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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: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On February 18, 2014, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") results of redetermination,<sup>1</sup> pursuant to the CIT's Remand Opinion and Order.<sup>2</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in Timken<sup>3</sup>, as clarified by Diamond Sawblades,<sup>4</sup> the Department is notifying the public that the final judgment in this case is not in harmony with the Department's Final Determination,<sup>5</sup> Amended Final 1 & Order,<sup>6</sup> and Amended

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<sup>1</sup> See Final Results Of Redetermination Pursuant To Court Remand, Court No. 05-00182, dated September 26, 2013, available at: <http://enforcement.trade.gov/remands/index.html> ("Beihai Final Remand Redetermination").

<sup>2</sup> See Beihai Zhengwu Indus. Co. v. United States, Consol. Court No. 05-00182 (CIT Aug. 13, 2013) ("Remand Opinion and Order").

<sup>3</sup> See Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) ("Timken").

<sup>4</sup> See Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) ("Diamond Sawblades").

<sup>5</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) ("Final Determination").

<sup>6</sup> 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) ("Amended Final 1 & Order").

Final 2<sup>7</sup> and is amending those final and amended final determinations with respect to the 29 plaintiffs that were party to the litigation.<sup>8</sup>

DATES: Effective February 28, 2014.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office V, Enforcement and Compliance, 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 27, 2004, the Department initiated the antidumping duty investigations of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam.<sup>9</sup> On July 16, 2004, the Department published the Preliminary Determination,<sup>10</sup> wherein we assigned a separate rate margin of 49.09 percent to 21 non-selected companies eligible for a separate rate. Subsequently, we amended the Preliminary Determination to include two additional non-examined companies to which we

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<sup>7</sup> See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Second Amended Final Determination of Sales at Less Than Fair Value, 71 FR 47484 (August 17, 2006) ("Amended Final 2").

<sup>8</sup> These companies are: Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co Ltd (Shantou City Qiaofeng Group Co Ltd); Hainan Fruit Vegetable Food Allocation Co., Ltd.; Pingyang Xinye Aquatic Products Co., Ltd.; Shantou Jinhang Aquatic Industry Co., Ltd.; Shantou Longfeng Foodstuffs Co., Ltd.; Shantou Ocean Freezing Industry And Trade General Corporation; Shantou Ruiyuan Industry Co., Ltd.; Shantou Sez Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.; Shantou Shengping Oceanstar Business Co., Ltd.; Shantou Wanya Food Factory Co., Ltd.; Shantou Yuexing Enterprise Company; Taizhou Zhonghuan Industrial Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhejiang Cereals, Oils, Foodstuffs Import Export Co., Ltd.; Zhejiang Daishan Baofa Aquatic Product Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhejiang Zhenglong Foodstuffs Co., Ltd.; Zhoushan Cereals Oils Foodstuffs Import Export Co., Ltd.; Zhoushan Diciyuan Aquatic Products Co., Ltd.; Zhoushan Haichang Food Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; Zhoushan Industrial Co., Ltd.; Zhoushan Juntai Foods Co., Ltd.; Zhoushan Lizhou Fishery Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; Zhoushan Xifeng Aquatic Co., Ltd.; and Zhoushan Zhenyang Developing Co., Ltd.

<sup>9</sup> See 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 (January 27, 2004) ("Initiation").

<sup>10</sup> 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").

granted separate rate status.<sup>11</sup> On December 8, 2004, the Department published the Final Determination and on February 1, 2005, the Department published the Amended Final 1 and Order, assigning a final separate rate of 53.68 percent to 39 companies to which we granted separate rate status. On August 17, 2006, the Department published a second amended final determination, wherein we granted separate rate status to an additional 11 companies which were not granted a separate rate in the Final Determination or the Amended Final 1 and Order.<sup>12</sup> Of all the companies to which we granted separate rate status in Amended Final 1 and Order and Amended Final 2, 29 companies (the “SR companies”) are plaintiffs subject to this Remand Opinion and Order. After the issuance of the Amended Final 1 and Order, the Department’s Final Determination was challenged at the CIT by the mandatory respondents and was subsequently remanded to the Department for redeterminations.<sup>13</sup> The resulting recalculations of the mandatory respondents’ investigation dumping margins were reduced to 5.07 percent, 7.20 percent, and 8.45 percent.<sup>14</sup> Consequently, as a result of the SR companies’ litigation, in the Remand Opinion and Order the Department recalculated the weighted-average margin assigned to the SR companies based on the revised mandatory respondents’ investigation dumping margins.

On September 11, 2013, the Department released the draft redetermination of remand and invited interested parties to comment. The Department received no comments on the draft

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<sup>11</sup> 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).

<sup>12</sup> See Amended Final 2.

<sup>13</sup> See Allied Pacific Food (Dalian) Co. v. United States, 716 F. Supp. 2d 1339 (CIT 2010); Shantou Red Garden Foodstuff Co. v. United States, 880 F. Supp. 2d 1332 (CIT 2012); see also Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 76 FR 30100 (May 24, 2011) (“Allied and Yelin Remand”) and 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, 77 FR 66434 (November 5, 2012) (“Red Garden Remand”).

<sup>14</sup> See Allied and Yelin Remand and Red Garden Remand.

redetermination<sup>15</sup> and issued the unchanged Beihai Final Remand Redetermination on September 26, 2013. No party contested the Department's remand redetermination. On February 18, 2014, the CIT affirmed all aspects of the Department's remand redetermination.<sup>16</sup>

#### 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 February 18, 2014, judgment sustaining the Beihai Final Remand Redetermination constitutes a final decision of that court that is not in harmony with the Final Determination, Amended Final 1 & Order, and Amended Final 2. 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.

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<sup>15</sup> See "Memorandum to the File, from Irene Gorelik, Senior Analyst, re: Remand Redetermination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China" and "Memorandum to the File, from Irene Gorelik, Senior Analyst, re: Recalculation of the Investigation Separate Rate Margin," both dated September 11, 2013.

<sup>16</sup> See Beihai Zhengwu Indus. Co. v. United States, Slip Op. 14-18, Ct. No. 05-00182 (CIT 2014).

Amended Final Determination

Because there is now a final court decision with respect to the 29 litigants, the revised separate rate dumping margin is as follows:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Beihai Zhengwu Industry Co., Ltd.	6.70 %
Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng)	6.70 %
Hainan Fruit Vegetable Food Allocation Co., Ltd.	6.70 %
Pingyang Xinye Aquatic Products Co., Ltd.	6.70 %
Shantou Jinhang Aquatic Industry Co., Ltd.	6.70 %
Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.)	6.70 %
Shantou Ocean Freezing Industry and Trade General Corporation	6.70 %
Shantou Ruiyuan Industry Co., Ltd.	6.70 %
Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.	6.70 %
Shantou Shengping Oceanstar Business Co., Ltd.	6.70 %
Shantou Wanya Food Factory Co., Ltd.	6.70 %
Shantou Yuexing Enterprise Company	6.70 %
Taizhou Zhonghuan Industrial Co., Ltd.	6.70 %
Yantai Wei-Cheng Food Co., Ltd.	6.70 %
Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.	6.70 %
Zhejiang Daishan Baofa Aquatic Product Co., Ltd.	6.70 %
Zhejiang Evernew Seafood Co., Ltd.	6.70 %
Zhejiang Taizhou Lingyang Aquatic Products Co.	6.70 %
Zhejiang Zhenglong Foodstuffs Co., Ltd.	6.70 %
Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.	6.70 %
Zhoushan Diciyuan Aquatic Products Co., Ltd.	6.70 %
Zhoushan Haichang Food Co. Ltd.	6.70 %
Zhoushan Huading Seafood Co., Ltd.	6.70 %
Zhoushan Industrial Co., Ltd.	6.70 %
Zhoushan Juntai Foods Co., Ltd.	6.70 %
Zhoushan Lizhou Fishery Co., Ltd.	6.70 %
Zhoushan Putuo Huafa Sea Products Co., Ltd.	6.70 %
Zhoushan Xifeng Aquatic Co., Ltd.	6.70 %
Zhoushan Zhenyang Developing Co., Ltd.	6.70 %

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

Dated: February 28, 2014.

Paul Piquado,  
Assistant Secretary,  
for Enforcement and Compliance.

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