) 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.

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

APPENDIX D
CANNED SHRIMP

CANNED SHRIMP

As noted earlier, the Commission, in its preliminary determinations, indicated that it would seek trade, pricing, financial, and foreign industry data specifically pertaining to canned shrimp in the final phase investigations.¹ Bumble Bee is the only U.S. producer of canned shrimp. Another U.S. firm, Pearl Indian Ridge (Pearl) produces a canned product, but unlike the shelf-stable product produced by Bumble Bee, Pearl's is frozen after vacuum packing and canning; hence, it is a frozen product that has simply been packaged in a can.²

Three firms, ***, provided import data on canned shrimp. In each instance, canned shrimp accounted for *** percent of the reported imports. *** imported canned shrimp in 2001 and 2002 from ***. For the balance of the period examined, *** had no imports. In 2002, *** imports accounted for *** percent of total canned shrimp imports. *** imports came from ***. In 2003, *** imports accounted for *** percent of total canned shrimp imports. *** of *** imports came from *** and accounted for *** percent of total canned shrimp imports in 2003.

Importers Chicken of the Sea and Seatech both appeared at the Commission's hearing to state their belief that canned shrimp is a separate like product from frozen shrimp and that the U.S. industry (Bumble Bee) is not suffering material injury. In challenging Bumble Bee's contention that its deteriorating financial condition was due to the loss of its private label business (primarily Chicken of the Sea) to imports, Kevin McClain of Chicken of the Sea, stated, in part:

¹ See, *Preliminary Shrimp Report*, p. 13. U.S. producer, ***, and importers, ***, provided such data which are presented in table D-1. *** production during the period examined was *** percent canned shrimp. Pricing data on canned shrimp are presented in app. G, table G-10.

² In testimony at the Commission's hearing in these investigations, Andrew Blanchard, President of Pearl, in speaking of the differences between his frozen product and Bumble Bee's shelf-stable product, stated:

"The product that we are cooking and putting in cans is a completely different animal than what they're {Bumble Bee} talking about on the processed side. Theirs can be put up in the shelves in a dry storage state. Ours has to be kept frozen. Once you put it in the refrigerator overnight you can just pop the can, open it up and, it's ready."

Further, regarding the frozen/shelf-stable differences, Mr. Blanchard stated:

"Ours has to be remained at zero degree temperature to have it, to be shelf-stable. And his can be at room temperature. But he retorts his through a process of retort. What we do, we just boil our product. It's not going through a retort process. We boil it, we take it, we peel it, take it in heads on. We peel it, we devein it. It goes through our boiler. And then it goes through a sequence of graders. Then it's inspected and put into a one pound can, put a vacuum on it, then it's brought into a blast freezer and it's cased out for distribution."

See, testimony of Andrew Blanchard, President, Pearl, hearing transcript, pp. 150-151.

***.

Table D-1

Canned warmwater shrimp and prawns: Summary data concerning the U.S. market, 2001-03, January-June 2003, and January-June 2004

* * * * *

“After Bumble Bee bought Reuther’s, we suddenly found ourselves in a very difficult position: our archrival was now our principal supplier of the four canned shrimp products mentioned above. Our company management had a lot of qualms about this situation because Bumble Bee took private label sales responsibility away from Mr. Reuther and handed it over to the Bumble Bee marketing department. Soon after the takeover, we noticed that Bumble Bee had much less interest in making sure that we, as one of its larger customers, were kept happy. We did not always get their best quality products and on-time deliveries were less frequent. Also, we began receiving price increases without a prior explanation or discussion. It became apparent that Bumble Bee was trying to price us out of the market in order to gain competitive edge.”

Further, with regard to Chicken of the Sea’s shift to imported shrimp, Mr. McClain, stated:

“Before terminating our relationship with Reuther/Bumble Bee, we conducted an intensive search for another domestic supplier of canned shrimp. However, we couldn’t find one. Reuther’s was really the last of the major domestic shrimp canners. We, therefore, had no choice but to turn to imports to fulfill the void left by the loss of Reuther’s as a reliable supplier.

In 2000, we began sourcing canned shrimp from Seatech Corporation, which became our exclusive supplier of these products following our purchase of the ‘Pacific Pearl’ brand from CI Seafoods, Inc.”³

With respect to Bumble Bee’s view of Chicken of the Sea’s shift to imported shrimp, David Cook of Bumble Bee stated, in part, “***.”⁴

With respect to foreign producers, two Indian and three Thai respondents provided data with respect to their canned shrimp operations. Such data are presented in tables D-2 and D-3, respectively. The information provided by the Indian and Thai respondents shows that *** percent of Indian exports and 0.1 percent of Thai exports to the United States were canned product in 2003.

Table D-2

Canned warmwater shrimp and prawns: Data for processors in India, 2001-03, January-June 2003, and January-June 2004

* * * * *

Table D-3

Canned warmwater shrimp and prawns: Data for processors in Thailand, 2001-03, January-June 2003, and January-June 2004

* * * * *

³ Chicken of the Sea posthearing brief, exhibit 6, affidavit of Kevin McClain, Vice President of Procurement, Chicken of the Sea.

⁴ Petitioners’ posthearing brief, app. A, statement of David Cook, Vice President, Specialty Seafood Trade, Bumble Bee, in response to a question from Chairman Stephen Koplan, pp. A-22-A-23.

COMMENTS ON LIKE PRODUCT FACTORS

Questionnaire respondents were asked to comment on the six like product factors as they relate to canned shrimp as a separate like product. U.S. producer *** and importers *** offered comments which follow:

* * * * *

APPENDIX E

**PURCHASER COMPARISONS OF PURCHASING FACTORS FOR
WARMWATER SHRIMP FROM VARIOUS COUNTRIES**

Table E-1

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	U.S. vs. Brazil ¹			U.S. vs. China ¹			U.S. vs. Ecuador ¹		
	S	C	I	S	C	I	S	C	I
Availability	1	2	4	1	6	10	2	3	10
Consistency from one shipment to another	0	0	7	1	3	13	1	3	11
Delivery terms	0	6	1	5	9	3	2	11	2
Delivery time	2	5	0	10	6	1	6	8	1
Discounts offered	1	6	0	0	14	3	1	12	2
Extension of credit	0	6	1	2	11	4	1	12	2
Lower price ²	1	3	3	1	6	10	2	7	6
Minimum quantity requirements	1	6	0	3	12	2	5	10	0
Packaging	0	4	3	2	11	4	1	10	4
Product range	0	3	4	2	3	12	2	4	9
Proper cutting, handling, and packing techniques	0	1	6	1	3	13	1	4	10
Quality meets your firm's standards	0	2	5	1	4	12	2	4	9
Quality exceeds your firm's standards	0	2	5	1	5	10	2	4	8
Reliability of supply	0	2	5	3	4	9	2	5	8
Taste/flavor profile	1	4	2	6	7	4	4	6	5
Transportation network	0	3	4	4	3	9	2	4	8
Lower U.S. transportation costs	2	5	0	7	10	0	4	9	1

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Table continued on next page.

Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	U.S. vs. India ¹			U.S. vs. Thailand ¹			U.S. vs. Vietnam ¹		
	S	C	I	S	C	I	S	C	I
Availability	0	6	6	3	5	12	2	5	8
Consistency from one shipment to another	1	2	9	1	3	16	1	1	13
Delivery terms	2	9	1	3	14	3	2	10	3
Delivery time	5	7	0	9	9	2	7	7	1
Discounts offered	0	10	2	1	14	5	1	12	2
Extension of credit	0	10	2	2	15	3	1	11	3
Lower price ²	0	4	8	1	8	11	1	6	8
Minimum quantity requirements	2	10	0	4	15	1	3	11	1
Packaging	0	9	3	1	12	7	1	8	6
Product range	0	3	9	1	5	14	1	4	10
Proper cutting, handling, and packing techniques	1	3	8	1	3	16	1	1	13
Quality meets your firm's standards	0	4	8	1	4	15	1	2	12
Quality exceeds your firm's standards	0	4	7	1	4	15	1	3	10
Reliability of supply	0	7	5	1	6	13	1	5	9
Taste/flavor profile	5	3	4	7	7	6	6	4	5
Transportation network	1	4	6	2	8	9	2	2	10
Lower U.S. transportation costs	4	8	0	6	13	1	6	9	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

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Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	U.S. vs. Nonsubject ¹			Brazil vs. China ¹			Brazil vs. Ecuador ¹		
	S	C	I	S	C	I	S	C	I
Availability	0	3	9	0	0	2	0	1	1
Consistency from one shipment to another	0	2	10	0	1	1	0	1	1
Delivery terms	1	7	4	1	1	0	0	2	0
Delivery time	4	6	2	1	1	0	0	2	0
Discounts offered	0	8	4	0	2	0	0	2	0
Extension of credit	0	9	3	0	2	0	0	2	0
Lower price ²	2	4	6	0	1	1	0	1	1
Minimum quantity requirements	1	10	1	0	2	0	0	2	0
Packaging	0	6	6	0	2	0	0	2	0
Product range	1	3	8	0	1	1	0	2	0
Proper cutting, handling, and packing techniques	1	2	9	0	1	1	0	1	1
Quality meets your firm's standards	0	3	9	0	1	1	0	1	1
Quality exceeds your firm's standards	0	3	8	0	1	1	0	1	1
Reliability of supply	0	4	8	0	1	1	0	1	1
Taste/flavor profile	0	5	7	0	1	1	0	1	1
Transportation network	0	3	8	0	1	1	0	1	1
Lower U.S. transportation costs	1	10	1	0	2	0	0	2	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

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Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	Brazil vs. India ¹			Brazil vs. Thailand ¹			Brazil vs. Vietnam ¹		
	S	C	I	S	C	I	S	C	I
Availability	0	1	1	0	0	3	0	0	1
Consistency from one shipment to another	0	2	0	0	1	2	0	0	1
Delivery terms	1	1	0	1	2	0	1	0	0
Delivery time	1	1	0	1	2	0	1	0	0
Discounts offered	0	2	0	0	3	0	0	1	0
Extension of credit	0	2	0	0	3	0	0	1	0
Lower price ²	0	1	1	0	2	1	0	0	1
Minimum quantity requirements	0	2	0	0	3	0	0	1	0
Packaging	0	2	0	0	3	0	0	1	0
Product range	0	0	2	0	1	2	0	1	0
Proper cutting, handling, and packing techniques	0	2	0	0	2	1	0	0	1
Quality meets your firm's standards	0	2	0	0	1	2	0	0	1
Quality exceeds your firm's standards	0	2	0	0	1	2	0	0	1
Reliability of supply	0	1	1	0	1	2	0	0	1
Taste/flavor profile	1	1	0	1	2	0	1	0	0
Transportation network	0	2	0	0	2	1	0	0	1
Lower U.S. transportation costs	0	2	0	0	3	0	0	1	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

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Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	Brazil vs. Nonsubject ¹			China vs. Ecuador ¹			China vs. India ¹		
	S	C	I	S	C	I	S	C	I
Availability	0	1	1	3	4	1	2	1	1
Consistency from one shipment to another	0	2	0	1	6	1	1	2	1
Delivery terms	0	2	0	1	6	1	0	3	1
Delivery time	0	2	0	1	4	3	0	4	0
Discounts offered	0	2	0	0	7	1	0	3	1
Extension of credit	0	2	0	0	7	1	0	3	1
Lower price ²	0	1	1	4	4	0	2	2	0
Minimum quantity requirements	0	2	0	0	8	0	0	3	1
Packaging	0	2	0	0	7	1	0	4	0
Product range	0	2	0	2	6	0	1	3	0
Proper cutting, handling, and packing techniques	0	2	0	0	8	0	1	3	0
Quality meets your firm's standards	0	2	0	1	6	1	1	2	1
Quality exceeds your firm's standards	0	2	0	0	6	2	1	2	1
Reliability of supply	0	1	1	1	7	0	1	3	0
Taste/flavor profile	0	1	1	0	7	1	1	2	1
Transportation network	0	2	0	1	6	1	0	4	0
Lower U.S. transportation costs	0	2	0	0	8	0	0	4	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

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Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	China vs. Thailand ¹			China vs. Vietnam ¹			China vs. Nonsubject ¹		
	S	C	I	S	C	I	S	C	I
Availability	2	9	1	1	1	1	2	2	1
Consistency from one shipment to another	0	8	4	0	2	1	1	3	1
Delivery terms	0	11	1	0	2	1	0	3	2
Delivery time	0	11	1	0	2	1	0	2	3
Discounts offered	0	12	0	0	2	1	0	4	1
Extension of credit	0	11	1	0	2	1	0	4	1
Lower price ²	5	7	0	2	1	0	1	3	1
Minimum quantity requirements	0	12	0	0	2	1	0	4	1
Packaging	0	12	0	0	2	1	0	4	1
Product range	0	11	1	0	1	2	1	3	1
Proper cutting, handling, and packing techniques	0	9	3	0	2	1	1	3	1
Quality meets your firm's standards	0	10	2	0	2	1	1	3	1
Quality exceeds your firm's standards	0	8	4	0	2	1	1	3	1
Reliability of supply	0	10	2	1	1	1	1	3	1
Taste/flavor profile	1	7	4	1	1	1	0	3	2
Transportation network	0	8	4	0	2	1	0	4	1
Lower U.S. transportation costs	0	12	0	0	3	0	0	4	1

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

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Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	Ecuador vs. India ¹			Ecuador vs. Thailand ¹			Ecuador vs. Vietnam ¹		
	S	C	I	S	C	I	S	C	I
Availability	1	1	1	2	2	2	0	3	2
Consistency from one shipment to another	1	2	0	0	5	1	2	1	2
Delivery terms	1	2	0	1	5	0	1	4	0
Delivery time	1	2	0	3	3	0	1	4	0
Discounts offered	0	3	0	0	6	0	0	5	0
Extension of credit	0	3	0	0	6	0	0	5	0
Lower price ²	0	2	1	0	4	2	1	1	3
Minimum quantity requirements	0	3	0	1	5	0	0	5	0
Packaging	0	3	0	0	5	1	0	5	0
Product range	0	1	2	0	2	4	0	2	3
Proper cutting, handling, and packing techniques	1	2	0	0	5	1	1	3	1
Quality meets your firm's standards	1	2	0	0	5	1	0	4	1
Quality exceeds your firm's standards	1	2	0	0	5	1	1	3	1
Reliability of supply	0	2	1	1	4	1	0	4	1
Taste/flavor profile	2	1	0	2	4	0	2	3	0
Transportation network	0	2	1	0	5	1	1	3	1
Lower U.S. transportation costs	0	3	0	0	5	1	0	5	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Table continued on next page.

Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	Ecuador vs. Nonsubject ¹			India vs. Thailand ¹			India vs. Vietnam ¹		
	S	C	I	S	C	I	S	C	I
Availability	1	3	1	1	1	4	0	2	2
Consistency from one shipment to another	1	4	0	0	3	3	0	1	3
Delivery terms	0	5	0	0	5	1	0	4	0
Delivery time	0	4	1	0	5	1	0	4	0
Discounts offered	0	4	1	0	6	0	0	4	0
Extension of credit	0	4	1	0	6	0	0	4	0
Lower price ²	3	2	0	3	3	0	1	3	0
Minimum quantity requirements	0	5	0	0	5	1	0	4	0
Packaging	0	5	0	0	4	2	0	4	0
Product range	1	3	1	0	3	3	0	3	1
Proper cutting, handling, and packing techniques	1	4	0	0	3	3	0	3	1
Quality meets your firm's standards	1	4	0	0	3	3	0	3	1
Quality exceeds your firm's standards	1	4	0	0	4	2	0	3	1
Reliability of supply	0	4	1	0	3	3	0	3	1
Taste/flavor profile	0	3	2	0	3	3	0	2	2
Transportation network	0	5	0	0	5	1	0	4	0
Lower U.S. transportation costs	0	5	0	0	6	0	0	4	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Table continued on next page.

Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	India vs. Nonsubject ¹			Thailand vs. Vietnam ¹			Thailand vs. Nonsubject ¹		
	S	C	I	S	C	I	S	C	I
Availability	0	2	1	1	5	1	1	2	3
Consistency from one shipment to another	0	3	0	1	5	1	1	5	0
Delivery terms	0	2	1	0	7	0	0	5	1
Delivery time	0	2	1	0	7	0	0	3	3
Discounts offered	0	1	2	0	7	0	0	5	1
Extension of credit	0	1	2	0	7	0	0	5	1
Lower price ²	2	1	0	0	5	2	3	3	0
Minimum quantity requirements	0	3	0	0	7	0	0	5	1
Packaging	0	3	0	0	7	0	0	6	0
Product range	2	1	0	1	5	1	1	4	1
Proper cutting, handling, and packing techniques	0	3	0	0	7	0	1	5	0
Quality meets your firm's standards	0	3	0	0	7	0	1	4	1
Quality exceeds your firm's standards	0	3	0	1	6	0	1	4	1
Reliability of supply	0	3	0	1	5	1	1	2	3
Taste/flavor profile	0	1	2	0	7	0	0	2	4
Transportation network	0	3	0	1	6	0	1	5	0
Lower U.S. transportation costs	0	3	0	0	7	0	0	6	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Table continued on next page.

Table E-1--Continued

Warmwater shrimp: Number of purchasers' comparisons of U.S. product and imports

Factor	Vietnam vs. Nonsubject ¹		
	S	C	I
Availability	1	3	1
Consistency from one shipment to another	1	3	1
Delivery terms	0	4	1
Delivery time	0	4	1
Discounts offered	0	4	1
Extension of credit	0	4	1
Lower price ²	3	2	0
Minimum quantity requirements	0	5	0
Packaging	0	5	0
Product range	1	3	1
Proper cutting, handling, and packing techniques	1	4	0
Quality meets your firm's standards	1	3	1
Quality exceeds your firm's standards	1	3	1
Reliability of supply	0	4	1
Taste/flavor profile	0	2	3
Transportation network	0	5	0
Lower U.S. transportation costs	0	4	0

¹ S = first named source superior, C = products comparable, I = first named source inferior.
² A rating of superior means that the price is generally lower. For example, if a firm reports "U.S. superior," it means that the price of the U.S. product is generally lower than the price of the imported product.

Note.— When purchasers compared groups of countries, e.g., United States vs. all subject, the comparison was counted with each country individually based on the countries with which the purchaser expressed a familiarity or from which the purchaser reported purchases.

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

APPENDIX F
U.S. FISHERMEN DATA

Table F-1

Warmwater shrimp: U.S. fishermen, location, position taken with respect to the petition, quantity of harvest in 2003, and share of U.S. harvest in 2003, by firms

Firms	Location	Position taken with respect to the petition	Harvest in 2003	
			Quantity	Share
			<i>Pounds</i>	<i>Percent</i>
A. J. Horizon	LA	Support	***	***
Ace of Trade	LA	Support	***	***
Angel Seafood	AL	Support	***	***
Angela Marie	LA	Support	***	***
Anna Grace	SC	Support	***	***
Annie Thornton	TX	Support	***	***
Anthony Garcia Trawlers	TX	Support	***	***
Apalachee Girl	AL	Support	***	***
Aparicio Trawlers	TX	Support	***	***
Barbara Brooks	TX	Support	***	***
Beth Lomonte	TX	Support	***	***
Big Grapes	LA	Support	***	***
***	***	***	***	***
Bon Secour Boats	AL	Support	***	***
Burnell Trawlers	TX	Support	***	***
Capt. Arnulfo	TX	Support	***	***
Capt. Bean	LA	Support	***	***
Capt. Carlos Trawlers	TX	Support	***	***
Capt. Craig	LA	Support	***	***
Capt. GDA	TX	Support	***	***
Capt. JDL	TX	Support	***	***
Capt. Walley	TX	Support	***	***
Carly Sue	FL	Support	***	***
Carolina Seafoods	SC	Support	***	***
Charles Sellers	SC	Support	***	***
Charlotte Maier	TX	Support	***	***
Clinton Hayes	FL	Support	***	***
Country	AL	Support	***	***
Craig & Keith Wallis	TX	Support	***	***
Da Ha (Cat's Ass)	FL	Support	***	***
David C. Donnelly	SC	Support	***	***
Deau Nook	MS	Support	***	***
Debbe Anne	TX	Support	***	***
DG & RC	TX	Support	***	***
Donald F. Boone	GA	Support	***	***
Dragnet	TX	Support	***	***
DSL&R	TX	Support	***	***
Dunamis Towing	LA	Support	***	***
Edward Garcia	TX	Support	***	***
Edward Garcia Trawlers	TX	Support	***	***
Table continued.				

Table F-1--Continued

Warmwater shrimp: U.S. fishermen, location, position taken with respect to the petition, quantity of harvest in 2003, and share of U.S. harvest in 2003, by firm

Firms	Location	Position taken with respect to the petition	Harvest in 2003	
			Quantity	Share
			<i>Pounds</i>	<i>Percent</i>
Elmira Pflueckhahn	TX	Support	***	***
Frank Toomer	SC	Support	***	***
Freedom Fishing	AL	Support	***	***
F/V Enterprise	FL	Support	***	***
Gold Coast Seafood	TX	Support	***	***
Grandpa's Dream	FL	Support	***	***
Gulf Sweeper	TX	Support	***	***
Hagan & Miley	FL	Support	***	***
Helen Kay	TX	Support	***	***
Home Loving Care	TX	Support	***	***
Independent Fish	TX	Support	***	***
Integrity Fisheries	AL	Support	***	***
Isabel Maier	TX	Support	***	***
Jackie & Hiep Trieu	MS	Support	***	***
Jacob A	TX	Support	***	***
James F. Dubberly	GA	Support	***	***
James Kenneth Lewis	NC	Support	***	***
James W. Green Jr.	SC	Support	***	***
Jesse LeCompte Jr.	LA	Support	***	***
JoAnn & Michael Daigle	LA	Support	***	***
Joseph Garcia	TX	Support	***	***
Julie Ann	FL	Support	***	***
Julie Shrimp	TX	Support	***	***
Julio Gonzalez (several boats)	TX	Support	***	***
J&J Rentals	TX	Support	***	***
K&S Trawlers	FL	Support	***	***
Kandi Sue (several boats)	TX	Support	***	***
KBL	LA	Support	***	***
Kenneth Garcia Trawlers	TX	Support	***	***
Khang Dang	MS	Support	***	***
Khanh Huu Vu	TX	Support	***	***
L & O Trawlers	TX	Support	***	***

Table continued.

Table F-1--Continued

Warmwater shrimp: U.S. fishermen, location, position taken with respect to the petition, quantity of harvest in 2003, and share of U.S. harvest in 2003, by firm

Firms	Location	Position taken with respect to the petition	Harvest in 2003	
			Quantity	Share
			Pounds	Percent
Lady Katherine	NC	Support	***	***
Lady Melissa	LA	Support	***	***
Lafourche Clipper	LA	Support	***	***
Lindsey & Ralph L.Thomas, Jr.	SC	Support	***	***
Little Ernie Gulf Trawler	TX	Support	***	***
Long Viet Nguyen	TX	Support	***	***
Low Country Lady	SC	Support	***	***
LW Graham	AL	Support	***	***
Lynda Riley	TX	Support	***	***
Mabry Allen Miller	SC	Support	***	***
Malolo	FL	Support	***	***
Mary Bea	TX	Support	***	***
Michael Lynn	GA	Support	***	***
Milton Yopp	FL	Support	***	***
Minh Doan & Liem Doan	MS	Support	***	***
Miss Caroline	TX	--	***	***
Miss Carolyn Louise	FL	Support	***	***
Miss Danielle Gulf Trawler	TX	Support	***	***
Miss Georgia	SC	Support	***	***
Miss Loraine et al.	AL	Support	***	***
Miss Luana Shrimp	GA	Support	***	***
Miss Rhianna	TX	Support	***	***
Miss Sandra II	SC	Support	***	***
Miss Savannah II	GA	Support	***	***
Miss Suzanne	FL	Support	***	***
Mom & Dad	LA	Support	***	***
Montha Sok & Tan No Le	MS	Support	***	***
Mr. Verdin	LA	Support	***	***
M. V. Lepin Lane	LA	Support	***	***
Nancy Joy	FL	Support	***	***
North Point Trawlers	AL	Support	***	***
Otis Cantrelle Jr.	LA	Support	***	***
Papa Rod	AL	Support	***	***
Table continued.				

Table F-1--Continued

Warmwater shrimp: U.S. fishermen, location, position taken with respect to the petition, quantity of harvest in 2003, and share of U.S. harvest in 2003, by firm

Firms	Location	Position taken with respect to the petition	Harvest in 2003	
			Quantity	Share
			Pounds	Percent
Phat Le & Le Tran	MS	Support	***	***
Randall Pinell	LA	Support	***	***
Randy Boy	LA	Support	***	***
Raul Castellanos	TX	Support	***	***
Reyes Trawlers	TX	Support	***	***
Romo	TX	Support	***	***
Ronnie L. Anderson Jr.	LA	Support	***	***
Rosa Marie	AL	Support	***	***
R&J	SC	Support	***	***
Salina Cruz	TX	Support	***	***
Sam Snodgrass	TX	Support	***	***
Samaira	AL	Support	***	***
Sea Eagle Fisheries	AL	Support	***	***
Skip Toomer	SC	Support	***	***
Skyla Marie	LA	Support	***	***
Stella Mestre	FL	Support	***	***
Sylvan P. Racine	SC	Support	***	***
Tanya Lea	LA	Support	***	***
Terry Luke	LA	Support	***	***
Three Sons	TX	Support	***	***
Tiffani Claire	LA	Support	***	***
Tikede/Sidney Fisheries	TX	Support	***	***
Trawler Raindear	FL	Support	***	***
Troy Le Compte Sr.	LA	Support	***	***
Tyler James	LA	Support	***	***
Ultima Cruz	TX	Support	***	***
Versaggi Shrimp	FL	Support	***	***
Villers Seafood	FL	Support	***	***
Webster's	TX	Support	***	***
West Point Trawlers	AL	Support	***	***
Westley J. Domangue	LA	Support	***	***
William E. Smith Jr.	NC	Support	***	***
WL&O	TX	Support	***	***
W.H. Blanchard	LA	Support	***	***
Zirlott Trawlers	AL	Support	***	***
Total (140)		***	***	***

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

Table F-2**Warmwater shrimp: U.S. fishermen's quantity harvested and employment-related indicators, 2001-03, January-June 2003, and January-June 2004**

Item	2001	2002	2003	January-June	
				2003	2004
Quantity harvested (1,000 pounds)	15,072	16,028	17,584	5,969	5,455
PRWs (number)	844	828	718	658	632
Days boat at sea	52,014	53,924	51,925	19,653	17,739
Wages paid to PRWs (\$1,000)	16,848	13,634	14,024	4,364	3,494
Average daily wages	\$26.17	\$20.75	\$24.25	\$18.54	\$15.86
Average daily harvest (pounds)	290.9	298.5	340.0	302.5	305.3
Average labor costs (per pound)	\$1.11	\$0.85	\$0.79	\$0.74	\$0.64

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

Table F-3**Warmwater shrimp: U.S. fishermen's shipments, by type, 2001-03, January-June 2003, and January-June 2004**

Item	2001	2002	2003	January-June	
				2003	2004
Quantity (1,000 pounds)					
Sold to processors/docks	13,412	14,293	15,612	5,514	5,017
Transferred to processors/docks	1,237	1,205	1,385	424	267
Other shipments	421	421	505	33	79
U.S. shipments	15,070	15,919	17,502	5,971	5,363
Export shipments	0	0	0	0	0
Total	15,070	15,919	17,502	5,971	5,363
Value (\$1,000)					
Sold to processors/docks	50,322	43,369	44,109	14,144	12,494
Transferred to processors/docks	5,421	4,233	4,527	1,641	914
Other shipments	1,919	1,542	1,719	192	258
U.S. shipments	57,661	49,144	50,355	15,977	13,666
Export shipments	0	0	0	0	0
Total	57,661	49,144	50,355	15,977	13,666
Unit value (dollars per pound)					
Sold to processors/docks	3.75	3.03	2.83	2.57	2.49
Transferred to processors/docks	4.38	3.51	3.27	3.87	3.43
Other shipments	4.56	3.66	3.41	5.76	3.27
Average	3.83	3.09	2.88	2.68	2.55
Export shipments	(1)	(1)	(1)	(1)	(1)
Average	3.83	3.09	2.88	2.68	2.55

(1) Not applicable.

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

Table F-4

Warmwater shrimp: Summary data concerning U.S. fishermen, 2001-03, January-June 2003, and January-June 2004

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

Item	Reported data					Period changes			
	2001	2002	2003	January-June		2001-2003	2001-2002	2002-2003	Jan.-June 2003-2004
				2003	2004				
U.S. fishermen's:									
Quantity harvested	15,072	16,028	17,584	5,969	5,455	16.7	6.3	9.7	-8.6
U.S. shipments:									
Quantity	15,070	15,919	17,502	5,971	5,363	16.1	5.6	9.9	-10.2
Value	57,661	49,144	50,355	15,977	13,666	-12.7	-14.8	2.5	-14.5
Unit value	\$3.83	\$3.09	\$2.88	\$2.68	\$2.55	-24.8	-19.3	-6.8	-4.8
Production workers	844	828	718	658	632	-14.9	-1.9	-13.3	-3.9
Days boats at sea	52,014	53,924	51,925	19,653	17,739	-0.2	3.7	-3.7	-9.7
Wages paid to PRWs (\$1,000)	16,848	13,634	14,024	4,364	3,494	-16.8	-19.1	2.9	-19.9
Average daily wages	\$26.17	\$20.75	\$24.25	\$18.54	\$15.86	-7.3	-20.7	16.8	-14.5
Net sales:									
Quantity	13,447	14,422	16,280	4,766	4,635	21.1	7.3	12.9	-2.8
Value	53,134	44,483	45,182	12,615	10,683	-15.0	-16.3	1.6	-15.3
Unit value	\$3.95	\$3.08	\$2.78	\$2.65	\$2.30	-29.8	-21.9	-10.0	-12.9
Operating expenses	52,402	48,849	48,183	15,143	14,525	-8.1	-6.8	-1.4	-4.1
Net income or (loss) before salaries	732	(4,366)	(3,001)	(2,528)	(3,842)	(2)	(2)	31.3	-51.9
Officer/partner salaries	619	494	603	206	278	-2.6	-20.2	22.0	34.8
Net income or (loss)	113	(4,860)	(3,604)	(2,734)	(4,119)	(2)	(2)	25.9	-50.7
Capital expenditures	6,043	4,431	1,393	1,024	121	-77.0	-26.7	-68.6	-88.2
Unit operating expenses	\$3.90	\$3.39	\$2.96	\$3.18	\$3.13	-24.1	-13.1	-12.6	-1.4
Unit net income or (loss) before salaries	\$0.05	(\$0.30)	(\$0.18)	(\$0.53)	(\$0.83)	(2)	(2)	39.1	-56.2
Unit officer/partner salaries	\$0.05	\$0.03	\$0.04	\$0.04	\$0.06	-19.6	-25.6	8.1	38.6
Unit net income or (loss)	\$0.01	(\$0.34)	(\$0.22)	(\$0.57)	(\$0.89)	(2)	(2)	34.3	-54.9
Operating expenses/sales (1)	98.6	109.8	106.6	120.0	136.0	8.0	11.2	-3.2	15.9
Net income or (loss) before salaries/sales (1)	1.4	(9.8)	(6.6)	(20.0)	(36.0)	-8.0	-11.2	3.2	-15.9
Net income or (loss)/sales (1)	0.2	(10.9)	(8.0)	(21.7)	(38.6)	-8.2	-11.1	3.0	-16.9

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) 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 are calculated from the unrounded figures.

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

APPENDIX G
PRICING DATA

Table G-1

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 1, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-2

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 2, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-3

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 3, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-4

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 4, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-5

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 5, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-6

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 6, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-7

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 7, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-8

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 8, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-9

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 9, and margins of underselling/(overselling), by quarters, January 2001- June 2004

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Table G-10

Warmwater shrimp: Weighted-average selling prices and quantities as reported by U.S. processors and importers of product 10, and margins of underselling/(overselling), by quarters, January 2001- June 2004

* * * * *

Figure G-1

Weighted-average selling prices, as reported by U.S. processors and importers of product 1, by quarters, January 2001-June 2004

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Figure G-2

Quantities sold as reported by U.S. processors and importers of product 1, by quarters, January 2001-June 2004

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Figure G-3

Weighted-average selling prices, as reported by U.S. processors and importers of product 2, by quarters, January 2001-June 2004

* * * * *

Figure G-4

Quantities sold as reported by U.S. processors and importers of product 2, by quarters, January 2001-June 2004

* * * * *

Figure G-5

Weighted-average selling prices, as reported by U.S. processors and importers of product 3, by quarters, January 2001-June 2004

* * * * *

Figure G-6
Quantities sold as reported by U.S. processors and importers of product 3, by quarters, January 2001-June 2004

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Figure G-7
Weighted-average selling prices, as reported by U.S. processors and importers of product 4, by quarters, January 2001-June 2004

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Figure G-8
Quantities sold as reported by U.S. processors and importers of product 4 by quarters, January 2001-June 2004

* * * * *

Figure G-9
Weighted-average selling prices, as reported by U.S. processors and importers of product 5, by quarters, January 2001-June 2004

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Figure G-10
Quantities sold as reported by U.S. processors and importers of product 5, by quarters, January 2001-June 2004

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Figure G-11
Weighted-average selling prices, as reported by U.S. processors and importers of product 6, by quarters, January 2001-June 2004

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Figure G-12
Quantities sold as reported by U.S. processors and importers of product 6, by quarters, January 2001-June 2004

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Figure G-13
Weighted-average selling prices, as reported by U.S. processors and importers of product 7, by quarters, January 2001-June 2004

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Figure G-14
Quantities sold as reported by U.S. processors and importers of product 7, by quarters, January 2001-June 2004

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Figure G-15
Weighted-average selling prices, as reported by U.S. processors and importers of product 8, by quarters, January 2001-June 2004

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Figure G-16
Quantities sold as reported by U.S. processors and importers of product 8, by quarters, January 2001-June 2004

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Figure G-17
Weighted-average selling prices, as reported by U.S. processors and importers of product 9, by quarters, January 2001-June 2004

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Figure G-18
Quantities sold as reported by U.S. processors and importers of product 9, by quarters, January 2001-June 2004

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Figure G-19
Weighted-average selling prices, as reported by U.S. processors and importers of product 10, by quarters, January 2001-June 2004

* * * * *

Figure G-20
Quantities sold as reported by U.S. processors and importers of product 10, by quarters, January 2001-June 2004

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APPENDIX H

ALLEGED EFFECTS OF IMPORTS ON U.S. PROCESSORS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. processors to describe any actual or potential negative effects since January 1, 2001, on their return on investment, growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and/ or Vietnam. Unless specifically noted, the producers did not distinguish between Brazil, China, Ecuador, India, Thailand, and Vietnam in their comments. The responses of those firms that provided useable data are as follows:

Actual Negative Effects

* * * * *

Anticipated Negative Effects

* * * * *

APPENDIX I

**SELECTED FINANCIAL DATA OF DOMESTIC
PROCESSORS ON THEIR SHRIMP PROCESSING OPERATIONS**

The tables in appendix I present selected financial data on the processing operations of domestic processors of warmwater shrimp. A summary of the data presented is as follows:

Table	Data presented
I-1	Sales quantities for all domestic processors ¹ sorted in descending order of FY 2003 net sales values
I-2	Sales values for all domestic processors sorted in descending order of FY 2003 net sales values
I-3	Operating income/(loss) for all domestic processors sorted in descending order of FY 2003 net sales values
I-4	Operating income/(loss) as a ratio to net sales for all domestic processors sorted in descending order of FY 2003 net sales values
I-5	Unit value of net sales/tolling revenues for all domestic processors sorted in descending order of FY 2003 net sales values
I-6	Unit value of operating expenses/tolling costs for all domestic processors sorted in descending order of FY 2003 net sales values
I-7	Results of processors (except previously excluded and targeted related processors) on their tolling operations
I-8	Results of processors (except previously excluded and targeted related processors) on their non-tolling operations

¹ Includes data on previously excluded processors, the targeted related parties, and processors not previously excluded or currently targeted. The data corresponds with data contained in table VI-4.

Table I-1

Warmwater shrimp: Results of all domestic processors on their processing operations (net sales quantity), fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-2

Warmwater shrimp: Results of all domestic processors on their processing operations (net sales value), fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-3

Warmwater shrimp: Results of all domestic processors on their processing operations (net sales operating income/loss value), fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-4

Warmwater shrimp: Results of all domestic processors on their processing operations (operating income/loss ratio to net sales), fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-5

Warmwater shrimp: Results of all domestic processors on their processing operations (unit value of net sales/tolling revenues), fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-6

Warmwater shrimp: Results of all domestic processors on their processing operations (unit value of operating expenses/tolling costs), fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-7

Warmwater shrimp: Results of processors (except previously excluded and targeted related parties) on their toll processing operations, fiscal years 2001-03, January - June 2003, and January - June 2004

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Table I-8

Warmwater shrimp: Results of processors (except previously excluded and targeted related parties) on their non-toll processing operations, fiscal years 2001-03, January - June 2003, and January - June 2004

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APPENDIX J

**ALLEGED EFFECTS OF IMPORTS ON U.S. FISHERMEN'S EXISTING
DEVELOPMENT AND HARVESTING EFFORTS, GROWTH, INVESTMENT,
AND ABILITY TO RAISE CAPITAL**

The Commission requested fishermen to describe any actual or anticipated negative effects of imports of warmwater shrimp from Brazil, China, Ecuador, India, Thailand, or Vietnam, on their return on investment or their growth, investment, ability to raise capital, and existing development and harvesting efforts, or their scale of capital investments undertaken as a result of such imports. The responses are as follows:

Actual Negative Effects

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Anticipated Negative Effects

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