



DEPARTMENT OF COMMERCE

International Trade Administration

[A-331-805]

Frozen Warmwater Shrimp from Ecuador: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that frozen warmwater shrimp (shrimp) from Ecuador is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2022, through September 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, Matthew Palmer, or Megan Goins, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5449, (202) 482-1678, and (202) 482-0884, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this

investigation on November 21, 2023.¹ On March 7, 2024, Commerce postponed the preliminary determination of this investigation until May 22, 2024.²

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is shrimp from Ecuador. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

Methodology

¹ *See Frozen Warmwater Shrimp from Ecuador and Indonesia: Initiation of Less-Than-Fair-Value Investigations*, 88 FR 81043 (November 21, 2023) (*Initiation Notice*).

² *See Frozen Warmwater Shrimp from Ecuador and Indonesia: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 16535 (March 7, 2024).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Frozen Warmwater Shrimp from Ecuador," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

⁵ *See Initiation Notice*, 88 FR at 81043.

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation, Commerce preliminarily calculated a *de minimis* rate for Industrial Pesquera Santa Priscila S.A. (Santa Priscila) /Tropical Packing Ecuador Tropack S.A.(Tropack) (Santa Priscila/Tropack).⁶ Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Sociedad Nacional de Galápagos C.A./Marina del Rey (SONGA/Marina del Rey).⁷ Consequently, the preliminary rate calculated for SONGA/Marina del Rey is also the preliminary rate assigned to all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/Producer	Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for
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⁶ Commerce preliminarily determines that these companies are a single entity. *See* Preliminary Decision Memorandum; *see also* Memorandum, “Preliminary Affiliation and Collapsing Memorandum,” dated concurrently with this notice (Preliminary Affiliation and Collapsing Memorandum).

⁷ Commerce preliminarily determines that these companies are a single entity. *See* Preliminary Decision Memorandum; *see also* Preliminary Affiliation and Collapsing Memorandum.

		Subsidy Offset(s) (percent)
Sociedad Nacional de Galápagos C.A. / Marina del Rey	10.58	10.58
Industrial Pesquera Santa Priscila S.A. / Tropical Packing Ecuador Tropack S.A.	1.54*	N/A
All Others	10.58	10.18

*(*de minimis*)

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates and preliminarily determines that individually examined respondents with *de minimis* rates have not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise, except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin for Santa Priscila/Tropack is *de minimis*, entries of shipments of subject merchandise from Santa Priscila/Tropack will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was

examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise from Santa Priscila/Tropack. Entries of shipments of subject merchandise from these companies in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by these respondents in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the “Preliminary Determination” section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in this preliminary determination within five days of any public announcement or, if there is no public

announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case brief.⁸ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.⁹

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁰ Further, we request that interested parties limit their public

⁸ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

¹¹ See *APO and Service Final Rule*.

On April 17, 2024 and May 20, 2024, pursuant to 19 CFR 351.210(e), American Shrimp Processors Association (ASPA, or the petitioner), and Santa Priscila/Tropack and SONGA, respectively, requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: May 22, 2024.

Ryan Majerus,

Deputy Assistant Secretary

for Policy and Negotiations

performing the non-exclusive functions and duties

of the Assistant Secretary for Enforcement and Compliance.

¹² See Petitioner's Letter, "Warmwater Shrimp from Ecuador and Indonesia: Petitioner's Requests to Postpone Final Determinations," dated April 17, 2024; see also Santa Priscila and SONGA's Letter, "Request to Extend the Deadline for the Final Determination," dated May 20, 2024.

Appendix I

Scope of the Investigation

The scope of this investigation includes certain frozen warmwater shrimp and prawns whether 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 form. “Tails” in this context means the tail fan, which includes the telson and the uropods.

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

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (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 (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered 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 ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Affiliation and Single Entity Treatment
- V. Discussion of the Methodology
- VI. Adjustments to Cash Deposit Rates for Export Subsidies in the Companion
Countervailing Duty Investigation
- VII. Currency Conversion
- VIII. Recommendation

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