



This document is scheduled to be published in the
Federal Register on 11/05/2012 and available online at

<http://federalregister.gov/a/2012-27042>, and on FDsys.gov

BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-893

Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Antidumping Duty Investigation

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

SUMMARY: On October 23, 2012, the United States Court of International Trade (“CIT”) sustained the Department of Commerce’s (“the Department”) results of redetermination, pursuant to the CIT’s remand order, in Shantou Red Garden Foodstuff Co., Ltd., v. United States, Slip Op. 12-133 (CIT 2012).¹

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s PRC Final Determination² and PRC Amended Final Determination & Order³ and is amending those final and amended final determinations with respect to Shantou Red Garden Foodstuff Co., Ltd. (“Red Garden”).

EFFECTIVE DATE: November 2, 2012.

¹ See Final Results Of Redetermination Pursuant To Court Remand, Court No. 05-00080, dated April 26, 2012, available at: <http://ia.ita.doc.gov/remands/12-7.pdf> (“Red Garden 2012 Final Remand”); see also Shantou Red Garden Foodstuff Co., Ltd. v. United States, Consol. Court No. 05-00080, Slip Op. 12-07 (CIT 2012) (“Remand Opinion and Order”).

² See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 70997 (December 8, 2004) (“PRC Final Determination”).

³ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People’s Republic of China, 70 FR 5149 (February 1, 2005) (“PRC Amended Final Determination & Order”).

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 2012, the CIT remanded to the Department five determinations made with respect to Red Garden in the PRC Final Determination and PRC Amended Final Determination & Order, two of which the Department requested for voluntary remand.⁴ Specifically, the CIT held that: 1) the Department erred in applying partial adverse facts available (“AFA”) for certain missing factors of production (“FOP”) information from one of the unaffiliated producers for Red Garden; 2) the Department must reconsider its determination of the surrogate value (“SV”) for fresh, raw, head-on, shell-on shrimp; 3) the Department must recalculate Red Garden’s margin using the correct production volume for a certain Red Garden supplier; 4) the Department must redetermine the SV for labor expenses consistent with the CAFC’s decision in Dorbest⁵; and 5) the Department unlawfully refused to allow Red Garden to correct a miscalculation for its growth stage multiplier submitted prior to verification

Pursuant to the CIT’s remand instructions, the Department re-examined record evidence and made the following changes. First, as facts otherwise available, we substituted Shantou Jinyuan District Mingfeng Quick-Frozen Factory (“Mingfeng”) and Shantou Longfeng Foodstuff Co., Ltd. (“Longfeng”) FOPs for Red Garden’s sales of subject merchandise supplied by Meizhou, as it did in the original Preliminary Determination⁶ using the most updated FOP database submitted by Red Garden. Second, the Department relied on the publicly ranged

⁴ See Remand Opinion and Order.

⁵ See Dorbest Ltd. v. United States, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) (“Dorbest”).

⁶ See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative 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”).

financial statement data for Devi Sea Foods Ltd. (“Devi”), rather than data for Nekkanti, as the basis for calculating the raw shrimp SV. Third, the Department determined that the correct production quantity of Mingfeng should be used to weight-average the FOP database because the correct quantity was on the record before verification, the Department used the correct amount in the Preliminary Determination to weight average the FOP database, and the Department eventually verified the correct amount. However, implementation of Mingfeng’s production quantity was unnecessary in the Red Garden 2012 Final Remand because the Department had actually used the correct amount, as used in the Preliminary Determination, to weight average the FOP databases.⁷ Accordingly, no changes were required in the margin program specific to this issue as it already contains the result mandated by the Court. Fourth, following Dorbest, the Department requested a voluntary remand of its wage rate calculations for Red Garden in the Final Determination. The CIT granted that request and remanded the Final Determination with instructions that the labor wage value be recalculated in accordance with law, supported with substantial evidence, and to comply with Dorbest. Consequently, the Department revised its valuation of Red Garden’s reported labor input in the Final Determination in accordance with the CAFC’s interpretation of section 773(c) of the Act as expressed in Dorbest. The Department, therefore, calculated an industry-specific hourly wage rate for the single, primary surrogate country, India. Lastly, in the Final Determination, the Department had not used the correct growth stage multiplier without explanation. The Department requested a voluntary remand for the purposes of considering Red Garden’s supplier’s growth stage multiplier and upon further review, the Department re-determined to use the revised growth stage multiplier collected at verification as there is no indication that the Department rejected it as a minor correction at verification or that it intended to reject it in the Final Determination.

On April 5, 2012, the Department released the draft redetermination of remand and

⁷ See Red Garden 2012 Final Remand at 12-13; see also Memorandum to the File; RE: Red Garden Final Determination Analysis Memorandum dated November 29, 2004, at SAS LOG lines 552-612.

invited interested parties to comment. The Department received no comments on the draft redetermination.⁸ On October 23, 2012, the CIT affirmed all aspects of the Department’s remand redetermination.⁹

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s October 23, 2012, judgment sustaining the Red Garden 2012 Final Remand constitutes a final decision of that court that is not in harmony with the PRC Final Determination and PRC Amended Final Determination & Order. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondent was reviewed.

Amended Final Determination

Because there is now a final court decision with respect to Red Garden, the revised dumping margin is as follows:

Manufacturer	Exporter	Weighted-Average Margin (Percent)
Shantou Red Garden Foodstuff Co., Ltd.	Shantou Red Garden Foodstuff Co., Ltd.	7.20 percent

⁸ See Shantou Red Garden Foodstuff Co., Ltd. v. United States, Slip Op. 12-07, Court No. 05-00080, Draft Results of Redetermination Pursuant to Court Remand (April 5, 2012) and Red Garden Analysis Memorandum for the Draft Results of Redetermination (“Draft Results Analysis Memo”).

⁹ See Shantou Red Garden Foodstuff Co., Ltd. v. United States, Slip Op. 12-133 (CIT 2012).

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1),
and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

October 31, 2012
Date

[FR Doc. 2012-27042 Filed 11/01/2012 at 4:15 pm; Publication Date: 11/05/2012]