

Comment 29: Adjustment of Promarisco's G&A Expense Ratio to Exclude Packing Expenses

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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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

<sup>1</sup> 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.

<sup>2</sup> This brief related only to scope issues.

<sup>3</sup> 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,<sup>4</sup> 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.

<sup>4</sup> "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*

- Offsets for Non-Dumped Sales
- Methodology for Calculating the "All Others" Rate
- Use of Container Weight as a Matching Characteristic
- Position of Species in the Matching Hierarchy
- "As Sold" Versus "HLSO" Product Comparisons
- Use of Forward Exchange Contracts to Make Currency Conversions
- Revenue from the Duty Entitlement Passbook Scheme
- Export House Revenue
- Ministerial Errors in the Preliminary Determination
- Selection of Comparison Market for Devi
- Credit Expenses for Devi
- Third Country Sale Outside the Ordinary Course of Trade for HLL
- Glazing Adjustment for HLL
- Filler Adjustment for HLL
- Bank Charges for HLL
- General and Administrative Expenses for HLL
- Level at Which Financing Expenses Are Calculated for HLL
- Offset to Financing Expenses for HLL
- Cost Reconciliation for HLL
- Critical Circumstances for HLL
- 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*