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DEPARTMENT OF COMMERCE

International Trade Administration

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Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders

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

SUMMARY: On March 22, 2013, the U.S. Trade Representative ("USTR") instructed the Department of Commerce ("Department") to implement its determinations under section 129 of the Uruguay Round Agreements Act ("URAA") regarding the antidumping investigations of certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC") and diamond sawblades and parts thereof ("sawblades") from the PRC. The Department issued its final determinations on March 4, 2013, regarding the offsetting of dumped comparisons with non-dumped comparisons when making average-to-average comparisons of export price and normal value in the investigation challenged by the PRC before the World Trade Organization ("WTO") in United States – Anti-Dumping Measures on Certain Shrimp and Diamond Saw Blades from China (DS422). The Department is now implementing these determinations.

DATES: The effective date of this determination is March 22, 2013.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik (shrimp) and Matthew Renkey (sawblades), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6905 and (202) 482-2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the written request of USTR, the Department informed interested parties on September 5, 2012, that it was initiating proceedings under section 129 of the URAA to implement the findings of the WTO dispute settlement panel in United States - Anti-Dumping Measures on Certain Shrimp and Diamond Saw blades from China (DS422) (“Panel Report”). On December 7, 2012, the Department issued the memorandum entitled “Preliminary Results Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China,” dated December 7, 2012 (“Preliminary Shrimp 129 Determination”), in which the Department recalculated the weighted-average dumping margins from the antidumping investigation of shrimp from the PRC¹ by applying the calculation methodology described in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006) (“Final Modification for Investigations”).

On December 17, 2012, the Department issued the memorandum entitled “Preliminary Results under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Diamond Sawblades and Parts Thereof from the People’s Republic of China,” dated December 17, 2012 (“Preliminary Sawblades 129 Determination”), in which the Department recalculated one of the weighted-average dumping margins from the antidumping investigation of sawblades

¹ 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 Shrimp Final Determination”). See also 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 Shrimp Amended Final” or “PRC Shrimp Order”). On January 21, 2005, the ITC notified the Department of its final determination that two domestic like products exist for the merchandise covered by the Department’s investigation: (i) Certain non-canned warmwater shrimp and prawns, and (ii) canned warmwater shrimp and prawns. The ITC determined that there is no injury regarding imports of canned warmwater shrimp and prawns from the PRC. Therefore, canned warmwater shrimp and prawns is not covered by the PRC Shrimp Order.

from the PRC² by applying the calculation methodology described in Final Modification for Investigations.

The Department invited interested parties for both shrimp and sawblades to comment on the respective preliminary recalculations. After receiving comments and rebuttal comments from the interested parties in both cases, the Department issued its final section 129 determinations on March 4, 2013.³

In a March 22, 2013, letter, USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the March 4, 2013, determinations have been completed. On March 22, 2013, in accordance with section 129(b)(4) of the URAA, USTR directed the Department to implement these determinations.

NATURE OF THE PROCEEDING

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that, “notwithstanding any provision of the Tariff Act of 1930,” within 180 days of a written request from the USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body report. The Statement of Administrative Action, URAA, H.

² See Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China, 71 FR 29303 (May 22, 2006). See also Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People’s Republic of China, 71 FR 35864 (June 22, 2006); Diamond Sawblades and Parts Thereof from the People’s Republic of China and the Republic of Korea: Antidumping Duty Orders, 74 FR 57145 (November 4, 2009) (“Sawblades Order”).

³ See Memoranda from Christian Marsh to Paul Piquado, “Final Results of the Proceeding under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China,” dated March 4, 2013 (“Shrimp Final 129 Determination Memo”), and “Final Results of the Proceeding under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Diamond Sawblades and Parts Thereof from the People’s Republic of China,” dated March 4, 2013 (“Sawblades Final 129 Determination Memo”).

Doc. 316, Vol. 1, 103d Cong. (1994) (“SAA”), variously refers to such a determination by the Department as a “new,” “second,” and “different” determination.⁴ After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determinations made under section 129 of the URAA.⁵ Pursuant to section 129(c) of the URAA, the new determinations shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the USTR directs the Department to implement the new determinations.⁶ The new determinations are subject to judicial review separate and apart from judicial review of the Department’s original determination.⁷

ANALYSIS OF COMMENTS RECEIVED

The issues raised in the case and rebuttal briefs submitted by interested parties in both the shrimp and sawblades proceedings are addressed in their respective final determinations,⁸ which are hereby adopted by this notice. A list of the issues, which the parties raised and we addressed in both the Shrimp Final 129 Determination Memo and the Sawblades Final 129 Determination Memo, is attached to this notice as Appendix I. Both the Shrimp Final 129 Determination Memo and the Sawblades Final 129 Determination Memo are public documents and are on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of both

⁴ See Statement of Administrative Action accompanying the URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (“SAA”) at 1025, 1027.

⁵ See 19 U.S.C. 3538(b)(4).

⁶ See 19 U.S.C. 3538(c).

⁷ See 19 U.S.C. 1516a(a)(2)(B)(vii).

⁸ See Shrimp Final 129 Determination Memo and Sawblades Final 129 Determination Memo.

memoranda can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Shrimp Final 129 Determination Memo and the Sawblades Final 129 Determination Memo and the respective electronic versions of these memoranda are identical in content.

FINAL ANTIDUMPING DUTY MARGINS

The recalculated margins for shrimp, unchanged from the Preliminary Shrimp 129 Determination, are:

Manufacturer/Exporter	Section 129 Results
Allied Pacific Group	0.00 %
Yelin Enterprise Co. Hong Kong	0.00 %
Shantou Red Garden Foodstuff Co., Ltd	0.00 %
Separate Rate Companies ⁹	22.58 %

The recalculated margin for sawblades, unchanged from the Preliminary Sawblades 129 Determination, is:

Manufacturer/Exporter	Section 129 Results
Advanced Technology & Materials Co., Ltd. (“AT&M”) ¹⁰	0.00 %

⁹ The 39 Separate Rate Companies are: Asian Seafoods (Zhanjiang) Co., Ltd.; Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co., Ltd., aka (Shantou Qiaofeng (Group) Co., Ltd.), aka (Shantou/Chaoyang Qiaofeng); 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 Aquatic Products Co., Ltd.; Jinfu Trading 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 Wanya Food Factory Co., Ltd.; Shantou Jinyuan District Mingfeng Quick-Frozen Factory; Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.); Shantou Ocean Freezing Industry and Trade General Corporation; 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 Newpro Food Co., Ltd.; Zhanjiang Go-Harvest Aquatic Products Co., Ltd.; Zhanjiang Runhai Foods Co., Ltd.; Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.; Zhanjiang Universal Seafood Corp.; Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.; Zhoushan Xifeng Aquatic Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; Zhoushan Cereals, Oils and Foodstuffs Import and Export Co., Ltd.; Zhoushan Lizhou Fishery Co., Ltd.; and Zhoushan Diciyuan Aquatic Products Co., Ltd.

¹⁰ Collectively with Beijing Gang Yan Diamond Product Company (“BGY”) and Yichang HXF Circular Saw Industrial Co., Ltd (“HXF”), a single entity.

PARTIAL REVOCATION OF THE ANTIDUMPING DUTY ORDER FOR CERTAIN FROZEN WARMWATER SHRIMP FROM THE PRC

Because the Department has recalculated dumping margins of zero percent for Allied, Red Garden, and Yelin, the Department is revoking the PRC Shrimp Order with respect to Allied, Red Garden, and Yelin¹¹, for entries made on or after March 22, 2013. The Department's practice, at the time of the underlying investigation, with respect to revocation or exclusions of companies from an antidumping duty order was to exclude companies in specific manufacturer-exporter combinations.¹² Accordingly, the Department will instruct CBP to liquidate without regard to antidumping duties, specific manufacturer-exporter combinations for Allied's¹³, Red Garden's¹⁴, and Yelin's¹⁵ entries of certain frozen warmwater shrimp which were entered, or withdrawn from warehouse, for consumption on or after March 22, 2013, and to discontinue the collection of cash deposits for estimated antidumping duties for the specified manufacturer-exporter combinations for Allied, Red Garden, and Yelin.

¹¹ The Department is not revoking the PRC Shrimp Order with respect to Hilltop International as part of this implementation. See Shrimp Final 129 Determination Memo at Comment 1.

¹² See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review, 68 FR 25861 (May 14, 2003) and accompanying Issues and Decision Memorandum at Comment 1. See also 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, 71004 (December 8, 2004), where the Department stated that "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." Subsequently, in the PRC Shrimp Order, we stated that "pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation of all entries of certain frozen warmwater shrimp and prawns from the PRC (except merchandise *produced and exported* by Zhanjiang Guolian because this company has a de minimis margin)" (emphasis added). See PRC Shrimp Order, 70 FR at 5152.

¹³ Revocation for Allied is specific to: merchandise manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd.

¹⁴ Revocation for Red Garden is specific to: merchandise manufactured by Red Garden Food Processing Co., Ltd., or Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd., or Raoping County Longfa Seafoods Co., Ltd., or Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., or Shantou Jinyuan District Mingfeng Quick-Frozen Factory, or Shantou Long Feng Foodstuffs Co., Ltd., and exported by Shantou Red Garden Foodstuff Co., Ltd. or Red Garden Food Processing Co., Ltd.

¹⁵ Revocation for Yelin is specific to: merchandise manufactured by Shantou Yelin Frozen Seafood Co., Ltd., or Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd., or Fuqing Yihua Aquatic Food Co., Ltd., or Shantou Jinyuan District Mingfeng Quick-Frozen Factory and exported by Yelin Enterprise Co. Hong Kong or Shantou Yelin Frozen Seafood Co., Ltd.

However, in the PRC Shrimp Amended Final, the Department assigned a dumping margin based on section 776 of the Act in the antidumping duty investigation to the PRC-Wide Entity. The Department has not recalculated this dumping margin because it is not affected by the implementation of the Panel Report. This dumping margin was based on information contained in the petition and “zeroing” was not used to calculate the dumping margins in the petition.¹⁶ In addition, the Department must determine an appropriate dumping margin for separate rate companies not selected for individual examination during the investigation. When, as here, the only available rates are zero, de minimis, or based upon adverse facts available, the Department looks to section 735(c)(5) of the Tariff Act of 1930, as amended (“Act”) for guidance, which instructs the Department to use “any reasonable method” for assigning the rate to non-selected respondents.¹⁷ The Department determines that a reasonable method for determining the separate rate for non-selected respondents is a simple average of the adverse-facts available dumping margin assigned to the PRC-Wide Entity and each of the calculated zero or de minimis dumping margins calculated in the original shrimp investigation or as part of the final section 129 determination for shrimp for the PRC.¹⁸ This is consistent with our past practice in the 2007 Section 129 Determinations.¹⁹ The separate rate margin is now 22.58 percent. Consequently, because the PRC-wide entity rate of 112.81 percent and the separate rate

¹⁶ See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People’s Republic of China and the Socialist Republic of Vietnam, 69 FR 3876, 3880-3881 (January 27, 2004) (where the Department stated that, “based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain frozen and canned warmwater shrimp from the PRC range from 112.81 percent to 263.68 percent”).

¹⁷ See section 735(c)(5)(B) of the Act.

¹⁸ See Shrimp Final 129 Determination Memo at 7-8.

¹⁹ See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261, 25262-63 (May 4, 2007) (“2007 Section 129 Determinations”) where the Department calculated a simple average of existing AFA margins with above de minimis/zero margins as an All-Others rate following section 129 recalculations for the mandatory respondents that resulted in zero or de minimis rates.

of 22.58 percent for non-individually examined companies are above de minimis, we will not wholly revoke the PRC Shrimp Order.

The Department will instruct CBP to continue to collect cash deposits for estimated antidumping duties from the separate rate companies and from the PRC-wide entity, as the PRC Shrimp Order, in whole, will not be revoked. Further, if any separate rate companies are subject to the investigation's separate rate cash deposit at the time of implementation (i.e., if a separate rate company from the investigation has not had the investigation separate rate cash deposit superseded by a subsequent review rate) we will instruct CBP to collect cash deposits at the new separate rate of 22.58 percent for subject merchandise entered, or withdrawn from warehouse, for consumption on or after March 22, 2013, the date on which USTR directed the Department to implement this 129 determination. As noted above, the PRC-wide entity rate has not changed from the PRC Shrimp Amended Final and Order, and continues to be 112.81 percent.

PARTIAL REVOCATION OF THE ANTIDUMPING DUTY ORDER FOR DIAMOND SAWBLADES AND PARTS THEREOF

Because the Department has recalculated a dumping margin of zero percent for AT&M, the Department is revoking the Sawblades Order with respect to AT&M, for entries made on or after March 22, 2013.²⁰ Accordingly, the Department will instruct CBP to liquidate without regard to antidumping duties, entries of sawblades manufactured and exported by AT&M which

²⁰ Pursuant to a Temporary Restraining Order ("TRO") issued by the U.S. Court of International Trade covering sawblades from the PRC on March 6, 2013, and continued on March 19, 2013, Commerce and CBP are restrained from: (1) excluding or revoking the AT&M entity and/or any of its members (as described in the TRO) from the Sawblades Order; (2) ordering the lifting of the suspension of liquidation regarding incoming entries produced and/or exported by these companies; and (3) making or permitting liquidation of any unliquidated entries produced and/or exported by these companies that are subject to the final determination of the less-than-fair-value investigation. Consistent with the final section 129 determination and recognizing that we cannot exclude or revoke the AT&M entity and/or any of its members from the Sawblades Order, future entries of such merchandise are subject to suspension of liquidation at the cash deposit rate of zero. Subsequent action will be consistent with the final court decision.

were entered, or withdrawn from warehouse, for consumption on or after March 22, 2013, and to discontinue the collection of cash deposits for estimated antidumping duties for AT&M. No other margin for any other entity is affected by this Section 129 Determination for sawblades and parts thereof from the PRC. We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers, except for AT&M, as stated above. We will instruct CBP to continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price.

These amended final determinations are issued and published in accordance with section 129(c)(2)(A) of the URAA.

Paul Piquado
Assistant Secretary
for Import Administration

Dated: March 22, 2013.

Appendix I

Certain Frozen Warmwater Shrimp

DISCUSSION OF THE ISSUES:

Comment 1: Whether the Order Should Be Revoked with Respect to Yelin and Hilltop

Comment 2: Revocation of the Order with Respect to Red Garden

Diamond Sawblades and Parts Thereof

DISCUSSION OF THE ISSUES:

Comment 1: Whether the Order Should Be Revoked with Respect to AT&M

Comment 2: Whether We Should Permit Petitioner to Submit a Targeted Dumping Allegation

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