Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam

Investigation Nos. 701-TA-491-497 (Preliminary)

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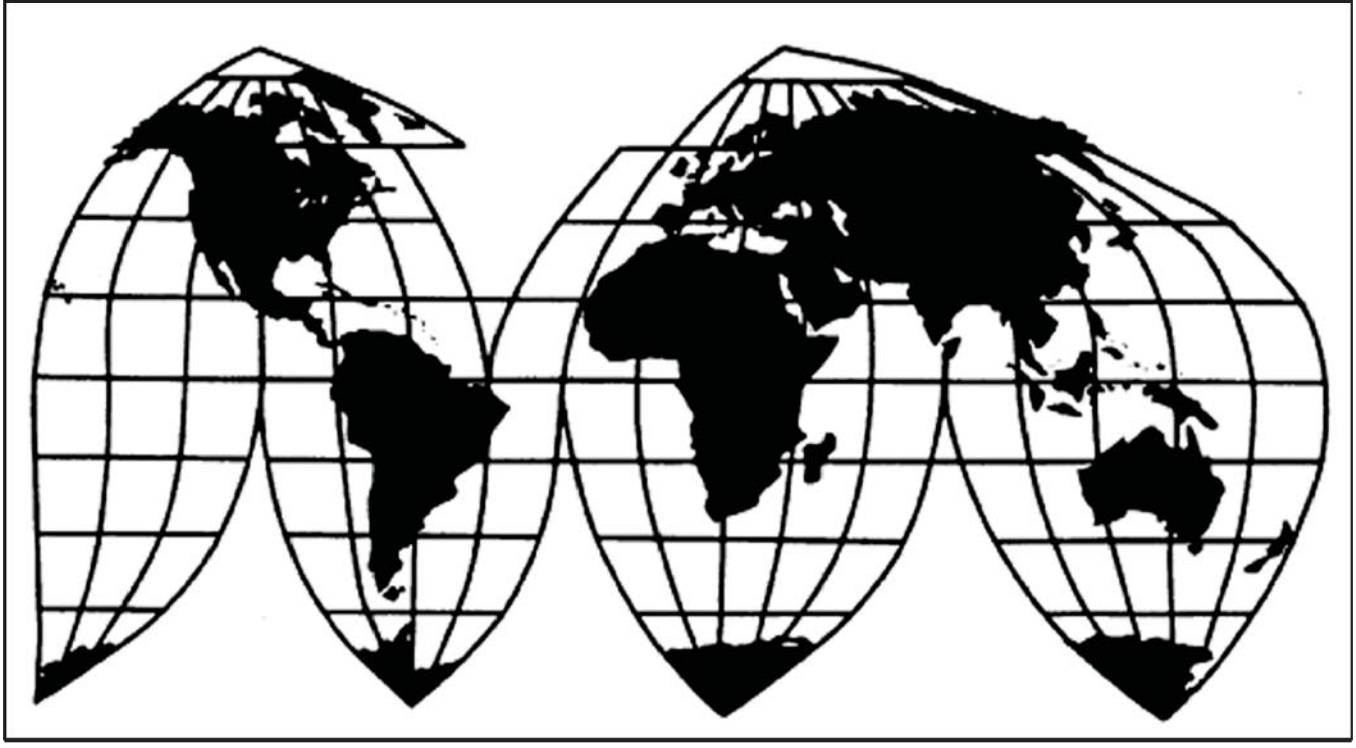
U.S. International Trade Commission



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-491-497 (Preliminary)

FROZEN WARMWATER SHRIMP FROM CHINA, ECUADOR, INDIA, INDONESIA, MALAYSIA, THAILAND, AND VIETNAM

DETERMINATION

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam of frozen warmwater shrimp, provided for in subheadings 0306.17.00, 1605.21.10 and 1605.29.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam.[2]

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 703(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under section 705(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On December 28, 2012, a petition was filed with the Commission and Commerce by the Coalition of Gulf Shrimp Industries**,** Biloxi, MS, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Accordingly, effective December 28, 2012, the Commission instituted countervailing duty investigation Nos. 701-TA-491-497 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 4, 2013 (76 FR 764). The conference was held in Washington, DC, on January 18, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Daniel R. Pearson voted in the negative.

VIEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen warmwater shrimp ("frozen shrimp") from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam that are allegedly subsidized.[1]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[2] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[3]

II. BACKGROUND

The petitions in these investigations were filed on December 28, 2012 by the Coalition of Gulf Shrimp Industries ("Coalition" or "Petitioner"), a trade association whose members are processors of frozen warmwater shrimp in the United States. Members of the Coalition appeared at the staff conference, and the Coalition submitted a postconference brief. A second domestic producer group, the Ad Hoc Shrimp Industry Committee ("AHSIC"), consists of several hundred businesses operating within the U.S. domestic shrimp industry, the great majority of which are shrimp fishermen. AHSIC takes no position on the petitions but filed a postconference brief.[4]

Five respondent groups participated in the conference and submitted postconference briefs. Respondents consist of (1) the National Chamber of Aquaculture ("Ecuador Respondent"), the trade association of Ecuador's shrimp processors; (2) the Seafood Exports Association of India, an association of foreign manufacturers and exporters of subject merchandise and the Government of India through the Marine Products Export Development Authority of India (collectively, "Indian Respondents"); (3) the Government of Indonesia and the Indonesian Fishery Product Processing & Marketing Association and its individual members (collectively, "Indonesian Respondents"); (4) a group of five Thai producers and exporters of frozen warmwater shrimp (Marine Gold Products Ltd.; Pakfood Public Co., Ltd.; Thai Royal Frozen Food Co., Ltd.; Thai Union Frozen Products Public Co., Ltd.; and Thai Union Seafood Co., Ltd.) and two U.S. importers of subject merchandise (Eastern Fish Co. and Tri-Union Frozen Products, Inc.) (collectively, "Thai Respondents"); and (5) a group of six Thai producers and exporters of frozen warmwater shrimp (Andaman Seafood Co., Ltd.; Chanthaburi Frozen Food Co., Ltd.; Chanthaburi

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[1] Commissioner Daniel R. Pearson determines that there is not a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam that are allegedly subsidized. See Dissenting Views of Commissioner Daniel R. Pearson. He joins sections I-VI.B.2 and VI.B.4 of these Views.

[2] 19 U.S.C. § 1673b(a) (2000); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chem. Corp. v. United States, 20 CIT 353, 354-55 (1996).

[3] American Lamb Co., 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[4] AHSIC's Postconference Brief at 1.

Seafoods Co., Ltd.; Phatthana Seafood Co., Ltd.; Phatthana Frozen Food Co., Ltd.; and Sea Wealth Frozen Food Co., Ltd.) and a U.S. importer, Rubicon Resources, LLC (collectively, "Rubicon Group").[5]

In these investigations, U.S. industry data are based on the questionnaire responses of 38 U.S. processors of frozen shrimp accounting for 83.8 percent of U.S. production of frozen warmwater shrimp in 2011.[6] U.S. import data are based on official Commerce import statistics and questionnaire responses from 46 U.S. importers accounting for 55.5 percent of total subject imports.[7] The Commission received responses to its questionnaires from 114 foreign producers of subject merchandise.[8]

III. DOMESTIC LIKE PRODUCT

A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[9] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[10] In turn, the Tariff Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ...."[11]

The decision regarding the appropriate domestic like product in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[12] No single factor is dispositive, and the Commission

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[5] No respondent entities with interests in imports or exports from China, Malaysia or Vietnam appeared at the conference or submitted postconference briefs.

[6] Confidential Staff Report, Memorandum INV-LL-013 (Feb. 4, 2013) as revised by Memorandum INV-LL-014 (Feb. 5, 2013), ("CR") at III-1 and Public Staff Report ("PR") at III-1. U.S. production is based on live (head-on shell-on) weight. The Commission received responses from 58 firms but only 38 U.S. processors provided usable quantitative data.

[7] CR/PR at IV-1. These U.S. importers also account for 52.9 percent of total imports from China, 48.1 percent of total imports from Ecuador, 51.7 percent of total imports from India, 64.7 percent of total imports from Indonesia, 43.5 percent of total imports from Malaysia, 61.5 percent of total imports from Thailand, and 43.1 percent of total imports from Vietnam in 2011. Id.

[8] CR/PR at VII-1. The foreign producer questionnaires are from three producers/exporters in China accounting for approximately *** of subject imports from China as reported in official Commerce statistics in 2011; nine producers/exporters in Ecuador accounting for approximately 58.4 percent of subject imports from Ecuador in 2011; 28 producers/exporters in India accounting for approximately 85.3 percent of subject imports from India in 2011; 15 producers/exporters in Indonesia accounting for approximately 77.5 percent of subject imports from Indonesia in 2011; three producers/exporters in Malaysia accounting for approximately *** of subject imports from Malaysia in 2011; 28 producers/exporters in Thailand accounting for approximately 88.2 percent of subject imports from Thailand in 2011; and 28 producers/exporters in Vietnam accounting for approximately 41.0 percent of subject imports from Vietnam in 2011. CR at VII-2 and VII-6; PR at VII-1, VII-3, VII-4 and VII-5.

[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(4)(A).

[11] 19 U.S.C. § 1677(10).

[12] See, e.g., Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.[13] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[14] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,[15] the Commission determines what domestic product is like the imported articles Commerce has identified.[16]

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as follows:

> The scope of these investigations is 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, regardless of size.
>
> 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 vannemei*), banana prawn (*Penaeus merguiensis*), 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*).

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[12] (...continued)
(1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'").

[13] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

[14] Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

[15] See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), aff'd, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

[16] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); Torrington, 747 F. Supp. at 748-52 (affirming the Commission's determination defining six like products in investigations in which Commerce found five classes or kinds).

> Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), 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; (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; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain "battered shrimp" (see below).
>
> "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 nonshrimp 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 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.[17]

The scope of investigation is virtually identical to that in the prior investigations and reviews regarding frozen warmwater shrimp.[18]

The Commission has previously conducted antidumping duty investigations and reviews of frozen shrimp. In the 2004 antidumping duty investigations on warmwater shrimp, the Commission determined, as proposed by the domestic producers, that the domestic like product should be defined to include fresh warmwater shrimp, an item excluded from the scope. Using the "semifinished products" like product analysis, the Commission found that fresh shrimp should be included in the domestic like product because fresh shrimp was overwhelmingly used as an input in the production of the frozen product, the shrimp was overwhelmingly sold in a processed form, and the initial stages of processing did not significantly change the physical characteristics and uses of the product and appeared to add at most moderate value to the product.[19] Consequently, the domestic like product on which the Commission

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[17] *Certain Frozen Warmwater Shrimp from the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 78 Fed. Reg. 5416, 5420-21 (Dep't of Commerce Jan. 25, 2013) (footnotes omitted).

[18] Specifically, the scope in these investigations is substantively the same as that in the most recent five-year reviews, with the exception that one scope exclusion in the five-year reviews (for a product called Lee Kum Kee shrimp sauce) is not repeated in the current scope definition. See Certain Frozen Warmwater Shrimp and Prawns from Brazil, China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Pub. 4221 at 5 (March 2011) ("2011 Review Determinations"). "Dusted shrimp," which is included in the scope in these investigations and also was included in the scope of the five-year reviews, was not within the scope of the Commission's original antidumping duty investigations. Further, canned shrimp was within the scope in the original investigations, but the Commission defined it as a separate domestic like product and made negative or negligible import determinations for canned shrimp from all countries subject to the original investigations. See Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. 3748 at 4-5 and 8-11 (Jan. 2005) ("Antidumping Duty Final Determination").

[19] Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Preliminary), USITC Pub. 3672 at 14-15 (Feb. 2004) ("2004 Preliminary

(continued...)

reached affirmative determinations in the antidumping duty investigations and subsequent five-year reviews consisted of both fresh warmwater shrimp and the frozen warmwater shrimp products described in the scope.[20]

C. Parties' Arguments

Petitioner proposes defining the domestic like product as certain frozen warmwater shrimp produced in the United States and not including fresh shrimp and brine-frozen shrimp in the domestic like product.[21] Petitioner asks the Commission not to apply the semifinished product analysis in this case, which is contrary to the position taken by petitioning domestic industry groups in prior proceedings concerning essentially the same scope of merchandise. Yet, Petitioner acknowledges that its request "is not based on a change in the facts that are traditionally examined under the five factors of the analysis."[22] According to Petitioner, application of the semifinished product analysis here "would effectively require the U.S. shrimp processing industry to demonstrate injury both to itself and to the U.S. shrimp fishing industry, which would contravene Congressional intent."[23] Domestic interested party AHSIC, comprised primarily of shrimp fishermen, contends that the Commission should define the domestic like product to encompass both fresh warmwater shrimp and those frozen articles described in the scope definition. It maintains that the record of these reviews does not provide any basis to adopt a different like product definition than was used in the prior investigations and reviews.[24] Respondents also argue that the domestic like product should include fresh warmwater shrimp as it has in the prior investigations and reviews.[25]

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[19] (...continued)
Determinations"); Antidumping Duty Final Determination, USITC Pub. 3748 at 6 (Jan. 2005).

[20] See generally 2011 Review Determinations, USITC Pub. 4221 at 6.

[21] Petition at I-2; Petitioner's Postconference Brief at 6 and Staff Question 3 at 1.

[22] Petitioner's Postconference Brief, Staff Question 4 at 1; Conf. Tr. at 66.

[23] Petitioner's Postconference Brief, Staff Question 4 at 1; Conf. Tr. at 66. In arguing that the expanded domestic like product and corresponding inclusion of the shrimp fishermen in the domestic industry would contravene Congressional intent, Petitioner refers to the legislative history regarding the statutory agricultural provision, 19 U.S.C. § 1677(4)(E). The agricultural provision permits the inclusion of upstream raw agricultural growers or producers in the domestic industry in certain investigations involving a processed agriculture product produced from any raw agricultural product, so as not to "preclude the possibility of appropriate sectors of U.S. agriculture from obtaining relief from unfairly traded imports of processed agricultural products." H.R. Rep. No. 100-40, pt. 2 at 111 (1987). Petitioner, however, uses the legislative intent to include upstream growers in the domestic industry to justify what appears to be a different and contrary proposition – that it should not have "to bear the additional burden of demonstrating injury or threat of injury to its suppliers...." Petitioner's Postconference Brief, Staff Question 4 at 1-2. We invite further arguments on this issue in any final-phase investigations. Petitioner's argument is also premised on the unsupported view that the Commission should not conduct a semifinished product analysis and define an expanded domestic like product if Petitioner has not requested it. Petitioner's Postconference Brief, Staff Question 4 at 3-8. The Petitioner's views on the appropriate definition of the domestic like product, however, do not bind the Commission. Our determination is based on an objective analysis of the record facts. See Torrington, 747 F. Supp. at 748.

[24] AHSIC's Postconference Brief at 1-13.

[25] Ecuador Respondents' Postconference Brief at 3; Indian Respondents' Postconference Brief at 3; Indonesian Respondents' Postconference Brief at 2; Thai Respondents' Postconference Brief at 4. Rubicon Group takes no position on the domestic like product issue. Rubicon Group's Postconference Brief at 4.

D. Analysis

As discussed below, we find a single domestic like product, encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope of the investigations.

The record in these investigations does not indicate that there have been any changes in the product characteristics of either fresh or frozen warmwater shrimp since the prior investigations and reviews.[26] Indeed, as previously stated, Petitioner acknowledges that the product characteristics have not changed.[27] Moreover, Petitioner does not argue that the factors the Commission would apply in its semifinished product analysis support a domestic like product definition different from the one the Commission has found in prior proceedings involving virtually the same scope of investigation. Rather, it argues that the Commission should not apply the analysis because it would result in a definition of the domestic industry that Petitioner does not prefer. Under the statute, however, the domestic industry definition is not the starting point of the Commission's analysis, but instead follows from the definition of the domestic like product.[28]

Moreover, Petitioner begins with the premise that the scope definition only includes frozen shrimp that has been further processed and is suitable for commercial use or sale, and not shrimp that has been frozen on board the fishing boats. Offshore shrimping vessels brine-freeze shrimp on board the boat to temporarily preserve the shrimp while the boats are fishing. This permits the boats to make longer offshore trips, perhaps lasting as long as several weeks.[29] Inshore shrimp boats place shrimp on ice or in ice slush in vats during their shorter voyages, such that the shrimp arriving at the dock is fresh, i.e., never frozen. Petitioner argues that the "forms [fresh shrimp and brine-frozen shrimp] of the shrimp processors buy from boats and docks are completely different from the final processed product that U.S. processors produce."[30] It relies on the FDA standard governing processed shrimp, which it contends "has excluded onboard freezing from its definition of 'processing' because 'freezing is an operation that is routinely used onboard a harvest vessel in order to preserve the quality of the fish until it is landed for further processing.'"[31]

While frozen shrimp suitable for commercial use or sale may arguably be the stage at which all subject imports enter the U.S. market and FDA standards applicable to processed shrimp may arguably not apply to shrimp that is frozen on board vessels, the scope language in these investigations refers simply to "frozen shrimp" without reference or limitation to any specific method of freezing or any stage of processing at which the freezing must occur.[32] The scope states as follows in relevant part:

> The scope of these investigations is 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**, regardless of size.

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[26] CR at I-11-16; PR at I-10-13.

[27] Petitioner's Postconference Brief, Staff Question 4 at 1; Conf. Tr. at 66.

[28] Compare 19 U.S.C. § 1677 (4)(A) with 19 U.S.C. § 1677 (10).

[29] Petitioner's Postconference Brief, Question 2 at 2 and Question 3 at 4.

[30] Petitioner's Postconference Brief, Question 2 at 1-5.

[31] Petitioner' Postconference Brief, Question 2 at 2-3.

[32] We do not find the scope language in question to be ambiguous. Even if there were an ambiguity concerning whether a given product is in or out of the scope, the Commission will decide the issue for purposes of its injury determination, while still deferring to the language and intent of Commerce's rulings. See generally e.g., Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia, Inv. Nos. 701-TA-470-471 and 731-TA-1169-1170 (Final), USITC Pub. 4192 at 4-6 (Nov. 2010).

> 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.[33]

Moreover, in the original antidumping duty investigations, the Commission stated in its analysis of whether to include fresh shrimp in the domestic like product that the scope of those investigations (which is nearly identical to the current scope) included onboard frozen shrimp. In discussing separate markets, the Commission stated as follows:

> *Separate Markets*. There are separate markets for fresh and processed warmwater shrimp in the sense that vessels sell their catch to a dock house or processor, while processors sell shrimp to end users and distributors. However, this distinction may more properly be characterized as one between harvested shrimp and processed shrimp than between "fresh" shrimp and processed shrimp. Because warmwater shrimp is commonly frozen and deheaded on the vessel, the product a vessel sells at the dock is not necessarily "fresh" shrimp.[34]

Petitioner's argument would have the effect of including some but not all shrimp fishermen in the definition of the domestic industry. Since some of the shrimp sold at the dock is in fresh form (not in scope) and some has already been brine-frozen (included in the scope),[35] those shrimp fishermen that further process by freezing shrimp on board their vessels would produce the domestic like product and thus would be included in the domestic industry under either Petitioner's proposed domestic like product definition or the one that the other parties advocate. Only under Petitioner's proposal, however, would the shrimp fishermen who sell only fresh warmwater shrimp not be included in the domestic industry.[36]

It is undisputed that the overwhelming majority of fresh shrimp is not sold as a "finished" product, but is used as an input (as is onboard frozen shrimp) for further processing into frozen products suitable for commercial use or sale. Consequently, fresh and processed shrimp are products at different stages of the same production process. In light of this, we conclude that use of the "semifinished product" like product analysis is appropriate to determine whether fresh shrimp should be included in the same like product as the processed frozen shrimp products within the scope, as it was in prior Commission proceedings concerning this product.[37]

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[33] 78 Fed. Reg. 5416, 5420-21 (Jan. 25, 2013) (emphasis added).

[34] USITC Pub. 3748 at 13-14.

[35] See CR at I-13; PR at I-12; and Conf. Tr. at 70-72.

[36] The Commission may, when appropriate, include domestic articles in the domestic like product that are in addition to those described in the scope. See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); Certain Lined School Paper Supplies from China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final), USITC Pub. 3884 at 10-11(Sept. 2006); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Final), USITC Pub. 2536 at 62 (July 1992), aff'd Makita Corp. v. United States, 974 F. Supp. 770, 785 (CIT 1997) (affirming domestic like product definitions expanded beyond scope of professional tools to also include consumer electric cutting and sanding/grinding tools); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations in which Commerce found five classes or kinds); see also Cleo Inc. v. United States, 501 F.3d 1291, 1298, n.1 (Fed. Cir. 2007) ("Commerce's [scope] finding does not control the Commission's [like product] determination").

[37] In a semifinished product analysis, the Commission examines the following: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be (continued...)

Petitioner concedes that the facts on the record of the current investigations are the same as the facts in the prior proceedings. We agree that when the semifinished product analysis is applied to the record in these investigations, it supports the findings the Commission made in the 2004 antidumping duty investigations:[38]

- *Dedication for Use.* The vast majority of fresh warmwater shrimp undergoes further processing. Petitioner has estimated that 95 percent of fresh warmwater shrimp is dedicated for processing.[39]
- *Separate Markets*. There are separate markets for harvested (whether fresh or brine-frozen) shrimp and processed warmwater shrimp in the sense that vessels sell their catch to a dock house or processor, while processors sell shrimp to end users and distributors. However, fresh shrimp and shrimp frozen on the vessel are both sold at the dock.[40]
- *Differences in Physical Characteristics and Functions of the Upstream and Downstream Articles*. The processing of fresh and brine-frozen shrimp does not change the essential character or functions of the upstream article.[41]
- *Differences in Value*. Based on shrimp input costs for domestic processors provided in the petition, it is estimated that frozen processed shrimp has about a 20 to 25 percent higher value than fresh and brine-frozen shrimp.[42]
- *Extent of Processes Used to Transform Downstream Product into Upstream Product*. The basic processing needed to transform fresh shrimp to processed shrimp – freezing and deheading – can be and is performed directly on the vessel. Processors use a variety of cleaning, weighing, and sorting equipment, as well as blast freezers, to further process frozen, shell-on shrimp.[43]

Conclusion. Based on the record in these preliminary phase investigations and on application of the semifinished products like product analysis, we include fresh shrimp in the same domestic like product as frozen shrimp, whether frozen on board a vessel or further processed suitable for commercial use or sale. Fresh shrimp is overwhelmingly sold in a processed form, and the initial stages of processing do not significantly change the physical characteristics and uses of the product and appear to add at most moderate value to the product. Based on these factors, we define a single domestic like product

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[37] (...continued)
separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) the significance and extent of the processes used to transform the upstream into the downstream articles. E.g., Crystalline Silicon Photovoltaic Cells and Modules from China, Inv. Nos. 701-TA-481 and 731-TA-1190 (Preliminary), USITC Pub. 4295 at 10, n.47 (Dec. 2011); Drill Pipe and Drill Collars from China, Inv. Nos. 701-TA-474 and 731-TA-1176 (Preliminary), USITC Pub. 4127 at 7 (Mar. 2010) (involving green tubes and finished drill pipe); Live Swine from Canada, Inv. No. 731-TA-1076 (Final), USITC Pub. 3766 at 8, n.40 (Apr. 2005); Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Preliminary), USITC Pub. 3533 at 7 (Aug. 2002).

[38] See 2004 Preliminary Determinations, USITC Pub. 3672 at 14-15 (2004).

[39] AHSIC's Postconference Brief at 5, referring to Petitioner's January 15, 2012 Submission to Commerce and the USITC.

[40] See generally CR at I-13-14; PR at I-11-12.

[41] See generally CR at I-14-15; PR at I-12-13.

[42] AHSIC's Postconference Brief at 12, calculated from Petition at I-33 and I-45. In the 2004 preliminary antidumping duty determination, the Commission found that the price the processor receives for a processed frozen headless shell-on product is approximately 25 to 40 percent more than the price the vessel receives at the dock for the same size shrimp product. USITC Pub. 3672 at 15.

[43] See generally CR at I-13-14; PR at I-11-12.

encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope definition.

IV. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[44] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[45]

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). Subsection 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[46] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.[47]

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[44] 19 U.S.C. § 1677(4)(A).

[45] In the prior antidumping duty investigations and reviews, the Commission found that processing activities such as deheading, grading, machine peeling, deveining, and cooking were all sufficient activities to constitute domestic production because these operations typically each required specialized equipment and added more value to the process than any preceding stage. By contrast, the Commission found that marinating and skewering did not constitute domestic production because they involved no specialized equipment and added relatively modest value to the processed shrimp product. Finally, the Commission found that breading could not constitute domestic production activity because breaded shrimp was not part of the domestic like product in the prior antidumping duty investigations and reviews. Antidumping Duty Final Determinations, USITC Pub. 3748 at 12-13; 2011 Review Determinations, USITC Pub. 4221 at 8-9. The record does not indicate any change in the nature of shrimp processing since the time of the antidumping duty investigations and reviews. CR at I-14-16; PR at I-12-13. Petitioner agrees with the findings that the Commission made in the prior investigations and reviews, and Respondents have not addressed the issue. Conf. Tr. at 77. Thus, we make the same findings as we did in the prior antidumping duty investigations and reviews concerning what shrimp processing activities constitute domestic production. Based on these findings, we find that all responding firms engage in sufficient production-related activities to be considered domestic producers.

[46] 19 U.S.C. § 1677(4)(B).

[47] The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd mem., 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. These latter two considerations were cited as appropriate factors in Allied Mineral Products, Inc. v. United States, 28 CIT 1861, 1865 (2004) ("The most significant factor considered by the Commission in making the 'appropriate circumstances' determination is whether the domestic producer accrued a substantial benefit from its importation of the subject merchandise."); USEC, Inc. v. United States, 132 F. Supp. 2d 1, 12 (Ct. Int'l Trade 2001) ("the provision's purpose is to exclude from the industry headcount domestic producers substantially benefitting from their relationships with foreign exporters."), aff'd, 34 Fed. Appx. 725 (Fed. Cir. 2002); S. Rep. No. 249, 96th Cong. 1st Sess. at 83 (1979) ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United

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One U.S. processor, Tampa Bay Fisheries, imported frozen shrimp directly from subject countries during the period of investigation.[48] As such, it is a related party as defined by the statute.[49] We find that appropriate circumstances do not exist, however, to exclude Tampa Bay Fisheries from the domestic industry.[50]

Tampa Bay Fisheries is the *** responding domestic processor, accounting for *** of the domestic industry's shipments in 2011.[51] Its imports of subject merchandise were relatively *** as a share of its domestic production during the period of investigation. Tampa Bay Fisheries' domestic production *** in 2011.[52] Its imports of subject merchandise, which were primarily from China and Indonesia, *** in 2011.[53] Its annual ratios of subject imports to production *** in 2011.[54] Tampa Bay Fisheries stated at the staff conference that the domestic suppliers cannot provide the amount of shrimp that it needs or generally supply the peeled shrimp which is required by its customers.[55] Tampa Bay Fisheries *** the petitions.[56] Relative to the overall operating income margin for reporting domestic

[47] (...continued)
States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

[48] CR at III-10 and Table III-9; PR at III-9 and Table III-9. Tampa Bay Fisheries is a production company that, along with its sister companies, is part of one of the largest private-owned shrimp importing and processing groups in the United States. CR at III-10; PR at III-9.

[49] Fourteen other U.S. processors did not import subject merchandise directly, but did purchase such merchandise. CR/PR at Table III-9. The Commission has previously concluded that a purchaser may be treated as a related party if it controls large volumes of subject imports. The Commission has found such control to exist when the domestic producer was responsible for a predominant proportion of an importer's purchases and these purchases were substantial. See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 at 8-9 (Sept. 2001). Most of the processors that purchased subject merchandise did so in small amounts. Although total annual imports from subject sources were at least 894 million pounds during each year of the period of investigation, CR/PR at Table IV-2, only one of these 14 processors purchased as much as two million pounds of imports in a calendar year. *** purchased *** in 2009 and 2010, but only *** in 2011. CR at Table III-9. The record consequently indicates that neither *** nor any of the other 13 processors is responsible for a predominant portion of any importer's purchases. Accordingly, we find that none of the processors that purchased subject merchandise warrants treatment as a related party.

[50] No party has addressed the related party issue.

[51] CR/PR at Table III-2.

[52] CR/PR at Table III-9.

[53] CR/PR at Tables III-9 and IV-1. Tampa Bay Fisheries also purchased subject imports throughout the period: *** in interim 2012. CR/PR at Table III-9. Its purchases in 2011 represented about *** of total subject imports in that year. CR/PR at Tables III-9 and IV-2.

[54] CR/PR at Table III-9.

[55] CR/PR at Table III-9 n.4, and Conf. Tr. at 115-116.

[56] CR/PR at Table III-2.

processors during the period of investigation, Tampa Bay's operating margin was ***.[57] [58] [59] In view of the foregoing, specifically its relatively small and declining ratio of subject imports to production, which indicates its principal interest lies in domestic production, and the fact that no party has argued for its exclusion from the domestic industry, we find that appropriate circumstances do not exist to exclude Tampa Bay Fisheries as a related party for purposes of the preliminary phase of the investigations.

Accordingly, in light of the definition of the domestic like product and the foregoing analysis, we define a single domestic industry encompassing all warmwater shrimp fishermen and processors of warmwater shrimp.[60]

V. CUMULATION[61]

For purposes of evaluating the volume and effects for a determination of whether there is a reasonable indication of material injury by reason of subject imports, section 771(7)(G)(i) of the Tariff Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.[62] In assessing whether subject imports

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[57] USITC auditor notes (preliminary phase), attachment A (processors included in financial results).

[58] Consistent with her practice in past investigations and reviews, Commissioner Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

[59] For purposes of the preliminary phase of these investigations, Commissioner Pinkert does not rely upon any related producer's financial performance in determining whether there are appropriate circumstances to exclude it from the domestic industry. In his view, the present record is not sufficient to link the producer's profitability on its U.S. operations to any specific benefit it derives from its related party status.

[60] While there is limited U.S. farm production and no U.S. shrimp farming entities responded to the Commission's questionnaire, U.S. shrimp farm producers would also be included in the domestic industry. During the period of investigation, farm-raised shrimp production accounted for 1.0 percent to 1.6 percent of domestic production. Calculated from CR/PR at Table IV-4 (revised).

[61] Negligibility under 19 U.S.C. § 1677(24) is not an issue in these investigations. The official import statistics indicate that subject imports as a share of the volume of all such merchandise imported into the United States exceed the requisite statutory negligibility thresholds. CR/PR at Table IV-3. In the case of countervailing duty investigations involving developing countries (as designated by the U.S. Trade Representative), the statute indicates that the negligibility limits are 4 percent and 9 percent, rather than 3 percent and 7 percent applicable to other imports. 19 U.S.C. § 1677 (24)(B). Ecuador, Malaysia and Thailand have been designated as developing countries, and India and Indonesia have been designated as least developed countries by the U.S. Trade Representative. Thus, imports from these five subject countries are subject to the 4 percent and 9 percent negligibility limits in these investigations. 15 C.F.R. § 2013.1 (regarding negligible import standards for definition of "Developing Country" under 19 U.S.C. § 1677(36)(A) and definition of "Least Developed Country" under 19 U.S.C. § 1677(36)(B)).

For the 12-month period of December 2011 to November 2012, imports from China and Vietnam (governed by the 3 percent statutory negligible standard) accounted for 3.2 percent and 8.3 percent, respectively, of total imports of frozen shrimp, as measured by quantity. CR/PR at Table IV-3. For the 12-month period of December 2011 to November 2012, imports from Ecuador, India, Indonesia, Malaysia, and Thailand (governed by the 4 percent statutory negligible standard) accounted for 15.7 percent, 13.2 percent 15.2 percent, 4.4 percent, and 27.2 percent, respectively, of total imports of frozen shrimp, as measured by quantity. CR/PR at Table IV-3. We therefore conclude that subject imports from all seven countries are not negligible.

[62] 19 U.S.C. § 1677(7)(G)(i).

compete with each other and with the domestic like product, the Commission generally has considered four factors:

> (1) the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions;
> (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
> (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
> (4) whether the subject imports are simultaneously present in the market.[63]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[64] Only a "reasonable overlap" of competition is required.[65]

Petitioner contends that each of the four factors supports cumulation of imports from the seven countries subject to these investigations.[66] Respondents do not contest (and with the exception of the Ecuador Respondent do not address) the issue of cumulation.[67]

The threshold requirement for cumulation is satisfied because Petitioner filed the countervailing duty petitions with respect to all seven countries on the same day, December 28, 2012.[68] In addition, none of the statutory exceptions to cumulation applies. As discussed below, we find a reasonable overlap of competition among subject imports from all seven countries and between subject imports from each source and the domestic like product.[69]

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[63] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[64] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[65] The Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994) ("SAA") expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." H.R. Doc. No. 103-316, Vol. I at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd, 859 F.2d 915 (Fed. Cir. 1988); see Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[66] Petitioner's Postconference Brief at 10-13.

[67] The Ecuador Respondent indicates that for purposes of this preliminary phase only, it "does not oppose cumulation. However, the Chamber reserves its right to contest cumulation of Ecuadorian imports in the final phase if the Commerce Department finds countervailable subsidy margins (which we strongly doubt will happen)." Ecuador Respondent's Postconference Brief at 7. In addition, the Rubicon Group does not mention cumulation for purposes of the Commission's present material injury analysis, but explicitly assumes cumulation for purposes of the Commission's threat analysis in alleging that "[c]umulated subject imports do not threaten the domestic industry with material injury." Rubicon Group's Postconference Brief at 21.

[68] CR/PR at I-1; see 19 U.S.C. § 1677(7)(G)(i).

[69] In the original antidumping duty investigations and subsequent five-year reviews involving subject imports from four of the subject countries in these countervailing duty investigations (China, India, Thailand and Vietnam), the Commission found a reasonable overlap of competition; the original investigations also included subject imports from Ecuador. Specifically, the Commission found clear overlaps in channels of distribution and geographic

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Fungibility. The record in these investigations indicates that there is a moderate degree of substitutability between U.S.-produced frozen shrimp and that imported from subject countries.[70] Most responding domestic processors reported that subject imports from all subject countries are "always" or "frequently" used interchangeably with each other and with the domestic like product.[71] While most responding importers reported that subject imports are "sometimes" or "frequently" used interchangeably with each other and with the domestic like product, there also were a number of importers reporting the subject imports and U.S. product are "never" interchangeable.[72] Factors cited as limiting interchangeability include differences between wild-caught and farm-raised shrimp; species of shrimp; size, flavor and texture of shrimp; type of processing; country of origin; and other factors.[73] When asked whether differences other than price are ever significant to purchasers in choosing between shrimp from subject countries and from the United States, a plurality of responding domestic processors reported "never."[74] Responding importers were divided on the question, with a plurality reporting that differences other than price are "always" significant between the U.S. product and subject sources, but only "sometimes" between subject sources.[75]

Geographic Overlap. Both U.S. producers and importers reported selling frozen shrimp to all regions in the contiguous United States during the period of investigation.[76] Thus, frozen shrimp from all sources served a nationwide market.

Channels of Distribution. Both the domestic like product and the subject imports are sold to distributors, end users, and retail/institutional customers such as grocers and restaurants. While the majority of domestically produced product and subject imports from China is sold to distributors and the majority of subject imports from the other six countries is sold to retail/institutional customers, the share to each channel of distribution has varied between countries and changed over the period of investigation.[77]

Simultaneous presence. During the period of investigation, subject imports from all seven countries entered the United States in every month and the domestic industry reported selling in every quarter.[78] Therefore, frozen shrimp from all sources was simultaneously present in the U.S. market during the period of investigation.

For the foregoing reasons, we cumulate subject imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam for purposes of our analysis of whether there is a reasonable indication of material injury to the domestic industry by reason of subject imports.

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[69] (...continued)
presence and a general perception among market participants of at least some degree of interchangeability between the domestic like product and the subject imports. Antidumping Duty Final Determinations, USITC Pub. 3748 at 19-21; 2011 Review Determinations, USITC Pub. 4221 at 15 and 16.

[70] CR at II-14; PR at II-11.

[71] CR/PR at Table II-6.

[72] CR/PR at Table II-6.

[73] CR at II-17; PR at II-14.

[74] CR/PR at Table II-7.

[75] CR/PR at Table II-7.

[76] CR at II-3 and Table II-2; PR at II-3 and Table II-2.

[77] CR/PR at Table II-1.

[78] CR at IV-8-9; PR at IV-8; CR/PR at Tables V-1 to V-4.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Legal Standard

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[79] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[80] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[81] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[82] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[83]

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is "materially injured by reason of" unfairly traded imports,[84] it does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[85] In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.[86]

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or

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[79] 19 U.S.C. §§ 1671b(a), 1673b(a).

[80] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each {such} factor ... {a}nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[81] 19 U.S.C. § 1677(7)(A).

[82] 19 U.S.C. § 1677(7)(C)(iii).

[83] 19 U.S.C. § 1677(7)(C)(iii).

[84] 19 U.S.C. §§ 1671b(a), 1673b(a).

[85] Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("{T}he statute does not 'compel the commissioners' to employ {a particular methodology}."), aff'g 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

[86] The United States Court of Appeals for the Federal Circuit (" Federal Circuit"), in addressing the causation standard of the statute, observed that "{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement." Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that "this court requires evidence in the record 'to show that the harm occurred "by reason of" the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.'" See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.[87] In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.[88] Nor does the "by reason of" standard require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.[89] It is clear that the existence of injury caused by other factors does not compel a negative determination.[90]

Assessment of whether material injury to the domestic industry is "by reason of" subject imports "does not require the Commission to address the causation issue in any particular way," as long as "the injury to the domestic industry can reasonably be attributed to the subject imports" and the Commission "ensure{s} that it is not attributing injury from other sources to the subject imports."[91] [92] Indeed, the

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[87] SAA at 851-52 (1994) ("{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry"); accord Mittal Steel, 542 F.3d at 877.

[88] SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); Taiwan Semiconductor Industry Ass'n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

[89] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

[90] See Nippon Steel Corp., 345 F.3d at 1381 ("an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the 'dumping' need not be the sole or principal cause of injury.").

[91] Mittal Steel, 542 F.3d at 877-78; see also id. at 873 ("While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured 'by reason of' subject imports, the Commission is not required to follow a single methodology for making that determination ... . {and has} broad discretion with respect to its choice of methodology.") citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

[92] Commissioner Pinkert does not join this paragraph or the following three paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal Steel, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject

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Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."[93]

The Federal Circuit's decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant "other factor" was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit's guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.[94] The additional "replacement/benefit" test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission's interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have "evidence in the record 'to show that the harm occurred 'by reason of' the LTFV imports,'" and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.[95] Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[96]

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[92] (...continued)
imports, albeit without reliance on presumptions or rigid formulas. Mittal Steel explains as follows:

> What Bratsk held is that "where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market," the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

[93] Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 ("Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was 'by reason' of subject imports.").

[94] Mittal Steel, 542 F.3d at 875-79.

[95] Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission's alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

[96] Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of cumulated subject imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam.

1. Demand Conditions

Apparent U.S. consumption of warmwater shrimp fluctuated within a relatively narrow range during the period of investigation. Apparent U.S. consumption was 1.28 billion pounds in 2009, declined to 1.25 billion pounds in 2010, and increased to 1.30 billion pounds in 2011.[97] Apparent U.S. consumption of *** during January-August 2012 was less than the 776 million pounds during January-August 2011.[98]

As was the case in the prior investigations and reviews, warmwater shrimp continues to be used principally in meal preparations. Demand for the product comes from retail sellers of both prepared and unprepared warmwater shrimp, such as grocers and restaurants.[99] The market tendency is for large shrimp (less than 36 per pound, heads-off, shell-on basis) to be sold raw and frozen to restaurants, hotels, and other food institutions; for small to medium shrimp (36-60 per pound) to be breaded, canned or sold at retail (e.g., supermarkets); and for extra small (61 to 70 per pound) and tiny shrimp (more than 70 per pound) to be used by canners, dryers, and producers of specialty products.[100] Between 2009 and 2011, U.S. consumption of shrimp per capita ranged from 4.0 pounds to 4.2 pounds.[101]

Domestic processors' and U.S. importers' perceptions of changes in U.S. demand during the period of investigation were mixed.[102] As previously stated, apparent U.S. consumption fluctuated from year to year, but was basically stable from 2009 to 2011. Firms reported that the demand for frozen shrimp declined because of the recession and the April 20, 2010 "Deepwater Horizon" incident in the Gulf of Mexico (the "Gulf Oil Spill"),[103] while increased demand was driven by the reported health benefits of eating seafood/shrimp (a low-fat food).[104]

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[97] CR/PR at Table IV-5 (revised).

[98] CR/PR at Table IV-5 (revised). Because NOAA Fisheries Service data on domestic shipments are available only through August 2012, partial year data on apparent U.S. consumption and market share have been calculated on a January-August basis. See CR/PR at Tables IV-4 and IV-5, as revised in INV-LL-014 (Feb. 5, 2013). By contrast, interim period data collected in the Commission questionnaires are reported on a January-September basis.

[99] CR at II-11; PR at II-9. In the prior antidumping duty investigations, it was estimated that 80 percent of shrimp in the U.S. market are bought by restaurants. CR at I-13; PR at I-11.

[100] CR at I-12; PR at I-11.

[101] CR at I-12; PR at I-11.

[102] CR/PR at Table II-4; Petitioner's Postconference Brief at 14-16; Ecuador Respondents' Postconference Brief at 9, 10, 18 and Exhibit 5; Rubicon Group's Postconference Brief at 10-11.

[103] Respondents argue that demand for domestic shrimp continues to be affected by oil-spill related concerns. See, e.g., Indonesian Respondents' Postconference Brief at 28-30.

[104] CR at II-12; PR at II-9.

2. Supply Conditions

Domestically produced shrimp is overwhelmingly wild-caught (ocean-harvested).[105] Harvesting takes place in the waters of the Gulf of Mexico and off the Atlantic Coast from the Carolinas to Florida.[106] In the United States, the main fishing season is from May to December, with different times of the year better for different species of shrimp.[107] During the off season (roughly January through April), fishermen make repairs and upgrades, and U.S. processors make sales from inventory. Historically, prices have been higher when the supply of both fresh and frozen shrimp is lower, such as in the off season.[108] Phenomena that affect the waters in which shrimp is harvested and in the coastal areas where fishing boats are docked and processing plants are located will also affect the supply of the domestic like product. Processors reported that hurricanes and other weather-related problems, pollution-caused diseases, and "black gill" disease affected the shrimp harvest and consequently the supply of frozen shrimp.[109] Additionally, areas in the Gulf were closed to fishing for various periods of time in 2010 because of the Gulf Oil Spill; most U.S. processors said the spill both reduced supply and undermined demand, while British Petroleum ("BP")'s willingness to pay for losses and its hiring of boats for the clean-up effort reduced the number of boats engaged in shrimping.[110]

Petitioner acknowledges that the domestic industry cannot harvest sufficient shrimp to satisfy U.S. demand.[111] Indeed, during the period of investigation, the domestic industry supplied between 9.6 percent and 12.5 percent of apparent U.S. consumption on an annual basis.[112] That is substantially less than the share supplied by subject imports and slightly less than the share supplied by nonsubject imports.[113]

Shrimp imported from subject sources is generally farm-raised; shrimp of many different species can be farmed, and shrimp farms generally are designed principally to produce shrimp for export.[114]

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[105] CR at II-1 and II-8; PR at II-1 and II-6.

[106] CR/PR at II-3.

[107] CR at II-5; PR at II-4.

[108] CR at II-5-6; PR at II-4-5.

[109] CR at II-8; PR at II-6.

[110] CR at II-8; PR at II-6. In the prior antidumping duty reviews, there was evidence that in June 2010, as much as 36.6 percent of the Gulf of Mexico was closed to fishing due to the Gulf Oil Spill, with the closures encompassing only 0.4 percent of the Gulf by November 2010. USITC Pub. 4221 at II-5, n.10. During this period, a large percentage of the Gulf shrimping fleet received payments from BP either for assistance in the Gulf clean-up or as compensation for damages. Because boats used in the clean-up effort were not shrimping, supply was lower but prices were higher for domestically harvested shrimp. Id. at II-5, n.12.

[111] Petitioner's Postconference Brief at 18-19. As the Commission previously has noted, "there is no short supply provision in the statute" and "the fact that the domestic industry may not be able to supply all of demand does not mean the industry may not be materially injured or threatened with material injury by reason of subject imports." Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 108, n.310 (Dec. 2003); see also Small Diameter Graphite Electrodes from China, Inv. No. 731-TA-1143 (Final), USITC Pub. 4062 at 22-23 (Feb. 2009); Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Final), USITC Pub. 3984 at 27 n.109 (Mar. 2008).

[112] CR/PR at Table IV-5 (revised).

[113] CR/PR at Table IV-5 (revised).

[114] CR at II-8; PR at II-6. Imports of shrimp from nonsubject sources are available both as farmed and wild-caught; Mexico, the largest nonsubject source of imports, provides wild-caught shrimp with the same seasonal supply period as U.S. product. Id. at II-11; PR at II-8-9.

Respondents describe the subject imports as having year-round availability, although some reported seasonality in particular sizes or species.[115]

Subject imports supplied the majority of apparent U.S. consumption and an increasing share of consumption during the period of investigation, ranging from 70.0 percent to 76.6 percent of the U.S. market on an annual basis.[116] Imports from four of the subject countries (China, India, Thailand, and Vietnam) were covered by antidumping duty orders during the period of investigation.[117]

Nonsubject sources supplied a declining share of the U.S. market, with their share declining from 17.5 percent in 2009 to 13.8 percent in 2010 and 13.5 percent in 2011; they were 11.7 percent of the market in January-August 2011 and *** percent in January-August 2012.[118] The largest sources of nonsubject imports during January 2009-September 2012 were Mexico, Honduras, Peru, and Guyana; these countries collectively accounted for 61.7 percent of nonsubject imports during that period.[119]

3. Substitutability[120]

The parties have expressed divergent views on the substitutability of the domestic like product and the subject imports, with Petitioner arguing that the products are at least moderately substitutable[121] and Respondents arguing that any competition between the domestic like product and the subject imports is attenuated.[122] As noted in the discussion of cumulation, U.S. processors and importers provided

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[115] CR at II-6 and n.9; PR at II-5 and n.9.

[116] CR/PR at Table IV-5 (revised).

[117] The antidumping duty orders covering imports from Ecuador were revoked with respect to all producers on August 15, 2007. 72 Fed. Reg. 48257 (Aug. 23, 2007). The order on subject imports from India was revoked with respect to producer Devi effective February 1, 2009. 75 Fed. Reg. 41813 (July 19, 2010). The order on subject imports from Thailand was revoked with respect to multiple producers effective January 16, 2009. See 75 Fed. Reg. 27299, 27300 (May 14, 2010). The United States also maintains an antidumping duty order on imports of frozen warmwater shrimp from Brazil, CR at I-4; PR at I-3, but imports from Brazil are not subject to these countervailing duty investigations.

[118] CR/PR at Table IV-5 (revised).

[119] CR at II-11; PR at II-9.

[120] Commissioner Pearson does not join this section of these Views. See Dissenting Views of Commissioner Daniel R. Pearson.

[121] Petitioner's Postconference Brief at 20-26. Petitioner contends that imported and domestic product compete across the market; for the same major purchasers, in retail, food service, and distribution; and across product forms, sizes, and types. In particular, it counters Respondents' argument about sizing and product quality, long-term contracts, military purchases of domestic shrimp, availability from domestic processors of certain types of value-added product (e.g., peeled and deveined, tail-on), and traceability from the point of harvest to consumption. Petitioner claims that the Commission has previously found that any differences that may exist between wild-caught and farmed shrimp do not significantly limit substitutability and that changes in price of one type (farmed or wild-caught) always or usually affect prices of the other type.

[122] Ecuador Respondents' Postconference Brief at 11-13; Indian Respondents' Postconference Brief at 5-6; Indonesian Respondents' Brief at 7-15; Thai Respondents' Postconference Brief at 5-10; Rubicon Group's Postconference Brief at 4-10. Respondents argue that the domestic wild-caught shrimp and the imported farm-raised shrimp are interchangeable only in the broadest sense, i.e., both forms can be cooked and eaten with little difference noted in the taste by the average consumer, and that domestic wild-caught shrimp is not a substitute for the vast majority of buyers. Thus, they argue competition between domestic and imported shrimp is attenuated for a wide variety of reasons, including differences between wild-caught and farm-raised shrimp; species of shrimp; size, flavor and texture of shrimp; degree of processing; country of origin; year-round vs. seasonal availability; contract vs. spot sales; ability to supply large volumes; individually quick frozen (IQF) vs. block-frozen forms; and other factors.

(continued...)

different general assessments of interchangeability, with U.S. processors overwhelmingly reporting that the domestic like product and imports from each subject country were always or frequently interchangeable, and most responding importers reporting that the domestic like product and imports from each subject country were sometimes or frequently interchangeable.[123]

One distinction between the domestic like product and the subject imports is that the domestic like product is overwhelmingly wild-caught, while the subject imports are predominantly farm-raised. However, the record does not indicate that this distinction, taken alone, significantly limits substitutability between the domestic like product and the subject imports.[124] The record in these investigations also does not indicate clear distinctions in the markets or customers served by the domestic like product and the subject imports. Both the domestic like product and the subject imports are available in every region of the country and through the same channels of distribution.[125]

The record indicates that the domestic industry supplies all major product forms. Although a large proportion of domestic production is block-frozen product, the domestic industry has the capacity to produce appreciable quantities of IQF product.[126] The domestic industry also offers products in all possible size ranges. Similarly, the record does not indicate any major product form that the subject imports do not supply.[127]

We find that differences in product mix and availability among the subject imports and the domestic like product limit to some extent the substitutability of warmwater shrimp from different sources. Nevertheless, we do not perceive significant differences in availability or product range among the domestically produced and subject products. While the record in these investigations supports finding that the products are at least moderate substitutes and that they compete for sales in the U.S. market, we will seek more information in any final phase investigations, including purchaser responses to

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[122] (...continued)
Rubicon Group's Postconference Brief at 4; Thai Respondents' Postconference Brief at 6-8; CR at II-17; PR at II-14.

[123] CR/PR at Table II-6. In any final phase investigations, the Commission will collect information from purchasers of frozen shrimp, who may purchase both the subject and domestic products and thus have first-hand experience with the products, concerning whether the products have the same end uses. For these preliminary investigations, we also have considered information provided by purchasers in the 2011 antidumping duty five-year reviews for some guidance about purchasers' experiences regarding the substitutability of domestically produced wild-caught shrimp and imported farmed-raised shrimp. In those reviews, a majority of purchasers reported that the domestic like product and the imports from each country subject to the 2011 reviews were always or frequently interchangeable. USITC Pub. 4221 at Table II-12.

[124] In the 2011 antidumping duty reviews, the evidence showed that a majority of reporting purchasers purchased wild-caught and farm-raised shrimp for the same end uses, and three times as many purchasers indicated that the two types of shrimp were purchased for the same end uses as reported that they were not. USITC Pub. 4221 at Table II-17.

[125] CR/PR at Tables II-1 and II-2. The evidence demonstrates that the subject imports have a larger presence in some channels of distribution, particularly those involving end users and retail buyers, than does the domestic product. CR/PR at Table II-1. To a large extent, this may be a function of subject imports accounting overall for a much larger share of apparent U.S. consumption than domestic production. As explained in section V. above, both the subject imports and the domestic like product are available in all channels of distribution. Moreover, it is undisputed that both the subject imports and the domestic like product participate in sales to distributors. In the 2011 antidumping duty reviews, the evidence showed that each of the five leading purchasers (which together represented more than 87 percent of reported purchases) purchased both the domestic like product and at least some imports from the countries subject to those reviews, and four purchased the domestic like product and imports from multiple subject countries. USITC Pub. 4221 at II-16.

[126] CR/PR at Table III-6.

[127] See, e.g., USITC Pub. 4221 at II-31-33; Petitioner's Postconference Brief, Question 7 at 1 and Exhibit 23.

Commission questionnaires, regarding the competition between subject imports and the domestic like product.

4. Other Conditions of Competition

Most U.S. processors and importers reported selling the majority of warmwater shrimp in the spot market.[128] Both U.S. processors and importers entered into short-term contracts of three to six months duration.[129] Respondents contend that only importers are able to compete for sales to large restaurant chains and other customers that plan and advertise menu promotions far in advance because domestic producers are not able to guarantee that they can supply large enough quantities of shrimp meeting purchasers' precise specifications far in advance of delivery.[130]

U.S. processors reported that fuel is the most important cost for fishermen.[131] High fuel costs can serve as a disincentive to fishermen to take their boats out to harvest shrimp.[132] Diesel prices in the Gulf Coast region nearly doubled from January 2009 to May 2011, but have not increased markedly through September 2012.[133]

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[134]

The cumulated volume of subject imports was already large at the beginning of the period of investigation, then increased steadily between 2009 and 2011. The cumulated volume of subject imports rose from 893.7 million pounds in 2009 to 956.8 million pounds in 2010, then to 984.2 million pounds in 2011. The volume was slightly lower in interim 2012 than in interim 2011.[135] Subject import market share rose from 70.0 percent in 2009 to 76.6 percent in 2010 and then declined slightly to 76.0 percent in 2011; it was 76.6 percent in January-August 2011 and *** in January-August 2012.[136] While apparent

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[128] CR/PR at V-2 n.3. Thirty-five of 41 responding U.S. processors and 24 of 43 responding importers reported selling the majority of warmwater shrimp in the spot market; 24 processors and 15 importers sold all of their product on a spot basis. Id.

[129] CR/PR at V-2. Only importers reported providing long-term contracts for one to three years. Id.

[130] CR/PR at V-2.

[131] CR/PR at V-1; Conf. Tr. at 39 ("Fishermen in turn need to be able to cover their cost of production, the most significant of which is fuel.").

[132] CR/PR at II-3, II-4, and V-1; Conf. Tr. at 39 ("When we can't pay enough to cover the fisherman's cost, they either have to tie up their boats or leave the fishing life altogether.").

[133] CR/PR at Figure V-1.

[134] 19 U.S.C. § 1677(7)(C)(i).

[135] CR/PR at Table IV-4 (revised). Subject imports totaled 594.8 million pounds in January-August 2011 and 574.2 million pounds in January-August 2012. CR/PR at Table IV-4 (revised). We note that official Commerce import data are available for the January-September interim periods. However, because the NOAA Fisheries Service data used for U.S. shipments in the calculation of U.S. market share are only available for the January-August interim periods, we are discussing the January-August interim period data here. The cumulated volume of subject imports for the January-September interim period shows the same trend as the January-August interim data. See CR/PR at Table IV-2.

[136] CR/PR at Table IV-5 (revised).

U.S. consumption was relatively flat and U.S. shipments declined overall between 2009 and 2011,[137] the domestic industry lost market share[138] and subject imports experienced significant gains.[139]

For purposes of these preliminary determinations, we find that the cumulated volume of subject imports, and the increase in that volume, is significant both in absolute terms and relative to consumption and production in the United States.

D. Price Effects of the Subject Imports

> Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[140]

The record in these preliminary phase investigations indicates that subject imports and domestically produced frozen shrimp are at least moderately substitutable and that price is at least a moderately important factor in purchasing decisions.[141]

The Commission collected quarterly pricing data on four warmwater shrimp products.[142] Thirty U.S. producers and 40 importers provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters. Pricing data reported by these firms accounted for *** percent of U.S. producers' shipments of frozen shrimp and 0.4 percent of U.S. shipments of imports from China, 5.2 percent of imports from Ecuador, 2.2. percent of imports from India, 4.5 percent of imports from Indonesia, 15.4 percent of imports from Malaysia, 3.1 percent of imports from Thailand, and 3.1 percent of imports from Vietnam during the period of investigation.[143]

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[137] Apparent U.S. consumption fluctuated annually and increased overall from 1.28 billion pounds in 2009 to 1.30 billion pounds in 2011. CR/PR at Table IV-4 (revised). Converted U.S. shipments declined from 159.4 million pounds in 2009 to 120.0 million pounds in 2010, and then increased to 136.6 million pounds in 2011. Id. (Converted U.S. shipments are U.S. production converted to pounds of headless shell-on weight using a conversion factor of 0.629. Id. at n.3.).

[138] The domestic industry's market share, as measured by quantity, fell from 12.5 percent in 2009 to 9.6 percent in 2010, then rose slightly to 10.5 percent in 2011. It was 11.7 percent in January-August 2011 and *** in January-August 2012. CR/PR at Table IV-5 (revised)

[139] The ratio of subject imports to converted U.S. production fluctuated annually but increased significantly between 2009 and 2011. It was 560.7 percent in 2009, 797.3 percent in 2010 and 720.6 percent in 2011. CR/PR at Table IV-6.

[140] 19 U.S.C. § 1677(7)(C)(ii).

[141] In the 2011 antidumping duty reviews, purchasers reported that price played a major role in purchasing decisions – of 33 responding purchasers, 27 reported price as a very important purchasing consideration. USITC Pub. 4221 at Table II-10. Moreover, purchasers most commonly listed price as the number two factor in purchasing decisions. Id. at Table II-9. Although a large majority of purchasers named quality as the number one factor in purchasing decisions, the domestic like product was at least as likely as the subject imports to satisfy purchasers' quality requirements. Id. at Table II-11.

[142] Three of these are block-frozen products, each of different sizes (10-15 count, 41-50 count, and 71-90 count). The fourth product was an IQF product (26-30 count). There also were differences for each product regarding the extent of processing (e.g., headless, shell-on product; peeled and deveined, tail off). CR at V-3; PR at V-2-3.

[143] CR at V-3 and V-4; PR at V-3.

The pricing data show that the subject imports undersold the domestic like product in 138 instances, or 39.4 percent of total comparisons, and oversold the domestic like product in 212 instances.[144] The margins of underselling ranged from 0.4 percent to 31.0 percent, and the average margin of underselling was 12.6 percent.[145]

We recognize that imports from four of the subject countries (China, India, Thailand and Vietnam) are covered by antidumping duty orders, which appear to have had disciplining effects on prices for these subject imports during the period of investigation.[146] For this reason, we place less weight on the price comparison data for purposes of these preliminary determinations. We also note the fairly limited pricing product coverage, particularly of domestically produced frozen shrimp.[147] In any final phase investigations, we invite the parties in their comments on our draft questionnaires to suggest pricing products that are likely to provide greater coverage of their sales in the U.S. market so that we may get a clearer impression of how and the extent to which products from different sources compete in the U.S. market.

Prices for the domestic like product and the subject imports fluctuated within a fairly narrow range, showing some increases but no discernible trend throughout the 15 quarters for which data were collected.[148] Thus, we do not find evidence of significant price depression. The pricing data do, however, show some indication that prices for the domestic like product and the subject imports moved in concert, and that price changes for the subject imports affected prices for the domestic like product.[149] Moreover, we find some evidence that subject imports have had price suppressing effects during the period. Over the period of investigation, the domestic industry's ratio of cost of goods sold ("COGS") to net sales was high and increased each year.[150] Increases in annual net sales revenue were not enough to cover increases in costs, suggesting that the domestic industry was experiencing a cost/price squeeze.[151] [152]

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[144] CR/PR at Table V-6.

[145] CR/PR at Table V-6.

[146] CR/PR at I-3 and I-4.

[147] The reported pricing data, particularly reported domestic pricing data, are also at variance with pricing data published by Urner-Barry, a monitoring service. See Petitioner's Postconference Brief at 33-38; Petition at Exhibit I-20; Ecuador Respondent's Postconference Brief at Exhibits 10 and 11. We recognize, however, that the Urner-Barry pricing data are regional (i.e., U.S. product prices are compared with farm-raised Asian product prices) and are not limited to the specific subject countries.

[148] CR at V-17; PR at V-12. Prices for product 1 fluctuated, with declines overall in U.S. prices and increases in prices for most subject imports. For product 2, U.S. prices fluctuated and prices for most subject imports fell within the range of U.S. prices. For product 3, U.S. prices rose in 2010, peaked in 2011 and then declined while prices for most subject imports were higher than U.S. prices but followed a similar pattern to U.S. prices. For product 4, U.S. prices increased and there appeared to be large amount of variation in the prices for most subject imports.

[149] As evident in Figure V-3, prices for product 2 for all sources, except subject imports from Vietnam moved in concert within a very narrow range throughout the period of investigation. Prices for products 1, 3 and 4, as shown in Figures V-2, V-4, and V-5, also fluctuated within a fairly narrow range.

[150] The ratio of COGS to net sales increased from 91.0 percent in 2009 to 92.5 percent in 2010 and 93.0 percent in 2011. The ratio of COGS to net sales was 92.6 percent in interim 2011 and 93.4 percent in interim 2012. CR/PR at Table VI-1.

[151] CR/PR at Table VI-1. Unit net sales values were $3.07 in 2009, $3.64 in 2010, $3.76 in 2011, $3.71 in interim 2011, and $3.84 in interim 2012. Unit COGS values were $2.79 in 2009, $3.37 in 2010, $3.49 in 2011, $3.44 in interim 2011, and $3.59 in interim 2012. Id.

[152] The Commission staff was unable to confirm any of the alleged lost sales during the preliminary phase of these investigations. CR at V-21; PR at V-16.

Accordingly, based on the record in the preliminary phase of these investigations, we find some evidence that the substantial and increasing volume of subject imports have prevented price increases which otherwise would have occurred to a significant degree.

E. Impact of the Subject Imports

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[153] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[154]

As was true in the prior investigations and reviews, the domestic industry has two primary segments – fishermen and processors.[155] We will examine the data pertaining to industry performance separately for each segment, as the Commission has done in the past.[156]

Public data indicate that fishermen's wild-catch landings fluctuated during the period of investigation. Landings declined from 261.8 million pounds in 2009 to 199.0 million pounds in 2010, and then increased to 234.2 million pounds in 2011.[157] Wild-catch landings were considerably lower in 2010, when the Gulf Oil Spill limited shrimp fishing, than in 2009 or 2011. The responding fishermen reported fluctuations between years but an overall increase in warmwater shrimp harvested; they reported harvesting 9.1 million pounds of warmwater shrimp in 2009, 7.1 million pounds in 2010, 9.3 million pounds in 2011, 6.7 million pounds in interim (January-September) 2011, and 5.5 million pounds in interim 2012.[158] The responding fishermen reported that the number of production and related workers (PRWs) increased from 225 to 233 from 2009 to 2011; there were 233 PRWs in both interim 2011 and interim 2012.[159] Hours worked, wages paid, and boat days at sea increased each year, but were lower in interim 2012 than in interim 2011.[160]

The financial results of responding fishermen also fluctuated during the period of investigation. The responding fishermen's ratio of operating expenses to net sales was relatively high, even though it

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[153] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

[154] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[155] Shrimp aquaculture in the United States peaked in 2003 at about 4.5 percent of production. CR at I-12, n.14; PR at I-10, n.14. During the period of investigation, farmed shrimp production accounted for 1.0 percent to 1.6 percent of domestic production. Calculated from CR/PR at Table IV-4 (revised).

[156] In the short time frame of these preliminary phase investigations, the Commission received timely questionnaire responses from a relatively small share of the shrimp fishermen, which may limit the representativeness of the data. For these reasons, we place less weight on data regarding the fishermen segment of the domestic industry. In any final investigations, the Commission will seek more coverage of the fishermen segment of the domestic industry.

[157] CR/PR at Table IV-4 (revised).

[158] CR/PR at Table E-3. Interim period data discussed in this section for all indicators except share of apparent U.S. consumption are calculated on a January-September basis.

[159] CR/PR at Table E-3.

[160] CR/PR at Table E-3.

declined each year from 98.3 percent in 2009 to 93.6 percent in 2011.[161] Fishermen reported operating income as a ratio to net sales of 1.7 percent in 2009, 5.7 percent in 2010, and 6.4 percent in 2011. In interim 2012, when responding fishermen had lower sales quantities than in interim 2011 but higher average unit values ("AUVs") than in any full year, they reported an operating income ratio of 4.4 percent, which was below the 10.3 percent ratio in interim 2011.[162] We observe that, because of non-operating income received from sources such as distributions pursuant to the Continued Dumping and Subsidies Offset Act of 2000 (CDSOA) and, in 2010 and 2011, Gulf Oil Spill compensation, responding fishermen reported positive net income for every period in the period of investigation.

Processors' production exhibited the same trends as wild-catch landings. Production decreased from 222.2 million pounds in 2009 to 181.3 million pounds in 2010, and then increased to 198.0 million pounds in 2011.[163] Production was lower in interim 2012, at 144.0 million pounds, than in interim 2011, at 151.7 million pounds.[164] Processors' capacity rose during each year of the period of investigation, increasing from 658.6 million pounds in 2009 to 704.9 million pounds in 2011; capacity was 506.7 million pounds in interim 2011 and 522.9 million pounds in interim 2012.[165] Capacity utilization fluctuated, decreasing from 32.9 percent in 2009 to 25.6 percent in 2010, then increasing to 27.4 percent in 2011. The 26.9 percent capacity utilization rate in interim 2012 was lower than the 29.2 percent rate in interim 2011.[166]

Processors' U.S. shipments showed the same trends as production, decreasing from *** in 2009 to *** in 2010, then increasing to *** in 2011. U.S. shipments of *** in interim 2012 were lower than the *** of shipments in interim 2011.[167] Ending inventory quantities fluctuated annually and increased overall from 35.9 million pounds in 2009 to 38.4 million pounds in 2011; ending inventory quantities were 34.5 million pounds in interim 2011 and 46.1 million pounds in interim 2012.[168]

With respect to employment, the number of production and related workers, hours worked, and total wages paid fluctuated annually and declined overall from 2009 to 2011.[169] Hourly wages and labor productivity increased each year of the period.[170]

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[161] Calculated from CR/PR at Table E-4. For purposes of this discussion, operating expenses include officer/partner salaries.

[162] Calculated from CR/PR at Table E-4. For purposes of this discussion, operating income refers to net sales value minus operating expenses and officer/partner salaries.

[163] CR/PR at Table III-4.

[164] CR/PR at Table III-4.

[165] CR/PR at Table III-4.

[166] CR/PR at Table III-4.

[167] CR/PR at Table III-4. Export shipments were very small in relation to domestic shipments and declined overall from 2009 to 2011. Id.

[168] CR/PR at Table III-8.

[169] The number of PRWs fell from 2,069 in 2009 to 1,859 in 2010, then rose slightly to 1,922 in 2011. It totaled 1,830 in interim 2011 and 1,782 in interim 2012. CR/PR at Table III-10. Wages paid decreased from $49.7 million in 2009 to $43.3 million in 2010, and then increased to $47.4 million in 2011. They totaled $36.6 million in interim 2011 and $35.5 million in interim 2012. Id. Hours worked totaled 3.9 million hours in 2009, declined to 3.1 million hours in 2010, and then increased to 3.3 million hours in 2011. Hours worked totaled 2.8 million hours in interim 2011 and 2.7 million hours in interim 2012. Id.

[170] Labor productivity increased from 53.8 pounds per hour worked in 2009 to 54.0 pounds per hour worked in 2010 and 56.5 pounds per hour worked in 2011. Labor productivity was 51.2 pounds per hour worked in interim 2011 and 50.8 pounds per hour worked in interim 2012. CR/PR at Table III-10. Hourly wages rose from $11.77 in 2009 to $12.74 in 2010 and $13.28 in 2011. Hourly wages were incrementally higher in interim 2012, at $12.37, than in interim 2011, when they were $12.19. Id.

Over the period of investigation, the indicators of the domestic processors' financial condition showed some positive and some negative trends. The processors' total net sales values increased each year from $651.4 million in 2009 to $662.1 million in 2010 and $725.0 million in 2011.[171] The processors' COGS also increased each year; as a share of net sales, it was 91.0 percent in 2009, 92.5 percent in 2010 and 93.0 percent in 2011.[172] Thus, while the processors were profitable each year from 2009 to 2011, their performance was marginal and declining; their operating income margin decreased from 1.8 percent in 2009 to 0.9 percent in 2010, and 0.3 percent in 2011.[173] Operating performance showed further deterioration in interim 2012.[174] Almost half of the reporting firms exhibited operating losses in 2011.[175] Capital expenditures fluctuated between years from 2009 to 2011 and were higher in interim 2012 than in interim 2011.[176] [177]

Despite increases in processors' net sales value over the period of investigation, they were able to sustain only a marginal, albeit positive, operating margin, except for interim 2012 when they sustained a loss. As discussed above, we have found the cumulated volume of subject imports and the market share of those imports to have been significant over the period of investigation and that there is some evidence of price suppression by the subject imports. Consequently, we find, for purposes of the preliminary phase of these investigations, that there is a reasonable indication that the large and increasing volume of subject imports had an adverse impact on the domestic industry.

In conducting our impact analysis, we have also considered the role of other factors so as not to attribute injury from other factors to subject imports. We have closely considered the role of nonsubject imports.[178] Nonsubject imports declined in volume and market share between 2009 and 2011,[179] and

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[171] CR/PR at Table VI-1.

[172] CR/PR at Table VI-1.

[173] CR/PR at Table VI-1.

[174] CR/PR at Table VI-1. Total net sales value in interim 2012, at $523.2 million, was lower than in interim 2011, at $548.2 million. COGS as a share of net sales, however, was higher, and the processors experienced further declines in financial performance in interim 2012; processors' operating income margins were 1.0 percent in interim 2011 and negative 1.2 percent in interim 2012. Id.

[175] CR/PR at Table VI-1. Respondents point to the abnormally high SG&A ratios for certain processors resulting in low operating profit ratios as another cause of injury to the domestic industry. Ecuador Respondents' Postconference Brief at 30-31; Indonesian Respondents' Postconference Brief at 25-26. With the exception of interim 2012, U.S. processors' SG&A expenses as a share of net sales moved within a relatively narrow range. The higher SG&A expenses in interim 2012 compared to interim 2011 ***. CR at VI-6 and n.8; PR at VI-5 and n.8.

[176] Capital expenditures increased from $4.7 million in 2009 to $10.2 million in 2010, and then declined to $7.7 million in 2011. They totaled $4.1 million in interim 2011 and $4.8 million in interim 2012. CR/PR at Table VI-3.

[177] Like the fishermen, a notable feature of the U.S. processors' financial results is the amount of "other income" reported. This ranged from a low of $19.2 million in 2009 to a high of $50.3 million in interim 2012. While "other income" includes a variety of items, its most significant component after 2009 appears to be settlement disbursements related to the Gulf Oil Spill, with a smaller relative share accounted for by CDSOA receipts. CR at VI-6 and VI-7; PR at VI-5. The parties disagree regarding how the Commission should consider the settlement disbursements and CDSOA receipts in evaluating the industry's financial results. Petitioner suggests that the disbursements and receipts should be considered a non-operating item, and Respondents propose that they should be considered the functional equivalent of operating income. See, e.g., Conf. Tr. at 54-55 and 138-139. The Commission's report follows the standard format, classifying such "other income" as non-recurring items below operating income to distinguish it from the primary operations examined. In any final phase investigations, we will seek information regarding the continuation of settlement disbursements and CDSOA receipts.

[178] Based on the record evidence in the preliminary phase of these investigations, Commissioner Pinkert finds that price competitive, nonsubject imports were a significant factor in the U.S. market for frozen warmwater shrimp during the period of investigation. CR/PR at Table C-1. He further notes, however, that, regardless of whether

(continued...)

subject imports' gains in market share exceeded the loss of market share by nonsubject imports.[180] In addition, pricing data indicate that nonsubject imports from Mexico were priced higher than subject imports in 99 of 170 quarterly price comparisons.[181]

While Respondents have raised several alleged other factors that they argue could be responsible for any difficulties experienced by the domestic industry rather than subject imports,[182] there is limited evidence on the record in the preliminary phase of these investigations to address such alleged other factors. We observe that while natural or manmade disasters such as the Gulf Oil Spill may have affected the domestic industry's performance, the Commission's analysis must take the industry as it finds it.[183] Moreover, while the Gulf Oil Spill affected the domestic industry's supply during 2010, the industry's supply began to return to pre-spill levels in 2011, and subject imports increased that year as the industry's operating performance declined. Finally, Respondents' arguments in these investigations regarding the domestic industry's ability to supply the U.S. market, whether due to the nature of wild-caught harvesting or the industry's alleged inability to provide specific niche products, are similar to those raised and rejected in prior investigations and reviews.[184] In any final phase investigations, we will seek more information regarding any other factors so as not to attribute any injury from such factors to the subject imports.

Consequently, for purposes of these preliminary determinations, we conclude that the cumulated subject imports have had a significant adverse impact on the domestic industry.

CONCLUSION

For the foregoing reasons, and based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is

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[178] (...continued)
frozen warmwater shrimp constitutes a commodity product (there is considerable argumentation in these investigations with respect to the interchangeability of shrimp from different country sources), the record does not support finding that nonsubject imports would have replaced subject imports during the period of investigation without benefit to the domestic industry if subject imports had exited the U.S. market. Nonsubject imports did not account for greater than 17.5 percent of the U.S. market in any year of the period, id., and there is no record information regarding the ability or propensity of nonsubject suppliers to replace subject imports. See CR at VII-13 - VII-14, PR at VII-10. Moreover, the available price data indicate that, in the majority of instances, imports of shrimp from Mexico (the largest nonsubject source) were sold at higher prices than shrimp originating both in subject countries and in the United States. CR at V-21, PR at V-16.

[179] Nonsubject import market share fell from 17.5 percent in 2009 to 13.8 percent in 2010, then to 13.5 percent in 2011. Nonsubject import market share was 11.7 percent in interim (January-August) 2011 and *** in interim (January-August) 2012. CR/PR at Table IV-5 (revised).

[180] Subject import market share increased from 70.0 percent in 2009 to 76.6 percent in 2010, and then declined slightly to 76.0 percent in 2011. Subject import market share was 76.6 percent in interim 2011 and *** in interim 2012. CR/PR at Table IV-5.

[181] CR at V-21; PR at V-16.

[182] Some of their alternative explanations include (1) declines in supply and demand resulting from the Gulf Oil Spill; (2) limits on the availability of domestic supply; (3) the domestic industry's inability to supply certain customers; (4) the fuel-dependent production process used by the U.S. shrimp fishermen; (5) imports from nonsubject countries; (6) the hypoxic zone; and (7) the economic recession in the United States. See, e.g., Indian Respondents' Postconference Brief at 12; Ecuador Respondents' Postconference Brief at 13-18; Indonesian Respondents' Postconference Brief at 26-33.

[183] See Iwatsu Electric Co. v. United States, 758 F. Supp. 1506, 1512, 1518 (Ct. Int'l Trade 1991).

[184] USITC Pub. 3748 at 34; USITC Pub. 4221 at 36. In any final phase investigations we intend to examine further the degree to which competition between subject imports and the domestic product may now be attenuated.

materially injured by reason of allegedly subsidized frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam.

DISSENTING VIEWS OF COMMISSIONER DANIEL R. PEARSON

Based on the record in the preliminary phase of these investigations, I find that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of subject imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam that are allegedly subsidized.[1]

I. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS

A. Conditions of competition

In the Commission's first investigations of this product I noted that the record contained extensive evidence of quality differences between the domestic like product and subject imports.[2] During the review of those original investigations, I found such extensive evidence of quality differences between the domestic like product and subject imports to the degree that competition between the products was attenuated.[3] I find that the record in these preliminary investigations again indicates a significant attenuation of competition between the domestic like product and subject imports.

The domestic like product is overwhelmingly comprised of wild-caught shrimp,[4] while subject imports consist overwhelmingly of farm-raised shrimp.[5] In the years prior to this period of investigation (POI), domestic landings of warmwater shrimp were relatively stable for several decades, averaging approximately 260 million pounds and exceeding 300 million pounds just three times since 1970.[6] This longterm stability suggests there is a limit on the amount of shrimp the domestic industry's fishermen can produce, regardless of price or demand. Although domestic landings have been relatively stable, there will always be a degree of unpredictability in the volume, size, and composition of a given year's catch.[7] The supply of subject imports, and nonsubject imports as well, is larger, more flexible, and more predictable, factors that would naturally make the product more attractive to purchasers that are more concerned about access to high and consistent volumes of shrimp.[8]

The distinctions between wild-caught and farm-raised shrimp are important to some market participants. A significant majority of responding domestic processors report that the domestic like product is always or frequently interchangeable with both subject and nonsubject imports.[9] Importers are significantly more likely to report that the domestic like product is only sometimes interchangeable with subject and nonsubject imports, and nearly as many responding importers report that the domestic like

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[1] I join and adopt as my own sections I-VI.B.2 and VI.B.4 of the majority Views.

[2] USITC Pub. 3748 at 52.

[3] USITC Pub. 4221 at 39.

[4] CR/PR at Tables III-1 and IV-4.

[5] CR at II-8, PR at II-6.

[6] Ecuador Respondent's postconference brief at 1 and Exh. 1.

[7] USITC Pub. 4221 at 39, citing INV-JJ-016 at II-42 n.66.

[8] Tr. at 111 (Faria) ("Our customers need year around consistency and high quality from one container to another.... [I]mported shrimp have more uniform and consistent quality"); Tr. at 185 (Lunn) ("they want predictability over time, that can't be given by the wild-caught shrimpers")

[9] CR/PR at Table II-6.

product is never interchangeable with subject imports as report that they are sometimes interchangeable.[10] Importers are also more likely to report fewer limitations on interchangeability among imports than are U.S. processors.[11]

A plurality of responding domestic processors report that perceived differences other than price are never significant, although a significant number report that non-price differences are always important.[12] Few importers report that nonprice differences are never important, particularly between domestic and subject or nonsubject product, while a majority report that non-price differences are always important in competition between the domestic like product and most subject imports.[13] Importers generally rated non-price differences as less important in competition among subject imports and between subject imports and nonsubject imports.[14]

Responding importers cited a variety of reasons for the limited interchangeability between the domestic like product and subject imports. Importers noted that some customers prefer domestic shrimp because it is considered to be free of chemicals and antibiotics, while other customers prefer the consistent quality of farmed shrimp. Importers claim that the domestic like product is sold mainly in headless/shell on form, while subject imports are available in a greater variety of formats, species, and sizes. Subject imports themselves vary as well, with certain species available from only specific countries, while subject producers in some countries specialize in certain formats.[15] Respondents also claim that the domestic like product is more likely to be sold as block frozen, while subject imports are more likely to be sold in individually quick frozen (IQF) form.[16]

Responding importers also note that farmed shrimp is available in larger and more predictable volumes than wild-caught shrimp and in more uniform sizes.[17] Farmed shrimp such as subject imports is therefore more suitable to high-volume customers such as national restaurant and supermarket chains who need regular and guaranteed quantities with uniform appearance.[18] Restaurants in particular are also interested in purchasing more processed products, to cut down on labor costs.[19]

These significant differences in the nature of the domestic like product and subject imports have led to significant differences in the customer base for the respective products. The domestic like product is sold predominantly to distributors, and for most of the POI, sales to distributors accounted for

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[10] CR/PR at Table II-6.

[11] CR/PR at Table II-6. The record in these preliminary investigations does not include questionnaire responses from purchasers. During the recent review of the antidumping orders on Brazil, China, India, Thailand, and Vietnam, purchasers were also less likely than domestic processors to consider subject imports as always interchangeable with the domestic like product. INV-JJ-016 at Table II-12.

[12] CR/PR at Table II-7.

[13] CR/PR at Table II-7.

[14] CR/PR at Table II-7.

[15] CR at II-17-18, PR at II-14-II-15.

[16] Thai Respondents' postconference brief at 7. The record gathered during the recent review indicated that a relatively modest amount of the domestic like product was shipped in IQF form, while IQF accounted for a substantial majority of subject imports. USITC Pub. 4221 at 40. The record does not contain a breakout of domestic or imported shrimp by freezing method. However, the domestic industry's block freezing capacity is significantly greater than its IQF capacity. CR/PR at Table III-6. Of the four products for which quarterly pricing was gathered, only one was an IQF product, and domestic pricing data gathered for that product reflected *** than for any of the block frozen products. CR/PR at Tables V-1-V-4.

[17] CR at II-18-19, PR at II-14-II-15; Thai Respondents' postconference brief at 7-8

[18] CR at II-18; Tr. at 111 (Faria) and 185 (Lunn).

[19] INV-JJ-016 at II-39-40.

80 percent or more of all shipments.[20] Subject imports, on the other hand, are significantly more likely to be sold to retailer or institutional buyers such as restaurants or hotels. Such purchasers accounted for upwards of 80 percent of all subject import shipments during this POI.[21]

Domestic processors have noted that many customers buy both the domestic like product and subject imports and use the domestic like product and subject imports for the same end uses.[22] The disparity in channels of distribution suggests the overlap is limited.[23] But the record also suggests that even those customers who buy both do not treat the domestic like product and subject imports as interchangeable.[24] Domestic and imported shrimp are packaged separately and priced separately.[25]

The record suggests that while there might be some overlap in channels of distribution, the subject imports' primary market is not the same as the primary market for the domestic like product. Subject imports appeal primarily to a market that needs a large, predictable volume of relatively uniform and relatively highly-processed product. The domestic like product appeals primarily to those who like the wild-caught product.

B. Volume Effects of Subject Imports

Section 771(7)(C)(I) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[26]

The volume of cumulated subject imports increased by 10.1 percent between 2009 and 2011, and the share of the market held by subject imports increased from 70.0 percent in 2009 to 76.0 percent in 2011.[27] Subject import volume in January-August 2012 was 6.3 percent lower than in January-August 2011.[28] Market share for January-August 2012 was *** percent, compared to 76.6 percent in January-August 2011.[29] Subject import volume thus increased both absolutely and relatively between 2009 and 2011.

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[20] CR/PR at Table II-1. Sales to distributors have accounted for a significant majority of domestic shipments since at least 2005. INV-JJ-016 at Table II-1.

[21] CR/PR at Table II-1.

[22] Petitioner's postconference brief at 22-23.

[23] See also Tr. at 110-111 (Faria) ("we do not encounter competition from domestic wild caught shrimp.... [W]e have never engaged in head to head competition with any of the Petitioners for an account.... [W]e focus on customers that strongly prefer farm-raised shrimp"); Tr. at 115, 116 (Paterson) ("I never have a domestic shrimp processing company call to offer me product for sale....[W]e sell nationally, and other than in those specific niche markets, we do not see domestic shrimp marketed nationally").

[24] Tr. at 110 (Faria) ("We supply large customers across the country and the orders presented to us by retail supermarkets, chain restaurants, cruise lines and casinos all ask for farm-raised shrimp.... Our customers give us specification sheets that identify the species, the quantity, the size...they want to purchase. These terms are not negotiable, they are requirements.... In a small number of cases we might see domestic shrimp specified, but we never see both farm shrimp and wild shrimp listed on the same specification")

[25] Thai Respondents' postconference brief at 6-8; Rubicon Group's postconference brief at 17-18; SEAI postconference brief at 5-6.

[26] 19 U.S.C. § 1677(7)(C)(I).

[27] CR/PR at Table C-1.

[28] CR/PR at Table C-1.

[29] CR/PR at Table C-1.

Conversely, shipments of the domestic like product were down by *** percent in 2010 from 2009, and though shipment volume increased in 2011, shipments were still *** percent lower than in 2009.[30] Shipments in interim 2012 were *** percent lower than in interim 2011.[31] The domestic industry's market share slipped from 12.5 percent in 2009 to 9.6 percent in 2010 and then to 10.5 percent in 2011.[32] The domestic like product accounted for *** percent of apparent U.S. consumption in interim 2012, compared to 11.7 percent in interim 2011.[33] The domestic industry lost both volume and market share over the POI.

Nonetheless, I do not find the volume of subject imports to be significant. As noted above, apparent domestic consumption in the U.S. market has been dominated by subject imports for a very long time, and in fact the market share of the domestic industry has been relatively stable since 2005.[34] Apparent domestic consumption has also been relatively stable since 2007.[35] The relatively high volume of subject imports and the relatively high subject import market share seen over this POI are a continuation of a longstanding equilibrium, an equilibrium that was reached when a significant volume of imported frozen shrimp was already subject to antidumping duty orders.[36]

Shrimp harvesting by the domestic fleet in the Gulf of Mexico was significantly disrupted by the Deepwater Horizon oil spill, significantly limiting the raw material available for processing in 2010 and also limiting production in 2011.[37] The decline in domestic shipments and the resulting loss of market share was not driven by the presence of subject imports in the market, as domestic shipments have varied very little over a relatively long period of time, regardless of the volume of subject imports.[38]

Subject import volume did increase in 2010 as domestic shipments declined.[39] However, the volume of nonsubject imports declined in nearly equal measure, leaving the total volume of imported frozen warmwater shrimp virtually unchanged.[40] This suggests that the primary competition for subject imports in the U.S. market is with nonsubject imports, which also consist mostly of farm-raised shrimp, rather than with the domestic like product. Similarly, in January-August 2012, shipments of the domestic like product and imports of subject imported shrimp as a share of the U.S. market were lower than in the January-August 2011 period.[41] Nonsubject imports, however, increased both absolutely and relatively, although total import volume was lower than in January-August 2011.[42] Again, this suggests that subject and nonsubject imports compete for the same segment of the market; as noted above, these products share important characteristics that make imports, both subject and nonsubject, suitable to a different set of customers than those who prefer domestic shrimp.

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[30] CR/PR at Table C-1.

[31] CR/PR at Table C-1.

[32] CR/PR at Table C-1.

[33] CR/PR at Table C-1.

[34] CR/PR at Table C-1; INV-JJ-016 at Table I-1.

[35] CR/PR at Table C-1; INV-JJ-016 at Table I-1.

[36] INV-JJ-016 at Table I-1.

[37] CR at II-4-II-5, II-7-II-8, and VI-5, PR at II-4, II-6, and VI-1 and VI-3.

[38] INV-JJ-016 at Table I-1.

[39] CR/PR at Table IV-4.

[40] CR/PR at Table IV-4.

[41] CR/PR at Table IV-5.

[42] CR/PR at Table IV-5.

Domestic production and shipments are influenced most strongly by harvesting conditions rather than by import volume. This is apparent in the lack of correlation between domestic production and shipments and subject import volume over a lengthy period of time, both prior to and after the imposition of antidumping duty orders on some sources of farm-raised shrimp.[43] While U.S. production and shipments were down in the wake of the Deepwater Horizon spill, the domestic industry's market share by 2011 and January-August 2012 had returned to historic norms. Total shipments were lower in January-August 2012 than in January-August 2011,[44] but this decline is more likely related to continuing concerns on the part of consumers about the safety of Gulf shrimp or a reflection of the more general decline in apparent domestic consumption than to the specific volume of subject imports.

For the foregoing reasons, despite the substantial total volume and market share of subject imports, I do not find subject import volume to be significant. The high volume and market share of subject imports have been constants in the U.S. market, and the record suggests significant attenuation of competition between those subject imports and the domestic like product.

C. Price Effects of Subject Imports

> Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[45]

Product-specific pricing data were gathered for four products, three block frozen and one IQF product. The data gathered reflected a surprising degree of overselling by subject imports. Subject imports oversold the domestic like product in 212 of 350 quarterly comparisons, by an average margin of 21.9 percent.[46] Subject imports undersold the domestic like product in 138 quarterly comparisons, by an average margin of 12.6 percent.[47]

While demand for frozen warmwater shrimp was stable throughout most of the POI, with perhaps a modest decline late in the period, prices rose throughout the POI. The average unit value (AUV) for net sales of the domestic like product rose 18.6 percent between 2009 and 2010. This increase might simply have been a reflection of the significantly reduced domestic supply as a result of the Deepwater Horizon spill, but AUVs in 2011 were higher than in 2010, although net sales reflected a significant improvement over depressed 2010 levels. Overall AUVs in 2011 were 22.5 percent higher than in 2009. In interim 2012, AUVs were 3.5 percent higher than in interim 2011. Thus, the record suggests that the domestic

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[43] INV-JJ-016 at Table I-1.

[44] CR/PR at Table IV-4.

[45] 19 U.S.C. § 1677(7)(C)(ii).

[46] CR/PR at Table V-6.

[47] CR/PR at Table V-6. Domestic processors have questioned the accuracy of the product-specific pricing data and argue that subject imports consistently undersold the domestic like product. Petitioner's postconference brief at 33. Domestic processors have also suggested other possible price comparisons. Petitioner's postconference brief at 34-37. At this time I do not find any reason to discount the product-specific pricing data. However, my findings regarding price effects depend primarily on my findings regarding attenuation of competition rather than any specific item of pricing data.

industry was not experiencing price depression during the POI.[48] AUVs for both subject imports and nonsubject imports were also higher in 2011 than in 2009.[49]

Despite the rising sales values, unit COGS for the domestic processors rose faster than sales values, and the ratio of COGS to sales was higher in interim 2012 than in interim 2011.[50] This suggests the industry was suffering a cost-price squeeze late in the POI. However, I find it unlikely that any cost-price squeeze was related to subject import volume or pricing. As noted above, competition between the domestic like product and subject imports is significantly attenuated, with the products competing in mostly separate markets. The significant amount and degree of overselling by subject imports also suggests that these products are not competing for the same customers.

For the foregoing reasons, I do not find that domestic prices were depressed to a significant degree, or that there has been significant price suppression by reason of the subject imports.

D. Impact of Subject Imports

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."[51] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[52]

Domestic processors saw a steady deterioration in performance over the POI. Capacity increased by 7.0 percent between 2009 and 2011, and interim 2012 production capacity was 3.2 percent higher than in interim 2011. Production, however, declined sharply in the wake of the Deepwater Horizon oil spill in the Gulf and made only a partial recovery in 2011. Capacity utilization, which has historically been low, declined. The number of production workers fell between 2009 and 2011, as did hours worked and total wages paid; all three measures were lower in interim 2012 than in interim 2011.[53]

The domestic industry's net sales declined in the wake of the Deepwater Horizon oil spill but made a partial recovery in 2011. Net sales were somewhat lower in interim 2012 than in interim 2011. Average unit sales values increased throughout the POI and were at a peak in interim 2012, but total sales value was somewhat lower in interim 2012. Unit costs rose between 2009 and 2011 and were higher in interim 2012 than in interim 2011. The industry's COGS-sales ratio rose throughout the POI as well, and

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[48] I am mindful that AUVs are not necessarily a reliable indicator of price trends in an industry such as this, given the variety of products. I note that prices for the individual domestic like products were higher in 2012 than in the relevant quarters of 2009 for each of the four products. CR/PR at Tables V-1-V-5.

[49] CR/PR at Table C-1.

[50] CR/PR at Table C-1.

[51] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

[52] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

[53] I have defined the domestic industry to include shrimp fishermen as well. The record has limited data on the condition of the shrimping fleet. The available information indicate that this portion of the industry saw significant increases in operating expenses relative to net sales late in the POI. CR/PR at Table E-4.

the industry had an operating loss in interim 2012.[54] The industry's financial performance continued to deteriorate even after production and sales began to recover from the Deepwater Horizon spill.

This industry has been a marginally profitable one for some time.[55] The imposition of a set of antidumping duty orders had no significant impact on the industry's profitability.[56] The profitability figures seen in this POI are in line with the industry's performance over the last decade and in line with the industry's performance both before and after the imposition of antidumping duty orders.[57] In reaching my determination during the sunset review of those orders, I found the continuity of results to be further evidence that the competition between the domestic like product and subject imports was attenuated.[58] I find the record here to be similarly persuasive. The industry's 2012 interim results are somewhat weak even by longer historical standards, but these poorer results occurred at a time when subject import volume was declining rather than rising and subject import market share was also declining somewhat, losing both market share and volume to nonsubject imports. The industry's declining performance was thus not correlated with either subject import volume or market share increases.[59]

I have already found attenuated competition and a lack of significant volume or price effects. I therefore do not find that there is a reasonable indication that cumulated subject imports are having an adverse impact on the domestic industry. I find that the record as a whole contains clear and convincing evidence that there is no reasonable indication of material injury by reason of subject imports of frozen warmwater shrimp and that no likelihood exists that contrary evidence would arise in any final-phase investigation.

II. NO REASONABLE INDICATION OF A THREAT OF MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[60] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole" in making its determination whether dumped or subsidized imports are imminent and whether

[54] Respondents have questioned the inclusion of some domestic industry expenditures as SG&A expenditures. Ecuador Respondent's postconference brief at 30-31; Indonesian Respondents postconference brief at 25-26. ***. CR at VI-6 n.8, PR at VI-5 n.8. In reaching my determination I have therefore assumed the reported SG&A expenses are accurate and correctly classified.

[55] INV-JJ-016 at Table I-1.

[56] INV-JJ-016 at Table I-1.

[57] INV-JJ-016 at Table I-1.

[58] USITC Pub. 4221 at 41, 42.

[59] The domestic industry has received significant funds both through CDSOA and settlements related to the Deepwater Horizon oil spill. These funds have been classified by recipients as "other income" and thus not included in operating income. CR at VI-6-VI-7. For purposes of these preliminary determinations I have accepted these classifications and not considered other income when evaluating the condition of the industry or the impact of subject imports.

[60] 19 U.S.C. § 1677(7)(F)(ii).

material injury by reason of subject imports would occur unless an order is issued.[61] In making my determination, I consider all statutory threat factors that are relevant to these investigations.[62] [63]

Under section 771(7)(H) of the Tariff Act, the Commission may "to the extent practicable" cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation in the material injury context are satisfied.[64] As detailed above, the requirements for cumulation in the material injury context are satisfied. No party has argued against cumulation for the threat analysis or suggested that the conditions of competition likely to confront subject imports from any country will likely different to a significant degree in the imminent future. I therefore exercise my discretion to consider subject imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam on a cumulated basis for purposes of this threat analysis.

---

[61] 19 U.S.C. § 1677(7)(F)(ii).

[62] These factors are as follows:

> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,
>
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
>
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
>
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,
>
> (V) inventories of the subject merchandise,
>
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.
>
> * * *
>
> (IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(I).

[63] I note that Commerce in its initiation notice found sufficient information to initiate countervailing duty investigations of multiple subsidy programs in each subject country. CR/PR at I-4-I-9. I have taken these allegations into consideration in making this determination and do not find that these allegations alter my determination.

[64] 19 U.S.C. § 1677(7)(H).

The industries in the subject countries are generally large and have increased in both capacity and production in recent years.[65] Cumulated capacity rose from nearly 2.441 billion pounds in 2009 to 2.810 billion in 2011, and capacity for 2013 is projected at 2.804 billion.[66] Production increased from 1.358 billion pounds in 2009 to 1.462 billion in 2011, with projected production at 1.350 billion for 2013.[67] The industry in each country is very export-oriented, relying on exports to absorb over 85 percent of production.[68] However, these conditions were true for the subject producers throughout the POI. Subject import volume increased somewhat between 2009 and 2011 but mostly took market share from nonsubject imports rather than from the domestic like product, and both subject import volume and market share were down late in the POI. Imports of farm-raised shrimp, which includes the vast majority of subject imports, have accounted for approximately 90 percent of apparent U.S. consumption for an extended period of time.[69] That same pattern held throughout this POI, and nothing on the record suggests that the market fundamentals that drive this particular configuration are likely to change. While imports, subject and nonsubject, are primarily farm-raised and the domestic like product primarily wild-caught, imports and the domestic like product will continue to serve different parts of the market. Nor do the inventories on hand or the product already on order suggest a significant change in the market arrangement or the volume of subject imports.

I have also considered price effects and found subject imports to neither depress nor suppress domestic prices. The available data suggest that subject imports frequently oversold the domestic like product and by significant margins, again suggesting that these products do not serve the same markets. I thus do not find that subject imports are likely to enter the U.S. market at such prices or in such manner as to depress or suppress prices for the domestic product.

The domestic industry is arguably vulnerable, with a relatively poor performance late in the POI. Despite generally modest returns, however, the industry has continued to make investments and was able to increase capacity over the POI. The true extent and duration of the effects of the Deepwater Horizon spill are not yet fully known, and it is possible that neither the supply of domestic frozen warmwater shrimp nor the demand for it will fully recover. But the effects of the oil spill, however lasting or deep, are unrelated to the volume or pricing of subject imports. The industry may remain vulnerable to further material injury in the imminent future, but not from the volume or pricing of subject imports.

I therefore conclude that the record as a whole contains clear and convincing evidence that there is no reasonable indication of a threat of material injury by reason of cumulated subject imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam and that no likelihood exists that contrary evidence would arise in any final phase investigation.

CONCLUSION

Despite having considerable empathy for an industry in which hundreds of independent businesses work hard to maintain treasured lifestyles by dealing with unpredictable factors over which they have no control, I conclude that there is no reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam that are allegedly subsidized.

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[65] CR/PR at Tables VII-1-VII-7.

[66] CR/PR at Table VII-8.

[67] CR/PR at Table VII-8.

[68] CR/PR at Tables VII-1-VII-7.

[69] INV-JJ-016 at Table I-1.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed with the U.S. Department of Commerce ("Commerce") and the U.S. International Trade Commission ("USITC" or "Commission") by the Coalition of Gulf Shrimp Industries (COGSI), Biloxi, MS, on December 28, 2012, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of certain frozen warmwater shrimp[1] from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Information relating to the background of the investigation is provided below.[2]

Effective date	Action
December 28, 2012	Petition filed with Commerce and the Commission; institution of Commission investigation (78 FR 764, January 4, 2013)
January 18, 2013	Commission's conference[1]
January 25, 2013	Commerce's notice of initiation (78 FR 5416)
February 7, 2013	Commission's vote
February 11, 2013	Commission determinations transmitted to Commerce
February 19, 2013	Commission views transmitted to Commerce

[1] A list of witnesses appearing at the conference is presented in app. B.

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

> *shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> *In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.*

[1] See the section entitled "The Subject Merchandise" in *Part I* of this report for a complete description of the merchandise subject to this investigation.

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

. . .
In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether . . . (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.
. . .
In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to
. . .
(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.

Organization of the Report

Part I of this report presents information on the subject merchandise, alleged subsidy margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume of subject imports and pricing of domestic and imported products, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

U.S. MARKET SUMMARY

Apparent U.S. consumption of frozen warmwater shrimp totaled approximately 1.3 billion pounds ($5.7 billion) in 2011. U.S. shipments[3] of frozen warmwater shrimp totaled 136.6 million pounds ($701.8 million) in 2011, and accounted for 10.5 percent of apparent U.S. consumption by quantity and 12.4 percent by value. U.S. imports from subject sources totaled 984.2 million pounds ($4.3 billion) in 2011 and accounted for 76.0 percent of apparent U.S. consumption by quantity and 75.6 percent by value. U.S. imports from nonsubject sources totaled 174.6 million pounds ($681.6 million) in 2011 and accounted for 13.5 percent of apparent U.S. consumption by quantity and 12.0 percent by value.

[3] U.S. shipments are derived from National Marine Fisheries Service data.

SUMMARY DATA AND DATA SOURCES

A summary of data collected in these investigations is presented in appendix C, table C-1. U.S. industry data are based on questionnaire responses of 58 firms, 38 of which provided usable data, that accounted for 83.8 percent of U.S. production of frozen warmwater shrimp during 2011. U.S. imports are based on official Commerce import data and from questionnaire responses from 46 U.S. importers that are believed to have accounted for 55.5 percent of total subject imports and 52.9 percent of total imports from China, 48.1 percent of total imports from Ecuador, 51.7 percent of total imports from India, 64.7 percent of total imports from Indonesia, 43.5 percent of total imports from Malaysia, 61.5 percent of total imports from Thailand, and 43.1 percent of total imports from Vietnam in 2011. A summary of trade and financial data as well as related information for fishermen as collected is presented in appendix E.[4]

PREVIOUS AND RELATED INVESTIGATIONS

Frozen warmwater shrimp has been the subject of prior antidumping duty investigations in the United States. On December 31, 2003, following receipt of a petition filed with the Commission and Commerce by the Ad Hoc Shrimp Trade Action Committee, Washington DC, the Commission instituted antidumping duty investigations on certain frozen and canned warmwater shrimp from Brazil, China, Ecuador, India, Thailand, and Vietnam (Inv. Nos. 731-TA-1063, 1064, 1066-1068). In January 2005, the Commission determined that an industry in the United States was materially injured by reason of frozen warmwater shrimp imports from Brazil, China, Ecuador, India, Thailand, and Vietnam, found by Commerce to be sold in the United States at LTFV.[5]

In May 2005, pursuant to section 751(b) of the Act, the Commission instituted changed circumstances investigations (Inv. Nos. 751-TA-28-29) on the antidumping duty orders from India and Thailand. In November 2005, the Commission determined that revocation of the antidumping duty orders covering warmwater shrimp from India and Thailand would be likely to lead to a continuation or recurrence of material injury to an industry in the United States.[6] In August 2007, the order on imports from Ecuador was revoked as a result of World Trade Organization ("WTO") panel findings.[7] In March 2011, the Commission completed its first five year reviews on the antidumping duty orders on Brazil, China, India, Thailand, and Vietnam, and determined that revocation of the orders would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[8]

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[4] Appendix E includes responses of fishermen which were filed in a timely manner, and which were determined to be complete by Commission staff.

[5] *Certain Frozen and Canned Warmwater Shrimp From Brazil, China, Ecuador, India, Thailand, and Vietnam*, 70 FR 3943, January 27, 2005. The Commission also determined that an industry in the United States was not injured by reason of imports from China, Thailand, and Vietnam of canned warmwater shrimp and prawns that had been found by Commerce to be sold at LTFV. Additionally, the Commission determined that imports from Brazil, Ecuador, and India of canned warmwater shrimp and prawns were negligible.

[6] *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review)*, USITC Publication 4221, March 2011, p. I-3.

[7] *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador*,72 FR 48257, August 23, 2007.

[8] *Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam*, 76 FR 18782, April 5, 2011.

NATURE AND EXTENT OF ALLEGED SUBSIDIES

Alleged Subsidies

On January 25, 2013, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam.[9] Commerce identified the following 25 alleged subsidy programs in China, seven in Ecuador, 21 in India, 14 in Indonesia, 16 in Malaysia, 12 in Thailand, and 20 in Vietnam.

China

A. Grant Programs
1. Guangdong Province Funds for Enterprise Outward Expansion
2. State Key Technology Renovation Project Fund Program
3. Central Government, Provincial, and Municipal Grants Under the Famous Brands Program
4. Grants Under the Healthy Development of the Aquaculture Industry Program
5. Grants by the Central Government and the Xuzhou District Government in Connection with Construction of Fishery Industry Zones and Farms
6. Grants from the Huanhua City Government for Fry Breeding
7. Central Government Grants Under the 2010 Aquatic Products Quality and Safety Supervision Program
8. Government Grants for Fishery Machinery and Equipment Purchases
9. Grants from Banfu Country Government for Development of Breeding Stock

B. Income Tax Programs
1. Tax Incentives for Enterprises Engaged in Aquaculture and Processing
2. Two Free, Three Half Program
3. Export Oriented FIEs
4. Tax Refund for Profit Reinvestment in Export-Oriented Enterprises
5. Tax Incentives for FIEs in Special Economic Zones

C. Other Tax Programs
1. VAT Exemption on Imports of Shrimp Fry
2. VAT Refunds for FIEs on Purchases of Chinese-Made Equipment
3. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
4. VAT and Tariff Exemption for Using Imported Equipment in Encouraged Industries

D. Loans
1. Preferential Lending to Shrimp Producers by the Central Government and Province of Guangdong
2. Central Government Provision of Loan Guarantees at the Zhanjiang City Seafood Center
3. Export Sellers Credits from China Export-Import Bank (China ExIm)
4. Export Buyers Credits from China Export-Import Bank (China ExIm)

[9] *Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 78 FR 5416, January 25, 2013.

E. LTAR Programs

1. Central Government Provision of Rent for LTAR and Waiver of Management Fees at the Zhanjiang City Seafood Center
2. Central Government Provision of Cold Storage Services at the Zhanjiang City Seafood Center for LTAR

F. Other Programs

1. Export Credit Insurance from Sinosure

Ecuador

A. Income Tax Programs

1. Tax Exemptions for Fishing, Aquaculture, Processing, and Trading Firms
2. Tax Incentives for Priority Sectors under the 2010 Organic Production Code

B. Loan Programs

1. Preferential Loans from the National Finance Corporation and the National Development Bank
2. Export Credits from CFN

C. Grant Programs

1. Funding under the National Agro-Industrial Development Plan
2. Exemption of Land Fees to Shrimp Farmers and Processors

D. Export Restraints

1. Export Restraints on Raw and Unprocessed Shrimp

India

A. Duty Entitlement Passbook Scheme ("DEPS") and Successor Programs

B. Tax and Duty Incentives under the Special Economic Zone ("SEZ") Program

C. Tax and Duty Incentives under the Export-Oriented Unit ("EOU") Program

D. Duty Incentives under the Export Promotion Capital Goods ("EPGC") Program

E. Export Financing

F. Export Credit Insurance

G. Subsidized Loans to the Marine Products Industry

Subsidies Provided by the Marine Products Export Development Authority ("MPEDA")

H. MPEDA Subsidies for New Shrimp Farms

I. MPEDA Subsidies for Shrimp Hatcheries

J. MPEDA Subsidies for Hatchery PCR Labs

K. MPEDA Subsidies for Shrimp Farm Effluent Treatment Systems

L. MPEDA Assistance for Organic Shrimp Farmers

M. MPEDA Technology Upgrade Scheme for Marine Products

N. MPEDA Refrigerated Truck and Container Subsidy

O. MPEDA Cold Storage Subsidy

P. MPEDA Insulated Fish Box Subsidy

Q. MPEDA Subsidies for In-Process Quality Control Labs

R. MPEDA Subsidies for the Construction and Renovation of Pre-Processing Centers

S. MPEDA Worker Insurance Subsidy

T. MPEDA Sea Freight Assistance

U. Development of Inland Fisheries and Aquaculture Scheme

V. Assistance from the National Fisheries Development Board (NFDB) - Direct Transfers

Indonesia[10]

A. Government Provision of Loans to the Indonesian Fishing and Aquaculture Sector

B. Government Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)
   1. Government Provision of Goods and Services Used to Promote the Indonesian Fishing and Aquaculture Sector for LTAR
   2. Government Provision of Electricity to the Indonesian Fishing and Aquaculture Sector for LTAR
   3. Government Provision of Land to the Indonesian Fishing and Aquaculture Sector for LTAR
   4. Government Provision of Shrimp Breeding Stock and Fry for LTAR

C. Tax Incentives from the Capital Investment Coordinating Board

D. Import Duty and VAT Exemptions in Bonded Zones

E. Grant Programs
   1. Government Provision of Grants to the Indonesian Fishing and Aquaculture Sector
   2. Government Provision of Grants for the Lampung Shrimp Pond Project

F. Export Financing Programs
   1. Export Financing from the Indonesia Export-Import Bank

[10] Petitioner has also made a specific allegation of CP Prima's uncreditworthiness. However, Commerce will only initiate an investigation on this allegation if CP Prima is selected as a company respondent in its investigation.

2. Export Credit Insurance
3. Export Credit Guarantees

G. Export Ban on Raw Shrimp

H. Debt Forgiveness from the Government of Indonesia

Malaysia

A. Provision of Grants under the Economic Transformation Program - Replicating Integrated Aquaculture Model (IZAQs)

B. Provision of Leases and Land at Less Than Adequate Remuneration under the ETP - IZAQs

C. Pioneer Status Program

D. Investment Tax Allowance

E. Infrastructure Allowance

F. Reinvestment Allowance

G. Accelerated Capital Allowance

H. 100% Allowance on Capital Expenditure for Approved Agricultural Projects

I. Tax Incentives for Approved Food Production Activities

J. Double Deduction for the Promotion of Exports

K. Export Credit Refinancing Program

L. Supplier Credit Facility

M. Buyer Credit Facility

N. Double Deductions for Export Credit Insurance Premiums

O. Tax Exemptions for Exporters in Free Trade Zones

P. Duty Exemptions for Exporters in Free Trade Zones

Thailand

A. Subsidized Loans to the Shrimp Industry

B. Loans under Bank of Thailand Refinancing Programs

C. Discounted Financing for Machinery Upgrades

D. Short-Term Export Financing from Thailand ExIm Bank

E. Medium- and Long-Term Export Financing from Thailand ExIm Bank

F. RTG Pledging Program for Shrimp

G. RTG Price Guarantee Program for Shrimp

H. Purchase of Shrimp for More Than Adequate Remuneration

I. Price Controls on Shrimp Feed

J. Tax Coupons for Exported Goods

K. Industrial Estate Tax Incentives

L. Tax Incentives, Duty Exemptions, and Other Benefits under the Investment Promotion Act

Vietnam

A. Income Tax Programs
1. Enterprise Income Tax Preferences under Articles 20 and 21 of Decree 51
2. Enterprise Income Tax Preferences Under Article 23 of Decree 51
3. Income Tax Preferences for Encouraged Industries under Chapter V of Decree 164
4. Income Tax Preferences for Exporters 39 under Article 27 of Decree 51, and Article 39 of Decree 164

B. Other Income Tax Programs
1. Income Tax Preferences for FIEs
2. Income Tax Reduction for Labor-Intensive Enterprises Under Decree No. 101/2011/ND-CP

C. Other Tax Programs
1. Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets Under Article 26 of Decree 5173
2. Import Duty Exemptions for Imported Raw Materials for Exported Goods
3. Land-Use Tax Exemption/Reduction Under Article 19 of Decree 51

D. Preferential Lending
1. Preferential Loans under the Aquaculture Development Scheme
2. Preferential Loans for Aquaculture Upgrades
3. Preferential Loans under the Seafood Processing Development Plan
4. Preferential Loans for Exporters
5. Investment Support Under Article 30 of Decree 51

E. The Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)
1. Provision of Land at LTAR under the Aquaculture Scheme
2. Land-Use Levy Exemption/Reduction Under Article 17 of Decree 51
3. Land Rent Exemptions Under Article 18 of Decree 51
4. Exemption from Land and Water Rents for Encouraged Industries Under Decree 142

F. Grants

1. Grants under the Aquaculture Scheme
2. Grants under the Seafood Processing Development Plan

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of these investigations as follows:

Certain frozen warmwater shrimp 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,[11] deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included 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 vannemei*), banana prawn (*Penaeus merguiensis*), 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 (including dusted shrimp), 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; (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; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain "battered shrimp" (see below).

"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 10 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,

[11] "Tails" in this context means the tail fan, which includes the telson and the uropods.

the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.[12]

Tariff Treatment

Based upon the scope set forth by the Department of Commerce, information available to the Commission indicates that the subject goods are imported under the following provisions of the 2013 HTS: subheadings 0306.17.00 (statistical reporting numbers 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, and 0306.17.0040), 1605.21.10 (statistical reporting number 1605.21.1030), and 1605.29.10 (statistical reporting number 1605.29.1010). Current tariff rates for frozen warmwater shrimp as set forth in the HTS for 2013 are presented in Appendix D.

THE PRODUCT

Description and Applications

The imported products subject to these investigations are frozen warmwater shrimp. The subject product can be any species of warmwater shrimp and includes both shrimp that were harvested from the ocean (wild-caught) and those produced by aquaculture (farm-raised). The shrimp can be in a wide variety of processed forms including head-on or head-off, tail-on or tail-off, shell-on or peeled, and deveined or not deveined. They may be raw or further processed by cooking, skewering, or addition of marinades, spices, or sauces. Food preparations containing more than 20 percent by weight of shrimp are included in the subject product, as are dusted shrimp.

Warmwater shrimp are crustaceans that usually inhabit salt waters in coastal regions in the tropics and subtropics. There are also freshwater species of shrimp. The warmwater shrimp subject to these investigations are either wild-caught or farm-raised in tropical or subtropical regions, are generally classified in the *Penaeidae* family, and comprise shrimp of several genera and species.[13] In the United States, virtually all warmwater shrimp are wild-caught.[14] The catch is composed primarily of brown shrimp (*Penaeus aztecus*), white shrimp (*Penaeus setiferus*), and pink shrimp (*Penaeus duorarum*). Shrimp vary greatly in size, depending on age and species. They typically grow to a harvestable size within one year; their size largely depends on the time of year they are harvested. [15]

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[12] *Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 78 FR 5416, January 25, 2013.

[13] In the previous antidumping duty investigations, it was noted that subject imports included, but were not limited to, shrimp from the following species: whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Machrobrachium 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*). *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final),* USITC Publication 3748, January 2005, p. I-5.

[14] Shrimp aquaculture in the United States peaked in 2003 at around 4.5 percent of production and, in 2010, represented approximately 0.9 percent of production.

[15] U.S. shrimp fisheries in both the South Atlantic and the Gulf of Mexico are seasonal, and seasonal peaks vary by species, with white shrimp and brown shrimp peaking between the late spring and the fall, and pink shrimp

(continued...)

Fresh shrimp (never frozen) in any form are excluded from Commerce's scope definition. Likewise, coldwater shrimp in any form,[16] shrimp in prepared meals, breaded shrimp, canned shrimp, and dried shrimp are excluded from the subject product.

Over the subject period, U.S. consumption of shrimp was consistent from year to year, at 4.1 pounds per capita in 2009, 4.0 pounds per capita in 2010, and 4.2 pounds per capita in 2011.[17] Warmwater shrimp are used principally for human consumption and are sold primarily on the basis of size. Because the tail section is the edible portion and spoilage is more rapid with the head on, most shrimp are marketed raw and frozen with the heads off. The market tendency is for large shrimp (less than 36 per pound, heads-off, shell-on basis) to be sold raw and frozen to restaurants, hotels, and other food institutions; for small to medium shrimp (36 to 60 per pound) to be breaded, canned, or sold at retail; and for extra small (61 to 70 per pound) and tiny shrimp (more than 70 per pound) to be used by canners, dryers, and producers of specialty products. In the previous antidumping duty investigations, it was estimated that 80 percent of shrimp in the U.S. market are bought by restaurants.[18]

Production Process[19]

Harvesting

The U.S. Gulf and South Atlantic warmwater shrimp[20] fleet is composed of vessels[21] spread across about two dozen port communities. The vessels fall into one of three broad categories: recreational shrimpers, commercial bait shrimpers, and commercial shrimpers. The catch of recreational shrimpers and commercial bait shrimpers is very small in proportion to the catch of commercial shrimpers, who account for the great bulk of all U.S. Gulf and South Atlantic warmwater shrimp landings.

There are two categories of commercial shrimpers. Inshore shrimpers operate small boats typically manned by one person on day-long trips in bays, estuaries, and shallow near-shore waters. Offshore shrimpers operate larger vessels typically manned by a crew of three in deeper waters out to the 200-mile U.S. territorial limit. In 2011, shrimp caught less than 3 miles offshore accounted for about 42

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[15] (...continued)
peaking in the first half of the calendar year.

[16] Species of coldwater shrimp, which are generally classified in the *Pandalidae* family, have different physical characteristics than warmwater species. In particular, they are generally much smaller in size than warmwater species. Coldwater shrimp are harvested and processed in cold water regions (e.g., the U.S. Pacific Northwest, New England, Canada, Greenland, Iceland, and Norway).

[17] National Marine Fisheries Service (NMFS), *Fisheries of the United States, 2011,* August 2012, p. 96.

[18] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final),* USITC Publication 3748, January 2005, p. I-6.

[19] Except as otherwise noted, background information in this section is sourced from U.S. Tariff Commission, *Shrimp*: *Report on Investigation No. 332-40,* 1961

[20] Shrimp harvested off the Pacific and Northern Atlantic coasts is coldwater shrimp.

[21] The number of shrimp vessels has declined substantially in recent years. In 2005, NOAA estimated that the number of vessels dropped from 4,000 to 2,500 between 2000 and 2005, and the number has reportedly declined further since then. In press reports, COGSI reported a 50 percent decline in the number of vessels in the past ten years (Hotakainen, "U.S. Shrimp Processors Seek Federal Help to Slow Imports," McClatchy, January 15, 2013, http://www.mcclatchydc.com/2013/01/15/179931/us-shrimp-processors-seek-federal.html#storylink=cpy (accessed January 25, 2013)).

percent of warmwater shrimp landings, with the remaining 58 percent caught between 3 and 200 miles offshore. Some offshore vessels can freeze their catch and thus make trips lasting several weeks.[22]

Offshore shrimpers use vessels that are typically 56 to 85 feet in length, constructed of steel, and diesel-powered. Such vessels are often equipped with sophisticated electronic gear for navigation, communication and locating shrimp. Most vessels are individually owned, often by the skipper. Major costs of operating a vessel include crew share (wages) and fuel as well as depreciation, mortgage payments, insurance, and maintenance on the vessel.

Vessels catch shrimp by towing one or more large, funnel-shaped nets. The U.S. fleet, particularly that portion in the Gulf, is relatively mobile and migrates with the seasonal warmwater shrimp populations, or away from areas of poor fishing. Therefore vessels may land shrimp at different ports in different states. Some shrimp vessels are equipped to perform simple processing steps (e.g., deheading, washing, grading, icing, or freezing) while at sea. Shrimp may be placed in mesh bags prior to freezing. Thus, warmwater shrimp can be landed either whole or headed (heads-off) and either fresh or frozen, and shrimp in different forms can be landed from the same trip. Upon unloading, shrimp are generally sold at dockside to dealers or processors. As payment, the vessel's crew typically receive a percentage of the revenue generated by the catch. While horizontal and vertical integration is limited, some shrimpers also process shrimp and/or own multiple vessels.[23]

Because of the differing feeding habits, migration patterns, and habitats of the different species, Gulf and South Atlantic shrimp vessels usually land one species at a time. Likewise, harvesting activities and hence, landings in the U.S. Gulf and South Atlantic, exhibit seasonal patterns that are influenced by the natural patterns of development of the different species of warmwater shrimp.

Processing

While some processors own their boats, most have buying arrangements with several shrimp vessels. After unloading, shrimp are transferred to processing facilities, which are often located dockside, and undergo initial processing such as separating shrimp from ice, weighing, washing, sizing, and grading.[24]

At this stage, shrimp may either be frozen in whole form (head-on, shell-on) or may undergo a number of further steps such as deheading, peeling, deveining, and cooking. Resulting from these steps are shrimp in a variety of forms (e.g., head-on, shell-on; headless, shell-on; raw, peeled; and cooked, peeled). Regardless of their specific processed form, shrimp then are typically frozen (with the exception that cooked, peeled shrimp may be canned rather than frozen).

Many processing steps (e.g., washing, grading, peeling, deveining, and cooking) may be performed manually or mechanically using purpose-built machinery.[25] Peeling can be done by one of two types of machines - the Laitram machine that operates by pushing the shrimp out of its shell, or the Jonsson machine that must be fed manually and that peels the shrimp with cutting equipment.

Freezing may take either of two forms: block frozen or individually quick frozen (IQF). In the block freezing method, shrimp and water are poured into a frame and frozen, typically in 5-pound blocks. The block is then sealed with a wrap that provides a barrier to moisture and vapor. The IQF method uses

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[22] National Marine Fisheries Service (NMFS), *Fisheries of the United States, 2011,* August 2012, p. 15.

[23] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final),* USITC Publication 3748, January 2005, p. I-7.

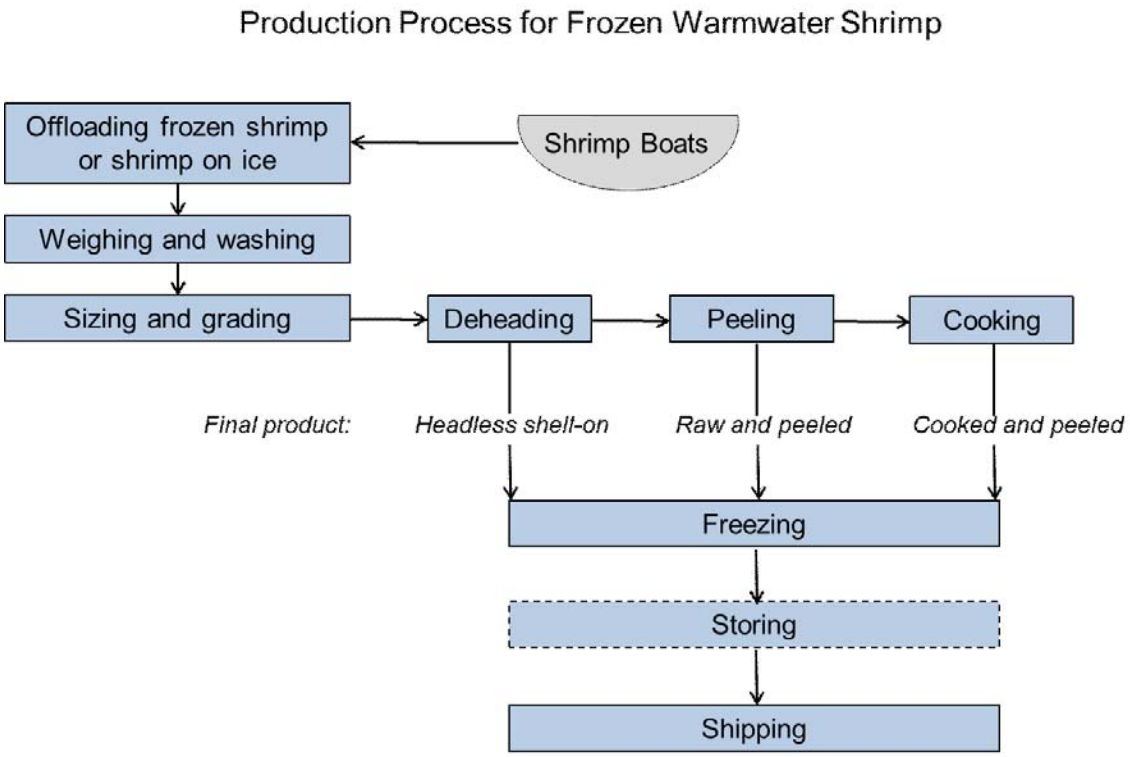
[24] Ibid.

[25] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final),* USITC Publication 3748, January 2005, p. I-8.

carbon dioxide, nitrogen, or ammonia to freeze each shrimp individually as it travels on a belt.[26] IQF lines require significant capital investment and are thus less common among smaller processors.[27] Block frozen shrimp is most suited to customers who know that they are going use at least the full block in one day,[28] since it must be defrosted all at once.

Processing of warmwater shrimp is conducted by a variety of types of operations. Dealers (a.k.a. shrimp houses or fish houses) and packing houses perform minimal processing steps (e.g., weighing, washing, sorting, and packing) for other processors or distributors. Other processors, variously known as freezers, peelers, and breaders, produce the variety of processed forms of shrimp noted previously and perform additional steps such as breading, cutting, and preparing specialty items.

Figure I-1
Frozen warmwater shrimp: Production process



Source: *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. I-9.

[26] Conference transcript, p. 88 (Babin).

[27] Conference transcript, p. 52 (Drake).

[28] Conference transcript, pp. 88-89 (Babin).

DOMESTIC LIKE PRODUCT ISSUES

The Commission's decision regarding the appropriate domestic product(s) that are "like" the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. In the antidumping duty orders concerning the same product that is the subject of these petitions, the Commission included fresh shrimp as part of the domestic like product, using the "semifinished products" analysis.[29]

Petitioners propose defining the domestic like product to include only certain frozen warmwater shrimp (i.e., the subject product).[30] Respondents argue that the domestic like product should include fresh shrimp, as it did in the previous antidumping duty investigations.[31] [32] The Ad Hoc Shrimp Industry Committee[33] also contends that there is one domestic like product that includes fresh and frozen warmwater shrimp.[34]

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[29] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final),* USITC Publication 3748, January 2005, p. 6. Fresh shrimp was also included in the domestic like product for the five-year review of these investigations. *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Review),* USITC Publication 4221, March 2011, p. 6.

[30] Petition, p. I-2.

[31] Trade Pacific's postconference brief, p. 4; National Chamber of Aquaculture's postconference brief, p. 3; Seafood Exports Association of India's postconference brief, p. 3; Indonesian respondents' postconference brief, p. 2.

[32] Rubicon Group takes no position on the domestic like product issue. Rubicon Group's postconference brief, p. 4.

[33] The Ad Hoc Shrimp Industry Committee is comprised of several hundred businesses operating with the U.S. domestic shrimp industry, and takes no position on the petitions.

[34] The Ad Hoc Shrimp Industry Committee's postconference brief, p. 1.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

U.S. MARKET CHARACTERISTICS

Warmwater shrimp are intended for human consumption and may be farm-raised or wild-caught, and may be processed to varying levels (e.g., peeled, deveined, shell-off, tail-off, marinated, skewered, or sauced). There are also multiple species of shrimp both farm-raised and wild-caught, and they exist in a range of sizes.[1]

For U.S.-processed warmwater shrimp, fresh shrimp are harvested (generally wild) and brought to dock by fishermen. Some deheading, sorting, and freezing may take place on the fishing boats. U.S. processors buy the fresh or frozen shrimp at the dock, and then may inspect, weigh, count, devein, peel, and cook it before freezing (refreezing) it. Some of the production will be put into inventory for later sale. U.S. processors may sell the warmwater shrimp to distributors or to retail customers directly, or have their sales handled by brokers. The market is similar for importers of warmwater shrimp; however, importers may sometimes import the warmwater shrimp and then process it themselves, either into another form of warmwater shrimp (e.g., marinated or sauced) or into a nonsubject product (e.g., breaded shrimp).[2] Some processors process both U.S. and imported shrimp.[3]

CHANNELS OF DISTRIBUTION

U.S. processors sold product mainly to distributors while importers sold product from subject countries mainly to retailers and institutional buyers, as shown in table II-1. The major exception to this was product imported from China; this was sold mainly to distributors. Most Malaysian product was mainly sold to distributors in 2009 and most Indian product was sold to distributors in January to September 2012. Imports of product from nonsubject countries are also mainly sold to distributors.

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[1] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Review)*, USITC Publication 4221, March 2011, p. II-1.

[2] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Final)*, USITC Publication 3748, January 2005, p. II-1.

[3] Conference transcript, p. 33 (Kimbough).

Table II-1
Frozen warmwater shrimp: U.S. processors' and U.S. importers' U.S. shipments by sources and channels of distribution, 2009-11, and January-September 2012

Item	Period			
	2009	2010	2011	Jan.-Sept. 2012
	Share of U.S. shipments (*percent*)			
U.S. processors' U.S. shipments of frozen warmwater shrimp to:				
Distributors	66.6	86.4	81.4	85.1
End users	9.2	5.2	6.5	6.3
To retailers[1]/institutional buyers[2]	24.2	8.4	12.1	8.6
U.S. importers' U.S. shipments of frozen warmwater shrimp from China:				
Distributors	68.3	94.1	92.0	97.6
End users	1.0	0.4	0.2	0.1
To retailers[1]/institutional buyers[2]	30.7	5.4	7.7	2.2
U.S. importers' U.S. shipments of frozen warmwater shrimp from Ecuador:				
Distributors	18.5	9.7	8.7	17.4
End users	0.3	18.6	6.0	43.1
To retailers[1]/institutional buyers[2]	81.1	71.7	85.3	39.5
U.S. importers' U.S. shipments of frozen warmwater shrimp from India:				
Distributors	3.9	14.1	18.1	72.5
End users	0.1	0.2	0.4	2.3
To retailers[1]/institutional buyers[2]	96.0	85.7	81.5	25.2
U.S. importers' U.S. shipments of frozen warmwater shrimp from Indonesia:				
Distributors	3.5	7.0	3.8	6.2
End users	1.0	1.8	0.8	1.1
To retailers[1]/institutional buyers[2]	95.5	91.1	95.4	92.7
U.S. importers' U.S. shipments of frozen warmwater shrimp from Malaysia:				
Distributors	54.7	1.1	1.2	1.0
End users	0.0	0.0	0.0	0.0
To retailers[1]/institutional buyers[2]	45.3	98.9	98.8	99.0
U.S. importers' U.S. shipments of frozen warmwater shrimp from Thailand:				
Distributors	15.9	4.4	20.3	17.7
End users	0.1	0.1	0.3	0.5
To retailers[1]/institutional buyers[2]	84.0	95.5	79.5	81.8
U.S. importers' U.S. shipments of fresh shrimp from Vietnam:				
Distributors	9.8	7.3	5.8	7.5
End users	0.1	0.1	0.0	0.1
To retailers[1]/institutional buyers[2]	90.1	92.6	94.2	92.4
U.S. importers' U.S. shipments of fresh shrimp from all subject countries:				
Distributors	16.6	4.6	7.5	9.7
End users	0.2	2.4	1.1	9.0
To retailers[1]/institutional buyers[2]	83.2	93.0	91.5	81.3
U.S. importers' U.S. shipments of fresh shrimp from all other countries:				
Distributors	80.1	72.4	69.3	55.5
End users	2.0	2.0	3.2	3.4
To retailers[1]/institutional buyers[2]	17.8	25.6	27.5	41.1

[1] Entities that purchase and resell to end users (i.e., supermarkets and other retailers that sell to customers).
[2] Entities such as restaurants, hotels, hospitals, etc.

Note.—numbers may not add to 100 because of rounding.

Source: Compiled from data submitted in response to Commission questionnaires.

GEOGRAPHIC DISTRIBUTION

Both U.S. processors and importers reported selling frozen warmwater shrimp to all regions in the contiguous United States (table II-2). Fourteen of 43 responding processors reported selling half or more of their product within 100 miles of their production facility, 20 sold half or more between 101 and 1,000 miles, and 6 sold half or more over 1,000 miles. Twenty-five of the 54 responding importers reported selling half or more of their product within 100 miles of their U.S. point of shipment, 17 reported selling half or more between 100 miles and 1,000 miles of their U.S. point of shipment, and 6 reported selling half or more over 1,000 miles from their U.S. point of shipment.

Table II-2
Frozen warmwater shrimp: U.S. processors' and U.S. importers' U.S. shipments by region

Regions	U.S. processors	Imports
Northeast	28	32
Midwest	28	33
Southeast	40	33
Central Southwest	38	35
Mountains	17	28
Pacific Coast	20	37
Other[1]	6	15

[1] All other U.S. markets, including AK, HI, PR, VI, among others.

Source: Compiled from data submitted in response to Commission questionnaires.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

U.S. supply of fresh shrimp and natural cycle

U.S. fishermen generally harvest white, pink, and brown shrimp from the Gulf, with white and pink shrimp from the Carolina and Florida Atlantic coasts, respectively. U.S. shrimp fishermen primarily harvest only shrimp, and changes to harvests of other animals would be expensive since their equipment (trawlers, nets, etc.) are not appropriate for catching other forms of seafood. Fishermen's decisions whether or not to shrimp depend on fixed costs including the cost of the boat, boat maintenance, insurance, and debt-servicing costs, and variable costs, including most importantly fuel, as well as equipment repair and replacement, and labor.[4]

Supply of warmwater shrimp in the United States

Based on available information, U.S. warmwater shrimp processors have the ability to respond to changes in demand with moderate changes in their quantity of shipments to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are some availability of inventories, and large unused processing capacity. Supply responsiveness is limited by few alternative

[4] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Review)*, USITC Publication 4221, March 2011, p. II-4.

markets and production alternatives, and biological/environmental limits on the amount of fresh shrimp that can be fished from U.S. waters.

Thirty of 47 responding processors reported that they had been unable to supply shrimp, citing: prices were below their costs; lack of fishing because of low prices; BP oil spill; high fuel costs reduced vessel profit; lack of funds for long-term inventories; vessels hired to work for BP or shrimping areas closed; and unpredictable prices. Forty-four of 60 responding processors reported that U.S. regulations affect supply, including: labor laws, environmental regulations, FDA, HACCP,[5] and other regulations that increase costs but also may improve the quality and safety of the food produced. Forty processors reported that other countries' regulations affected supply, and a number of these reported that lack of regulation in other countries reduce their competitors' costs; other differences included that the EU has banned substances that are permitted or not tested for by the United States causing a lower grade to be imported into the U.S. market, and a tariff on U.S. product sold in the EU. Forty-seven processors reported manmade disasters had affected supply; most cited the BP oil spill.

Almost half of the importers (21 of 44) reported supply constraints, including: unavailability of wild U.S. shrimp; FDA random inspections cause delay; if demand is high sometimes supply is not available; demand in China has reduced availability; seasonality; antidumping bond requirements make it difficult to purchase as much as needed; and diseases reduce availability. Most importers (39 of 46) reported that U.S. regulations affect supply, including: FDA inspections slow delivery; and antidumping regulations limit availability. Most importers also reported that other countries' regulations affect supply, including: labor laws in Ecuador and other labor concerns; other countries' antibiotic restrictions are more stringent than those of the United States; and other countries do not have FDA type regulations.

Thirteen of the 43 responding U.S. processors and 11 of the 42 responding importers reported changes in their product range, product mix, and/or marketing since January 2009. U.S. processors reported changes, including: processing equipment is now being installed in Asia, allowing Asian producers to export pealed and IQF product to the U.S. market; there has been an effort to market U.S. shrimp, both wild and farmed, as better in food safety, quality, and flavor; imports of prepared products which compete with domestic product that requires preparation; BP oil spill held up shrimp marketing; the oil spill has affected the size of shrimp caught as low prices make fishing for lower priced smaller shrimp uneconomic; a flood of imports from India has driven prices down; and imports from India, Indonesia, and Malaysia have reduced the price of large headless shrimp. Importers also reported changes, including: increased availability of white shrimp; low priced inferior quality Indian product has changed the product mix with customers purchasing more white shrimp rather than black tigers; the poor economy has increased sales of smaller shrimp at lower prices; more farming of large sizes of white that get higher prices; increased demand; new items; endorsements; and health conscience.

Seasonality

The U.S. supply of wild-caught fresh shrimp varies by season. The main fishing season is May to December, although different times of the year are better for particular species and sizes. In the offseason (roughly January through April), some fishermen take time for maintenance and upgrades while others continue fishing. Although U.S. processors are able to maintain some supply of warmwater shrimp during the offseason by freezing part of their in-season inventory for later sale, prices have been historically higher in the offseason as supply of both fresh and frozen shrimp is lower. U.S. processors

[5] Hazard analysis & critical control points (HACCP) "is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product." Source: HTTP://WWW.FDA.Gov/food/foodsafety/hazardanalysiscriticalcontrolpointsHACCP/default 2/1/2013

and fishermen have described this seasonal supply characteristic as a necessary cycle for fishermen and U.S. processors to make money (through higher offseason prices) and make needed repairs and upgrades.[6]

Most of U.S. processors (34 of 46) and most of importers (26 of 46) reported that there are business cycles or seasonality in U.S. warmwater shrimp supply.[7] U.S. processors reported that U.S. shrimping tends to be seasonal,[8] while imports are not because of the process of farming.[9] Other factors mentioned included: demand related to the economy, holidays/lent; mainly eaten in warmer weather; size of the shrimp being caught differs from month to month; and imports have affected the business cycle.

U.S. processors' supply

Industry capacity

U.S. processors' capacity increased from 658.6 million pounds in 2009 to 704.9 million in 2011. The capacity utilization rate decreased from 32.9 percent in 2009 to 27.4 percent in 2011 and from 29.2 percent in January to September 2011 to 26.9 percent in January to September 2012. This relatively low level of capacity utilization suggests that U.S. processors may have substantial capacity to increase processing of frozen warmwater shrimp in response to an increase in prices. The actual responsiveness of supply, given excess capacity, depends on the availability of shrimp to be processed which is determined by the amount of shrimp available and the size and success of the shrimp fishing fleet.

Export markets

U.S. processors' exports, as a percentage of total shipments, were less than one tenth of one percent throughout the period. U.S. processors may have very little, if any, ability to shift shipments between the U.S. market and other markets in response to price changes.

Inventory levels

U.S. processors maintain inventories to respond to year-round demand for warmwater shrimp and seasonal fluctuations in landings. U.S. processors' inventories increased slightly. U.S. processors' inventories, as a ratio of their total warmwater shrimp shipments, increased from 16.6 percent in 2009 to 19.8 percent in 2011, and from 17.3 percent in the first three quarters of 2011 to 25.5 percent in the first three quarters of 2012. These inventory levels suggest that U.S. processors may have some ability to respond to changes in demand with changes in the quantity shipped from inventories.

Production alternatives

Only 4 of 55 responding processors stated that they could switch production from frozen warmwater shrimp to other products. Other products that processors reportedly can produce on the same equipment as frozen warmwater shrimp are fresh shrimp and breaded shrimp.

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[6] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Review)*, USITC Publication 4221, March 2011, p. II-6.

[7] Some processors reported that business was not seasonal because they carried product for year round sales.

[8] Some reported that white shrimp and brown shrimp have different seasons.

[9] Some importers reported imports also were available seasonally, with more shrimp production in the summer, and black tiger shrimp are not available from January through March.

Supply constraints

Thirty of 47 responding processors reported that they were unable to supply product. Processors reported that shrimping boats only when it was economic for them to do so, they would not work when shrimp prices were low or fuel costs were high; that they did not always have all sizes of shrimp that might be requested; that the BP oil spill reduced production; that they had to decline orders and not take new customers; that they lack funds for long-term inventory; and that supply was constrained by natural disasters.

U.S. processors reported that fishing, safety, sanitary, environmental, business, and employment regulations increased their costs, thus affecting their supply. A number of processors questioned if imports faced the same level of regulation/enforcement. Processors were also asked about "manmade" or natural disasters or diseases. Most processors mentioned that the BP oil spill both reduced supply and undermined demand, while BP's willingness to pay for losses and hiring of boats for the cleanup effort reduced the number of boats shrimping. Firms also reported that hurricanes and other weather related problems,[10] pollution causing diseases, and "black gill" disease affected the supply of frozen warm water shrimp.

Respondents report that commercial landings in Gulf and South Atlantic states have averaged 260 million pounds per year for the last 40 years and that from 2001 through 2011 they averaged 250 million pounds per year; thus U.S. processors are not going to be able to increase their production much if prices improve, or imports decline. [11]

Subject imports

Imports constitute the vast majority of the U.S. warmwater shrimp market. Warmwater shrimp production in subject foreign countries primarily uses farm-raised shrimp unlike U.S. production which primarily uses wild-caught shrimp. Shrimp of many different species can be farmed, and shrimp farms are usually designed principally for export.

Imports from subject countries increased from 894 million pounds in 2009 to 984 million in 2011 and subject imports increased from 80.0 percent of the quantity of all U.S. imports to 84.9 percent in that time. Country-by-country data were available for imports of the majority of product imported into the U.S. markets for all subject countries except Malaysia and Vietnam (table II-3).

[10] Other weather problems reported included: unusually warm weather that increased predation; freezes that reduced the shrimp population; and floods that reduced the shrimp population.

[11] Conference transcript, pp. 131-132 (Goldfeder).

Table II-3
Frozen warmwater shrimp: Capacity, total shipments to the U.S. market, capacity utilization, inventories, sales to various markets and overall capability to shift sales to the United States

Year	Total capacity	U.S. imports[1]	Capacity utilization	Inventories to shipments	Sales to markets		Factors influencing supply responsiveness to changes in the U.S. market
					Home	U.S.	
	1,000 short tons		Percent				
China:							
2009	***	49,600	***	***	***	***	Having the second lowest capacity and shipments to the U.S. market reported for 2011 may reduce China's ability to increase supply to the U.S. market. High inventories at the end of the period and significant exports to other countries increase its ability to increase shipments to the U.S. market; while relatively high and rising capacity utilization reduce its ability to increase shipments to the U.S. market.
2011	***	42,032	***	***	***	***	
Ecuador:							
2009	312,569	133,934	57.6	4.5	3.0	44.5	Ecuador's increasing capacity and increasing shipments to the U.S. market may increase its ability to increase supply to the U.S. market. Relatively low capacity utilization, and large quantities shipped to other markets may increase its ability to shift shipments to the U.S. market. Low inventories, however, reduce its ability to shift shipments to the U.S. market.
2011	498,848	160,421	55.9	6.5	3.1	35.3	
India:							
2009	617,182	42,486	16.2	12.7	0.2	33.4	India has the second largest capacity of the subject countries, as well as rapidly growing shipments to the U.S. market, which may increase its ability to increase supply to the U.S. market. Very low capacity utilization (although rising), and large share of production exported to other markets may allow it to increase shipments to the U.S. market.
2011	687,259	104,959	23.7	12.3	0.0	54.6	
Indonesia:							
2009	323,147	145,390	50.9	9.4	4.9	60.8	Indonesia had the second largest shipments of product to the U.S. market in 2009, however exports to the U.S. market have risen relatively little and it is no longer the second largest in 2011. High quantities sold may increase the ability to increase supply to the U.S. market; low capacity utilization increases Indonesia's ability to shift shipments to the U.S. market.
2011	303,700	146,746	57.1	13.8	1.4	68.7	
Malaysia:							
2009	***	39,466	***	***	***	***	Relatively low shipments to the U.S. may reduce Malaysian ability to increase supply to the U.S. market. However, shipments have been rising rapidly. (Data are limited by the very low response rate).
2011	***	63,414	***	***	***	***	

Table continued on the next page.

Table II-3 *Continued*
Frozen warmwater shrimp: Capacity, total shipments to the U.S. market, capacity utilization, inventories, sales to various markets and overall capability to shift sales to the United States

Year	Total capacity	U.S. imports[1]	Capacity utilization	Inventories to shipments	Sales to markets: Home	Sales to markets: U.S.	Factors influencing supply responsiveness to changes in the U.S. market
	1,000 short tons		Percent				
Thailand:							
2009	817,010	394,308	80.7	20.2	6.5	55.2	Relatively high shipments to the U.S. market (more than twice as much as reported by any other subject country), high capacity, and a majority of production shipped to the U.S. market may increase the ability to increase supply to the U.S. market. Relatively high exports to other countries, falling capacity utilization, and inventories may also increase ability to increase shipments to the U.S. market.
2011	893,838	375,072	63.2	21.1	5.1	58.8	
Vietnam:							
2009	272,496	88,489	67.9	21.1	5.6	17.4	Vietnam's moderate level of shipments to the U.S. market, compared to other subject countries may reduce its ability to increase supply to the U.S. market, while its rising capacity, falling capacity utilization, inventories, and very small share sold to the U.S. market may increase its ability to shift product to the U.S. market. (Data are limited by the low response rate).
2011	324,864	91,502	60.7	27.2	6.5	17.2	

[1] U.S. imports are from official Commerce statistics. All other data are from the foreign producers' questionnaires and reflect the coverage provided in the foreign producer questionnaires.

Note.–Foreign producer data for most subject countries cover the majority of imports into the United States: Thailand (88.2%); India (85.3%); China ***; Indonesia (77.5%); and Ecuador (58.4%). Vietnamese foreign producers responding to the questionnaires export 41% of Vietnam's exports to the United States and Malaysian responding foreign producers cover only ***% of Malaysian exports to the United States.

Source: Compiled from data submitted in response to Commission questionnaires, table IV-4.

Supply constraints

Twenty-one of 44 responding importers reported supply constraints. Importers reported a variety of constraints including: bad harvests; delayed shipments; shortages; smaller catches of wild shrimp forced the firm to replace U.S. produced with imports because of unavailability of U.S. product; shifted to selling COD due to economy; FDA inspection caused delays; demand can be higher than supply; limits on species and sizes available; refused customers out of delivery area or credit; antidumping duties bond requirements curtailed growth; and limitation in Asian supply due to disease and demand in other markets.

Importers were asked if regulations in the United States or other countries effected supply. A number of importers stated that FDA inspections can delay shipments for up to 6 weeks, increasing their need for inventories or causing delayed deliveries. A few reported that other countries' regulations affected supply, including: in Ecuador, peelers are required to be full-time employees with benefits, increasing cost by 25 percent; other purchasing countries have changed import policies; and antibiotic restrictions in other countries affect product supplied in the United States.

Nonsubject imports

Imports of warmwater shrimp from nonsubject countries are available both as farmed and wild caught. Mexico provides wild-caught warmwater shrimp with the same seasonal supply surge as U.S.

production. Other major nonsubject country sources include Honduras, Peru, Guyana, Bangladesh, Singapore, and Venezuela.

The largest sources of nonsubject imports during January 2009-September 2012 were Mexico, Honduras, Peru, and Guyana. Combined, these countries accounted for 61.7 percent of nonsubject imports during that period.

Respondents report that nonsubject countries could supply the U.S. market all the frozen warmwater shrimp it is now importing without any imports from subject country sources [12] and that nonsubject imports would have a similar impact on U.S. prices as product from subject countries.[13]

U.S. Demand

Demand for warmwater shrimp comes from retail sellers of both prepared and unprepared warmwater shrimp (e.g., grocery stores) and restaurants. In recent years, larger restaurant chains and U.S. seafood processors (i.e., breaders, skewers, and marinates) have demanded warmwater shrimp in larger quantities, with year-round availability, standardized sizes, and lower prices. There is some seasonality in U.S. shrimp demand, which is typically higher around Easter, Christmas, and New Year's.[14]

End Uses

U.S. demand for frozen warmwater shrimp depends on the demand for shrimp as food either as a standalone item or as an ingredient with other food. Downstream products included breaded shrimp, frozen meals, and skillet meals. Petitioners report that the "food service industry" purchases the majority of frozen warmwater shrimp in the United States. In the food service industry, it is used as a center-of-the-plate item, and accounts for the largest portion of the costs of the meal. [15]

Business Cycle

While processors and importers reported important cycles affecting supply, few mentioned any cycles in demand. Petitioners, however, report that with the recent economic downturn, the food service industry has become more cost conscious.[16]

Apparent Consumption

Apparent U.S. consumption of frozen warmwater shrimp fluctuated during 2009-11. In 2009, apparent consumption was 1,276 million pounds; apparent consumption fell to 1,249 million pounds in 2010, and rose to 1,295 million pounds in 2011. Overall, apparent U.S. consumption in 2011 was 1.5 percent higher than in 2009. Firms indicated that demand for frozen warmwater shrimp declined because of the recession and the BP oil spill, while increased demand was driven by the reported health benefits of eating seafood, shrimp being a low fat food, and demographics.[17]

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[12] Conference transcript, p. 169 (Connelly).

[13] Ecuador National Chamber of Aquaculture (NCA) post conference brief, pp. 21-22.

[14] *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Invs. Nos. 731-TA-1063-1068 (Review)*, USITC Publication 4221, March 2011, p. II-15.

[15] Conference transcript, pp. 35-36 (Kimbrough).

[16] Conference transcript, p. 36 (Kimbrough).

[17] U.S. processors also reported that demand had fallen because of low-priced imports and importers reported that the steady supply of shrimp increased demand.

Demand Perceptions

Most U.S. processors reported that U.S. demand had decreased or fluctuated since 2009, while most importers reported that demand had increased or was unchanged since 2009 (table II-4).

Table II-4
Frozen warmwater shrimp: Reported changes in demand in the United States

Supplier	Number reporting actual changes in demand in the United States since 2009			
	Increased	No change	Decreased	Fluctuated
U.S. processors	3	7	19	11
Importers	15	12	5	10

Source: Compiled from data submitted in response to Commission questionnaires.

Firms were asked how demand had changed outside the U.S. market (table II-5). Few processors responded and half of those responding reported no change in demand. Most importers (18 of 23), however, reported that demand outside the United States had increased. Importers that reported demand growth cited consumer affluence or growth in developing countries.

Table II-5
Frozen warmwater shrimp: Reported changes in demand outside of the United States

Supplier	Number reporting actual changes in demand outside the United States since 2009			
	Increased	No change	Decreased	Fluctuated
U.S. processors	1	9	5	3
U.S. importers	18	1	1	3

Source: Compiled from data submitted in response to Commission questionnaires.

Substitute products

All U.S. processors and almost all importers reported that there were no substitutes.[18] In general, there are few, if any, close substitutes for warmwater shrimp. While other proteins, particularly meats, fish, or shellfish may be consumed, they offer different tastes, textures, and presentations. One possible substitute for imported subject frozen warmwater shrimp is increased imports of value-added product, such as breaded shrimp, produced overseas, rather than having the frozen warmwater shrimp imported and having the value added in the United States.[19]

Cost share

Frozen warmwater shrimp accounts for a moderate-to-large share of the cost of the end-use products in which it is used. Reported cost shares for some end uses were as follows: distribution (95 percent); prawn in prepared meals (17- 25 percent); breaded shrimp (35-65 percent); and skillet meals (28 percent). Petitioners estimated that shrimp cost 75 percent of the total cost of food in a restaurant meal, but this cost excludes other restaurant costs such as labor and overhead.[20]

[18] One of 39 responding importers reported a substitute (any protein).
[19] Conference transcript, pp. 118, 159 (Patterson).
[20] Conference transcript, p. 85 (McLendon).

Buy American

Respondents report that some of the U.S. market is covered by "Buy American" provisions, in particular U.S. Government purchases mainly for military.[21] U.S. processors report that purchases under the Berry Amendment for the military account for between 2.2 and 2.4 percent of U.S. domestic shrimp production.[22] Respondents report that some U.S. Commissaries "have committed to stocking Gulf Seafood and that the number might increase."[23]

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported frozen warmwater shrimp depends upon such factors as relative prices, quality (e.g., species characteristics, consistency, flavor profile, etc.), and conditions of sale (e.g., price discounts/rebates, availability, payment terms, product services, reliability of supply, etc.). Based on available data, staff believes that there is a moderate degree of substitutability between U.S.-produced frozen warmwater shrimp and that imported from subject countries.

Factors Affecting Purchasing Decisions

Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports

Processors and importers were asked whether frozen warmwater shrimp can "always," "frequently," "sometimes," or "never" be used interchangeably, and whether there are differences other than price among sources (tables II-6 and II-7). Most processors reported that product from all country pairs was

[21] Conference transcript, p. 99 (Bloom).
[22] Petitioners' post conference brief, Staff Questions 8, p. 2.
[23] Petitioners' post conference brief, exhibit 17.

Table II-6
Frozen warmwater shrimp: Perceived interchangeability, by country pairs

Country pair	Number of firms							
	U.S. processors				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Subject								
U.S. vs. China	20	14	2	2	0	4	8	6
U.S. vs. Ecuador	20	15	2	2	0	2	12	11
U.S. vs. India	20	15	2	2	0	4	10	11
U.S. vs. Indonesia	19	15	3	2	0	4	11	11
U.S. vs. Malaysia	20	14	2	2	2	3	10	7
U.S. vs. Thailand	20	15	2	2	2	3	13	11
U.S. vs. Vietnam	20	15	2	2	0	4	9	9
U.S. vs. Nonsubject								
U.S. vs. Nonsubject	18	11	2	2	0	2	8	5
Subject vs. Subject								
China vs. Ecuador	17	12	1	2	3	5	9	2
China vs. India	18	12	2	1	2	7	10	1
China vs. Indonesia	20	11	1	1	2	7	10	1
China vs. Malaysia	20	11	1	1	1	7	9	0
China vs. Thailand	19	12	1	1	3	7	9	1
China vs. Vietnam	20	11	1	1	2	7	10	2
Ecuador vs. India	17	12	2	1	3	3	15	3
Ecuador vs. Indonesia	18	12	1	2	3	4	13	3
Ecuador vs. Malaysia	18	12	1	2	2	3	10	2
Ecuador vs. Thailand	18	13	2	1	3	4	14	3
Ecuador vs. Vietnam	18	12	1	2	3	3	13	3
India vs. Indonesia	19	12	1	1	3	7	13	1
India vs. Malaysia	19	12	1	1	2	6	10	1
India vs. Thailand	18	12	2	1	2	9	14	1
India vs. Vietnam	19	11	2	1	2	8	12	1
Indonesia vs. Malaysia	20	11	1	1	4	7	6	2
Indonesia vs. Thailand	19	11	2	1	6	12	9	0
Indonesia vs. Vietnam	19	11	2	1	5	10	8	2
Malaysia vs. Thailand	19	11	1	2	4	7	7	1
Malaysia vs. Vietnam	19	11	1	2	4	6	8	2
Thailand vs. Vietnam	19	13	1	1	5	8	10	0
Subject vs. Nonsubject								
China vs. Nonsubject	17	8	2	1	0	4	9	1
Ecuador vs. Nonsubject	17	8	2	1	1	4	9	1
India vs. Nonsubject	17	8	2	1	0	3	11	1
Indonesia vs. Nonsubject	17	8	2	1	1	3	10	2
Malaysia vs. Nonsubject	17	8	2	1	1	3	8	0
Thailand vs. Nonsubject	17	8	2	1	1	3	11	1
Vietnam vs. Nonsubject	17	8	2	1	0	4	10	1

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-7
Frozen warmwater shrimp: Perceived differences other than price, by country pairs

Country pair	Number of firms							
	U.S. processors				U.S. importers			
	A	F	S	N	A	F	S	N
U.S. vs. Subject								
U.S. vs. China	9	6	8	14	7	7	1	1
U.S. vs. Ecuador	8	5	9	15	13	4	2	2
U.S. vs. India	9	5	9	14	13	6	1	1
U.S. vs. Indonesia	9	5	9	14	13	5	4	1
U.S. vs. Malaysia	9	5	9	14	9	7	2	1
U.S. vs. Thailand	8	5	9	15	15	7	3	1
U.S. vs. Vietnam	9	5	9	14	12	6	2	1
U.S. vs. Nonsubject								
U.S. vs. Nonsubject	8	5	7	14	6	6	3	1
Subject vs. Subject								
China vs. Ecuador	4	5	6	15	1	6	10	1
China vs. India	3	6	6	15	1	4	11	2
China vs. Indonesia	3	5	6	16	1	4	11	2
China vs. Malaysia	3	5	6	16	1	5	8	2
China vs. Thailand	4	5	7	14	1	5	10	2
China vs. Vietnam	3	5	8	14	1	4	10	3
Ecuador vs. India	4	5	6	15	1	6	12	3
Ecuador vs. Indonesia	4	5	6	15	1	5	13	3
Ecuador vs. Malaysia	5	4	6	14	1	5	7	2
Ecuador vs. Thailand	4	5	8	14	1	6	13	2
Ecuador vs. Vietnam	3	5	6	14	1	5	12	2
India vs. Indonesia	3	5	7	14	2	4	16	1
India vs. Malaysia	3	5	7	14	2	4	10	1
India vs. Thailand	4	5	6	15	2	5	17	1
India vs. Vietnam	3	5	7	15	2	4	15	1
Indonesia vs. Malaysia	3	5	6	16	3	3	7	4
Indonesia vs. Thailand	4	5	6	15	3	4	12	6
Indonesia vs. Vietnam	3	5	7	15	3	4	12	4
Malaysia vs. Thailand	4	5	6	15	2	4	7	4
Malaysia vs. Vietnam	3	5	7	15	2	3	10	4
Thailand vs. Vietnam	3	6	6	15	3	3	11	5
Subject vs. Nonsubject								
China vs. Nonsubject	3	5	6	14	0	4	10	1
Ecuador vs. Nonsubject	3	6	5	14	0	3	10	3
India vs. Nonsubject	3	6	5	14	0	3	15	0
Indonesia vs. Nonsubject	3	6	6	13	0	3	12	2
Malaysia vs. Nonsubject	3	6	5	14	0	3	8	2
Thailand vs. Nonsubject	3	6	5	14	0	3	12	2
Vietnam vs. Nonsubject	3	5	6	14	0	3	12	1

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

"always" or "frequently" interchangeable. Most importers, however, reported that U.S. and imported product was only "sometimes" or "never" interchangeable and that product from different subject and nonsubject countries was "frequently" or "sometimes" interchangeable. Factors cited as limiting interchangeability include:

- differences between wild and farmed shrimp (some consumers prefer domestic wild shrimp because it is considered to be free of antibiotics, chemicals and other food hazards, while shrimp from aquaculture is perceived to be prone to misuse of antibiotic and chemicals; U.S. product is wild, and wild may not be as available; U.S. wild caught product cannot be used for extended large contracts with narrow size spectrum due to size irregularity of wild; customers prefer consistent quality and supply of farm raised products, thus there is no overlap);
- differences in the types of shrimp (preference for tiger shrimp available from Indonesia but not the United States);
- differences in size, flavor, and texture of shrimp;
- differences in processing (U.S. product is sold mainly headless shell on while imports have more forms; United States does not produce cooked tail on or easy zip and the sizes importers sell; machine grading and packing decreases yield and increases defects of U.S. product);
- differences among countries (customers need to trust country of origin; farmed from Asian countries are often interchangeable between countries; China, Indonesia, Malaysia, Thailand, and Vietnam produce mainly peeled and deveined or cooked, India produces mostly shell on which competes directly with U.S. and Mexican product in large sizes; Ecuador has more small size shell on and all sizes head on which other countries do not do; Ecuador does not have the capacity to produce the same products made in Asia; Chinese product is lower quality than that from Ecuador); and
- other differences (water quality; and customers use product from different sources in different applications).

Most processors reported that there were either "never" or only "sometimes" differences other than price for product from each of the country pairs. Most importers, however, reported there were either "always" or "usually" differences other than price between U.S. and imported product and most importers reported that there were "sometimes" differences between most subject pairs and subject and nonsubject pairs.[24] Reported differences not listed above include: small shrimp from Ecuador is hand peeled and phosphate free; BP oil spill has messed up local production, quality, and infrastructure; U.S. facilities lack good food safety controls; seasonality and labor expertise differ between countries; quality and technical support from Vietnam, Thailand, and Indonesia; import product comes from many areas and thus gives a year round supply; Vietnam and India produce tigers, the United States does not produce tiger shrimp; Thailand produces small vannamei shrimp in large volumes and the United States does not produce these in large volumes; customers prefer block frozen material that can't be easily damaged; and Indian product is lower quality than that from Indonesia, Malaysia, Thailand, and Vietnam.

Respondents reported that there are numerous differences between U.S. and imported frozen warmwater shrimp and that these differences cause "limited to no direct competition between domestic frozen shrimp and imports."[25] They reported that customers that want "consistent high quality product year round must buy imported farmed shrimp" and "while there are sizeable processors in the United States, none of these guys can guarantee delivery to me in the sizes and quantities that I want, when I want."[26] In addition, "restaurants can plan menus and pricing due to the programming and consistency of farmed shrimp. Supermarkets can plan advertising schedules without having to store large volumes of

[24] Most importers reported that there were either "usually" or "sometimes" differences other than price between Malaysia and other subject countries.

[25] Conference transcript, p. 107 (McCloskey).

[26] Conference transcript, p. 99 (Bloom).

product. This leads to healthier cash flows and reduced supply chain costs."[27] Respondents also report that the type of processing of imported and U.S. products differ; "most of Eastern Fish's imports from subject countries are further processed goods, which are almost unavailable from the domestic industry. Most U.S. product is marketed in the basic shell on block form, and to the degree that shrimp are peeled, they are mostly peeled by machine with significant broken shrimp and shell remaining."[28] Further they report that "Gulf Coast frozen shrimp frequently has a poor appearance."[29] They report, however, that "the frozen domestic product has its market segment. This tends to consist of smaller stores and regional distributors located in Southern, Midwest, and Mid-Atlantic states. More out of tradition than anything else, these customers still place a premium on wild caught U.S. product, whether in fresh or frozen form."[30]

Although respondents argue that "for customers that demand traceability, wild caught U.S. shrimp is generally not an option,"[31] some petitioners report having traceability -- "we have recently passed the Global Food Safety Institution's safe quality foods audit, a globally recognized food safety quality management and traceability certification. Most of the boats that supply our company with shrimp have GPS units onboard that trace exactly where the boats are shrimping, and all of our product is labeled with the unloading location."[32]

Representatives of the Indian processors reported that Indian product "basically does not compete with U.S. processors. We compete with … Thailand, Indonesia, Ecuador, Vietnam, China, and a few other nonsubject countries."[33] The Indonesian representative reported that Indonesian product competes mainly with other imports,[34] and also reported that it was increasingly focusing on selling to its domestic market.[35]

[27] Conference transcript, p. 100 (Bloom).
[28] Conference transcript, p. 100 (Bloom).
[29] Conference transcript, p. 103 (McCloskey).
[30] Conference transcript, p. 106 (McCloskey).
[31] Conference transcript, p. 110 (Faria).
[32] Conference transcript, p. 42 (McLendon).
[33] Conference transcript, pp. 123-124 (Sait).
[34] Conference transcript, p. 126 (Layton).
[35] Conference transcript, p. 129 (Layton).

PART III: U.S. PROCESSORS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged subsidies was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of 58 firms, 38 of which provide usable data, that accounted for 83.8 percent of U.S. production based on live (head-on shell-on) weight during 2011.[1]

U.S. PROCESSORS

Warmwater shrimp is largely wild-caught in the United States in the Gulf of Mexico and the Southeastern Atlantic.[2] Table III-1 presents warmwater shrimp landings and farm production, by region, in 2011.

Table III-1
Warmwater shrimp: Wild-catch landings and farm production, by region, 2011

Region	Wild-catch landings	Farm production	All warmwater shrimp
		Quantity (*1,000 pounds*)	
Gulf	211,998	2,192	214,190
South Atlantic	22,198	([1])	22,198
Total	234,196	2,192	236,388

[1] Data not available.

Note.–Farm production data is only available for Texas. U.S. processors reported that 99.3 percent of their shrimp used for production is wild-caught.

Source: NMFS, Fisheries of the United States, 2011; staff interview with Granvil Treece, Texas A&M.

Table III-2 presents a list of current domestic processors of frozen warmwater shrimp and each company's position on the petition, location, and share of reported production of frozen warmwater shrimp in 2011. No U.S. processors are related to foreign producers of the subject merchandise and two are related to U.S. importers of the subject merchandise. In addition, as discussed in greater detail below, one U.S. processor, *** directly imports the subject merchandise and 15 purchase the subject merchandise from U.S. importers.

[1] Staff's coverage estimate is based on a comparison of data compiled from Commission questionnaires (198.0 million pounds) to official NMFS statistics.

[2] The limited farm production is also largely concentrated in the same states.

Table III-2
Frozen warmwater shrimp: U.S. processors, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2011 reported U.S. production

Firm	Position on petition	Location	Share of 2011 reported production (*percent*)
Bama Sea Products	***	FL	***
Bayou Shrimp Processors, Inc.[1]	***	LA	***
Best Sea Pack of Texas, Inc.	***	TX	([2])
Biloxi Freezing and Processing, Inc.[3]	***	MS	***
Bluewater Shrimp Company, Inc	***	LA	***
Bon Secour Fisheries, Inc.	***	AL	***
C F Gollott & Son Seafood Inc	***	MS	***
C.J. Seafood, LLC	***	SC	([2])
Cape Canaveral Shrimp Co.	***	FL	([2])
Carson and Co., Inc.	***	AL	***
David Chauvin's Seafood Co., LLC[4]	***	LA	([2])
Dean Blanchard Seafood, Inc.	***	LA	([2])
Dominick's Seafood, Inc.	***	AL	***
DoRan Seafood, LLC	***	LA	***
Fisherman's Reef Shrimp Co.	***	TX	***
Gar Shrimp Corp.	***	TX	***
Garcia Enterprises, Inc. (DBA Quality Seafood)	***	TX	([2])
Golden Gulf Coat Packaging Co., Inc.	***	MS	***
Graham Shrimp Co., Inc.	***	AL	***

Table continued on next page.

Table III-2--*Continued*
Frozen warmwater shrimp: U.S. processors, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2011 reported U.S. production

Firm	Position on petition	Location	Share of 2011 reported production (*percent*)
Gulf Crown Seafood Co, Inc.	***	LA	***
Gulf Fish, Inc.	***	LA	***
Gulf Island Shrimp and Seafood II, LLC	***	LA	***
Gulf Pride Enterprises, Inc.	***	MS	***
Gulf Shrimp, Inc.	***	FL	(2)
Gulf South, Inc.	***	LA	(2)
Hi Seas of Dulac inc.	***	LA	***
International Oceanic Enterprises, Inc. of Alabama [5]	***	AL	***
Intracoastal Seafood, Inc.	***	LA	(2)
James F. Dubberly (DBA Dubberly's Mobile Seafood)[6]	***	GA	(2)
JBS Packing Company, Inc.	***	TX	***
Lafitte Frozen Foods Corp.	***	LA	***
Lazaretta Packing, Inc.	***	GA	***
Mariah Jade Shrimp Co.[7]	***	LA	(2)
Mary Thi Nguyen (DBA Seafood Mart)	***	LA	(2)
Ocean Harvest Wholesale, Inc.	***	TX	***
Ocean Pride Seafood	***	LA	(2)
Ocean Springs Seafood Marketing, Inc.	***	MS	(2)
Palacios Processor's, Inc. (DBA Lighthouse Seafood)	***	TX	***
Pascagoula Ice and Freezer Co., Inc.	***	MS	(2)
Paul Piazza and Son, Inc.	***	LA	***
Pearl, Inc. (DBA Indian Ridge Shrimp Co.)	***	LA	***
Penguin Frozen Food, Inc.	***	IL	***

Table continued on next page.

Table III-2--*Continued*
Frozen warmwater shrimp: U.S. processors, positions on the petition, U.S. production locations, related and/or affiliated firms, and shares of 2011 reported U.S. production

Firm	Position on petition	Location	Share of 2011 reported production (*percent*)
Philly Seafood Company, Inc.[8]	***	TX	([2])
R A Lesso Brokerage Co.	***	MS	***
Sea Gold[9]	***	CA	***
Sea Pearl Seafood Company, Inc.	***	AL	***
Seabrook Seafood	***	TX	***
Smith and Sons Seafood, Inc.	***	GA	***
Tampa Bay Fisheries[10]	***	FL	***
Tex Mex Cold Storage	***	TX	([2])
Texas Gulf Seafood, Inc.	***	TX	***
Texas Pack, Inc.	***	TX	([2])
The Seafood Shed[11]	***	LA	([2])
Thunderbolt Fisherman's Seafood[12]	***	GA	([2])
Tideland Seafood Co., Inc.	***	LA	***
Tommy's Seafood Inc.	***	LA	***
Vincent Piazza Jr. and Sons Sea	***	LA	([13])
Wood's Fisheries, Inc.	***	FL	***

[1] ***.
[2] ***.
[3] ***.
[4] ***.
[5] ***.
[6] ***.
[7] ***.
[8] ***.
[9] ***.
[10] ***.
[11] ***.
[12] ***.
[13] ***.

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-3 summarizes the changes in operations reported by U.S. processors since January 2009. In addition, 24 U.S. processors reported prolonged shutdowns or production curtailments, predominantly as a result of the 2010 Deep Water Horizon (BP) oil spill. U.S. processors appearing at the staff conference noted that there have not been any major consolidations or new processors to the industry during the period of investigation.[3]

Table III-3
Frozen warmwater shrimp: Changes in domestic industry operations since January 1, 2009

* * * * * * *

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. processors' capacity, production, and capacity utilization data for frozen warmwater shrimp are presented in table III-4. Processors' reported capacity in the United States increased by 7.0 percent between 2009 and 2011 and increased by 3.2 percent between the interim periods.

Table III-4
Frozen warmwater shrimp: U.S. processors' total capacity, production, and capacity utilization, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
Capacity (*1,000 pounds*)	658,566	687,265	704,850	506,682	522,909
Production (*1,000 pounds*)	222,231	181,325	198,011	151,706	144,039
Capacity utilization (*percent*)	32.9	25.6	27.4	29.2	26.9

Note.--Capacity utilization calculated here excludes data for two processors which reported useable trade data on shipments and production but did not provide a useable capacity figure.

Source: Compiled from data submitted in response to Commission questionnaires.

Constraints on Capacity

The Commission asked domestic processors to report constraints on their capacity to produce warmwater shrimp. Table III-5 presents the firms' ranking of constraints.

[3] Conference transcript, pp. 89-90 (Drake).

Table III-5
Frozen warmwater shrimp: Constraints on production capacity

Item	Not applicable	Most important	2nd most important	3rd most important	4th most important	5th most important
Freezing capacity	35	2	5	4	3	1
Live shrimp supply	19	23	7	0	0	0
Machinery or equipment other than freezers	32	4	4	6	0	3
Storage capacity	35	0	3	3	7	3
Labor availability	29	2	9	5	3	2
Other	14	11	2	0	0	0

Source: Compiled from data submitted in response to Commission questionnaires.

Freezing Capacity

Table III-6 presents the U.S. processors total and allocated freezing capacity. Four domestic processors report that they process other products utilizing the same equipment and related workers used to produce frozen warmwater shrimp.[4]

Table III-6
Frozen warmwater shrimp: U.S. processors' capacity, by type, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Quantity (*1,000 pounds*)				
Total potential freezing capacity	651,835	645,679	663,074	493,510	509,944
of which allocated to frozen warmwater shrimp	601,840	596,379	613,964	444,678	461,194
Block freezing capacity	384,236	375,274	387,689	283,855	300,278
IQF freezing capacity	217,704	220,510	222,560	177,515	177,526

Source: Compiled from data submitted in response to Commission questionnaires.

[4] Processors reported processing other fish and fresh shrimp.

U.S. PROCESSORS' SHIPMENTS

Data on U.S. processors' shipments of frozen warmwater shrimp are presented in table III-7. The quantity of U.S. processors' U.S. shipments fluctuated from 2009 to 2011 but decreased overall by *** percent, and decreased by *** percent in the interim periods. The unit values of U.S. shipments increased in each year from 2009 to 2011, increasing overall by *** percent. Unit values also increased during the interim periods, by *** percent.

Table III-7
Frozen warmwater shrimp: U.S. processors' shipments, by types, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Quantity (*1,000 pounds*)				
Commercial shipments	213,426	184,254	191,603	147,671	133,561
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Value (*1,000 dollars*)				
Commercial shipments	659,085	662,554	718,707	543,068	509,864
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***
	Unit value (*per pound*)				
Commercial shipments	$3.09	$3.60	$3.75	$3.68	$3.82
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	***	***	***	***	***

Table continued on next page.

Table III-7--*Continued*
Frozen warmwater shrimp: U.S. processors' shipments, by types, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Share of quantity (*percent*)				
Commercial shipments	98.6	98.9	98.8	98.7	98.4
Internal consumption	***	***	***	***	***
Transfers to related firms	***	***	***	***	***
U.S. shipments	***	***	***	***	***
Export shipments	***	***	***	***	***
Total shipments	100.0	100.0	100.0	100.0	100.0

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. PROCESSORS' INVENTORIES

Table III-8 presents domestic processors' end-of-period inventories for frozen warmwater shrimp. The domestic industry's inventories of warmwater shrimp increased by 6.9 percent from 2009 to 2011, and also increased by 33.6 percent during the interim periods. Inventories, relative to total shipments, increased by 3.2 percentage points from 2009 to 2011, and by 8.2 percentage points during the interim periods. Domestic processors hold more inventory in the off season, which is at the end and the very beginning of the calendar year.[5]

[5] Conference transcript, p. 64 (Drake).

Table III-8
Frozen warmwater shrimp: U.S. processors' end-of-period inventories, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
Inventories (*1,000 pounds*)	35,865	33,699	38,357	34,508	46,105
Ratio to production (*percent*)	16.1	18.6	19.4	17.1	24.0
Ratio to U.S. shipments (*percent*)	16.7	18.1	19.9	17.4	25.6
Ratio to total shipments (*percent*)	16.6	18.1	19.8	17.3	25.5

Note.–Partial-year ratios are based on annualized production and shipments.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. PROCESSORS' IMPORTS AND PURCHASES

One U.S. processor, Tampa Bay Fisheries, reported direct imports of frozen warmwater shrimp. Tampa Bay Fisheries states that it is a production company that, along with its sister companies, is part of one of the largest private-owned shrimp importing and processing groups in the United States. It purchases and processes foreign shrimp, as well as products from U.S. vessels.[6] Fifteen U.S. processors reported purchases of subject imports of frozen warmwater shrimp. Table III-9 presents U.S. processors' imports and purchases of frozen warmwater shrimp.

Table III-9
Frozen warmwater shrimp: U.S. processors' Imports and purchases of imports, 2009-11, January-September 2011, and January-September 2012

* * * * * * *

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

The U.S. processors' aggregate employment data for frozen warmwater shrimp are presented in table III-10. The number of PRWs fluctuated from 2009 to 2011, but had an overall decrease of 7.1 percent, and decreased by 2.6 percent during the interim periods. Aggregate wages paid also fluctuated from 2009 to 2011, but had an overall decrease of 4.6 percent; wages paid also decreased 3.0 percent during the interim periods. Productivity increased over the period by 5.0 percent, and decreased slightly during the interim period by 0.7 percent.

[6] Conference transcript, p. 114 (Paterson).

Table III-10
Frozen warmwater shrimp: U.S. processors' employment-related data, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
Production and related workers (PRWs)	2,069	1,859	1,922	1,830	1,782
Hours worked by PRWs (*1,000 hours*)	3,885	3,143	3,321	2,807	2,714
Hours worked per PRW	1,968	1,777	1,810	1,611	1,598
Wages paid to PRWs (*1,000 dollars*)	49,677	43,340	47,411	36,606	35,490
Hourly wages	$11.77	$12.74	$13.28	$12.19	$12.37
Productivity (*pounds produced per hour*)	53.8	54.0	56.5	51.2	50.8
Unit labor costs (*per pound*)	$0.23	$0.25	$0.25	$0.25	$0.25

Note.-- Calculations exclude data for a number of firms that provided partial employment data.

Source: Compiled from data submitted in response to Commission questionnaires.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

Importer questionnaires were sent to 92 firms believed to be importers of subject frozen warmwater shrimp, as well as to all U.S. processors of frozen warmwater shrimp.[1] Questionnaire responses were received from 46 companies, representing 55.5 percent of total subject imports and 52.9 percent of total imports from China, 48.1 percent of total imports from Ecuador, 51.7 percent of total imports from India, 64.7 percent of total imports from Indonesia, 43.5 percent of total imports from Malaysia, 61.5 percent of total imports from Thailand, and 43.1 percent of total imports from Vietnam in 2011.[2] Table IV-1 lists all responding U.S. importers of frozen warmwater shrimp, the countries they import from, and their shares of U.S. imports in 2011.

Table IV-1
Frozen warmwater shrimp: U.S. importers, countries from which they import, and shares of subject imports, 2011

Importer	China	Ecuador	India	Indonesia	Malaysia	Thailand	Vietnam	Share of 2011 reported subject U.S. imports
Aqua Star (USA), Corp.[1]	***	***	***	***	***	***	***	***
Arista Industries, Inc.	***	***	***	***	***	***	***	***
Best Choice Trading Corp.	***	***	***	***	***	***	***	([2])
C.P. Food Products, Inc.[3]	***	***	***	***	***	***	***	***
Censea, Inc.	***	***	***	***	***	***	***	***

Table continued on next page.

[1] The Commission sent questionnaires to firms that, based on a review of data provided by U.S. Customs and Border Protection ("Customs"), may have imported greater than *** percent of total imports under HTS subheadings listed in table IV-2 in any one subject country since 2009.

[2] Coverage was calculated based on the official Commerce import statistics compared to the quantity of imports, in million pounds, reported in questionnaire data (22.232 for China, 77.226 for Ecuador, 54.283 for India, 95.011 for Indonesia, 27.566 for Malaysia, 230.841 for Thailand, and 39.469 for Vietnam).

Table IV-1--*Continued*
Frozen warmwater shrimp: U.S. importers, countries from which they import, and shares of 2011 imports

Importer	China	Ecuador	India	Indonesia	Malaysia	Thailand	Vietnam	Share of 2011 reported subject U.S. imports
Choice Canning Co., Inc.[4]	***	***	***	***	***	***	***	***
Contessa Premium Foods	***	***	***	***	***	***	***	([2])
Delco, Inc.	***	***	***	***	***	***	***	***
Devi Seafoods, Inc.[5]	***	***	***	***	***	***	***	***
Diamond Seafoods	***	***	***	***	***	***	***	([6])
Eastern Fish Co.	***	***	***	***	***	***	***	***
Expack Seafood, Inc.	***	***	***	***	***	***	***	***
Four Star Imports and Distribution, Inc.	***	***	***	***	***	***	***	***
Golden Harvest, Inc.	***	***	***	***	***	***	***	([6])
Good World Foods, Inc.	***	***	***	***	***	***	***	***
H and N Foods International	***	***	***	***	***	***	***	***
Hanwa American Corporation[7]	***	***	***	***	***	***	***	***
High Liner Foods (USA), Inc.	***	***	***	***	***	***	***	***
International Pacific (DBA Pacific Supreme Company)	***	***	***	***	***	***	***	***
Lawrence Wholesale, LLC	***	***	***	***	***	***	***	***
Limson Trading, Inc.	***	***	***	***	***	***	***	***
Tri-Union Frozen Products, Inc. (DBA Chicken of the Sea Frozen Foods and DBA Empress International)[8]	***	***	***	***	***	***	***	***
Lucky Food, LLC	***	***	***	***	***	***	***	([6])
Mazzetta Co., LLC	***	***	***	***	***	***	***	***
MV and Sons - Texas, LP	***	***	***	***	***	***	***	***

Table continued on next page.

Table IV-1--*Continued*
Frozen warmwater shrimp: U.S. importers, countries from which they import, and shares of 2011 imports

Importer	China	Ecuador	India	Indonesia	Malaysia	Thailand	Vietnam	Share of 2011 reported subject U.S. imports
North Food Group, Inc.	***	***	***	***	***	***	***	***
Ocean Bistro Corp.[9]	***	***	***	***	***	***	***	***
Ocean Food, Inc.	***	***	***	***	***	***	***	***
Ore Cal Corp.	***	***	***	***	***	***	***	***
Pacific American Fish Co., Inc.	***	***	***	***	***	***	***	***
Pacific Breeze Seafood, Inc.[10]	***	***	***	***	***	***	***	***
Pacific Coral Seafood Co., Inc.	***	***	***	***	***	***	***	***
Pescanova, Inc. (DBA Pescanova USA)[11]	***	***	***	***	***	***	***	***
Pioneer Seafood Trading Co.	***	***	***	***	***	***	***	([6])
Polar Seafood Company, LLC	***	***	***	***	***	***	***	***
Prime Seafood[12]	***	***	***	***	***	***	***	***
PSC Enterprise, LLC	***	***	***	***	***	***	***	***
Ramona Trading, Inc.	***	***	***	***	***	***	***	***
Rubicon Resources, LLC[13]	***	***	***	***	***	***	***	***
Sea Harvest Seafood Co.	***	***	***	***	***	***	***	***
Shells and Fish Import and Export Co.[14]	***	***	***	***	***	***	***	***
Southwind Foods, LLC (DBA Great American Seafood Imports)	***	***	***	***	***	***	***	***
Sunnywell Seafood Trading Co., LLC	***	***	***	***	***	***	***	***
Suram Trading Corp.	***	***	***	***	***	***	***	***
Tampa Bay Fisheries[15]	***	***	***	***	***	***	***	***
Worldwide Food Products	***	***	***	***	***	***	***	***
Total								100%

Table continued on next page.

Table IV-1--*Continued*
Frozen warmwater shrimp: U.S. importers, countries from which they import, and shares of 2011 imports

[1]***.
[2]***.
[3]***.
[4]***.
[5]***.
[6]***.
[7]***.
[8]***.
[9]***.
[10]***.
[11]***.
[12]***.
[13]***.
[14]***.
[15]***.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. IMPORTS

Table IV-2 presents data for U.S. imports of frozen warmwater shrimp. Imports from China decreased by 15.3 percent from 2009 to 2011, and decreased by 23.8 percent in the interim periods. Imports from Ecuador increased by 19.8 percent from 2009 to 2011, and then increased by 13.9 percent in the interim periods. Imports from India increased by the largest percent of all subject countries, by 147.0 percent from 2009 to 2011, and then increased by 24.7 percent in the interim periods. Imports from Indonesia increased by less than one percent from 2009 to 2011, and then increased by 3.8 percent in the interim periods. Imports from Malaysia increased by 60.7 percent from 2009 to 2011, and then decreased by 11.9 percent in the interim periods. Imports from Thailand decreased in both the 2009-11 and interim periods, by 4.9 and 24.7 percent respectively. Imports from Vietnam increased by 3.4 percent from 2009 to 2011, and then decreased by 11.2 percent in the interim periods.

Table IV-2
Frozen warmwater shrimp: U.S. imports, by sources, 2009-11, January-September 2011, and January-September 2012

Source	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Quantity (*1,000 pounds*)				
China	49,600	54,591	42,032	28,407	21,633
Ecuador	133,935	141,620	160,422	121,864	138,853
India	42,486	65,444	104,960	72,433	90,320
Indonesia	145,391	126,661	146,747	111,798	116,090
Malaysia	39,466	52,721	63,415	40,324	35,542
Thailand	394,308	414,954	375,072	261,328	196,756
Vietnam	88,490	100,834	91,503	64,380	57,139
Subtotal (subject)	893,678	956,825	984,150	700,534	656,333
All other sources	222,951	172,475	174,570	110,715	116,366
Total	1,116,629	1,129,300	1,158,720	811,249	772,699
	Value (*1,000 dollars*)[1]				
China	145,582	174,857	159,147	106,181	75,733
Ecuador	339,850	418,571	540,443	411,389	445,209
India	161,163	308,832	529,412	365,157	372,197
Indonesia	487,326	485,466	686,296	522,372	493,977
Malaysia	113,842	153,999	212,566	132,841	124,460
Thailand	1,324,191	1,480,787	1,655,821	1,138,813	836,122
Vietnam	379,595	511,515	504,949	353,209	311,539
Subtotal (subject)	2,951,547	3,534,025	4,288,634	3,029,961	2,659,237
All other sources	720,432	638,578	681,566	419,105	431,129
Total	3,671,979	4,172,604	4,970,199	3,449,067	3,090,366
	Unit value (*per pound*)[1]				
China	$2.94	$3.20	$3.79	$3.74	$3.50
Ecuador	2.54	2.96	3.37	3.38	3.21
India	3.79	4.72	5.04	5.04	4.12
Indonesia	3.35	3.83	4.68	4.67	4.26
Malaysia	2.88	2.92	3.35	3.29	3.50
Thailand	3.36	3.57	4.41	4.36	4.25
Vietnam	4.29	5.07	5.52	5.49	5.45
Subtotal (subject)	3.30	3.69	4.36	4.33	4.05
All other sources	3.23	3.70	3.90	3.79	3.70
Total	3.29	3.69	4.29	4.25	4.00

Table continued on next page.

Table IV-2--*Continued*
Frozen warmwater shrimp: U.S. imports, by sources, 2009-11, January-September 2011, and January-September 2012

Source	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Share of quantity (*percent*)				
China	4.4	4.8	3.6	3.5	2.8
Ecuador	12.0	12.5	13.8	15.0	18.0
India	3.8	5.8	9.1	8.9	11.7
Indonesia	13.0	11.2	12.7	13.8	15.0
Malaysia	3.5	4.7	5.5	5.0	4.6
Thailand	35.3	36.7	32.4	32.2	25.5
Vietnam	7.9	8.9	7.9	7.9	7.4
Subtotal (subject)	80.0	84.7	84.9	86.4	84.9
All other sources	20.0	15.3	15.1	13.6	15.1
Total	100.0	100.0	100.0	100.0	100.0
	Share of value (*percent*)				
China	4.0	4.2	3.2	3.1	2.5
Ecuador	9.3	10.0	10.9	11.9	14.4
India	4.4	7.4	10.7	10.6	12.0
Indonesia	13.3	11.6	13.8	15.1	16.0
Malaysia	3.1	3.7	4.3	3.9	4.0
Thailand	36.1	35.5	33.3	33.0	27.1
Vietnam	10.3	12.3	10.2	10.2	10.1
Subtotal (subject)	80.4	84.7	86.3	87.8	86.0
All other sources	19.6	15.3	13.7	12.2	14.0
Total	100.0	100.0	100.0	100.0	100.0

[1] Landed, duty-paid.

Note.–Because of rounding, figures may not add to the totals shown. Staff recognizes that HTS subheading 0306.16 contains out of scope product (coldwater shrimp). This HTS subheading was created in 2012 and is included to maintain data consistency across the entire period.

Source: Compiled from official Commerce statistics, HTS numbers 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040,0306.16.0003, 0306.16.0006, 0306.16.0009, 0306.16.0012, 0306.16.0015, 0306.16.0018, 0306.16.0021, 0306.16.0024, 0306.16.0027, 0306.16.0040, 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.20.1010, 1605.20.1030, 1605.21.1030, 1605.29.1010.

NEGLIGIBILITY

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.[3] Negligible imports are generally defined in the Tariff Act of 1930, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. However, if there are imports of such merchandise from a number of countries subject to investigations initiated on the same day that individually account for less than 3 percent of the total volume of the subject merchandise, and if the imports from those countries collectively account for more than 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period, then imports from such countries are deemed not to be negligible.[4] Imports from each subject country and its share of total imports are presented in table IV-3.

Table IV-3
Frozen warmwater shrimp: U.S. imports and shares of total imports, by source, December 2011–November 2012

Country	Imports (*1,000 pounds*)	Share of total imports (*percent*)
China	32,185	3.2
Ecuador	160,049	15.7
India	134,488	13.2
Indonesia	154,520	15.2
Malaysia	45,129	4.4
Thailand	276,900	27.2
Vietnam	84,369	8.3
Subtotal	887,640	87.3
All other countries	129,360	12.7
Total	1,017,000	100.0

Note.-Because of rounding, figures may not add to the totals shown. Data for December 2011 includes coldwater shrimp.

Source: Compiled from official Commerce Statistics, HTS numbers 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.20.1010, 1605.20.1030, 1605.21.1030, 1605.29.1010.

[3] Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

[4] Section 771(24) of the Act (19 U.S.C. § 1677(24)).

CUMULATION CONSIDERATIONS

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) fungibility, (2) presence of sales or offers to sell in the same geographical market, (3) common or similar channels of distribution, and (4) simultaneous presence in the market. Issues concerning fungibility and channels of distribution are addressed in Part II of this report. With regard to geographical markets, official Commerce statistics show that the majority of U.S. imports from China entered the United States through Los Angeles, and through 17 ports total in 2009-11. The majority of imports from Ecuador entered through Los Angeles and New York, and through 24 ports total during the period. The majority of imports from India entered through Los Angeles and New York, and through 18 ports total during the period. The majority of imports from Indonesia entered through Los Angeles and New York, and through 21 ports total during the period. The majority of imports from Malaysia entered through Los Angeles and New York, and through 23 ports total during the period. The majority of imports from Thailand entered through Los Angeles and New York, and through 26 ports total during the period. The majority of imports from Vietnam entered through Los Angeles and New York, and through 22 ports total during the period. Both U.S. producers and U.S. importers reported shipping frozen warmwater shrimp geographically throughout the United States.[5] Imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam were present in every month of the period for which data were collected.[6]

APPARENT U.S. CONSUMPTION

Data concerning apparent U.S. consumption of frozen warmwater shrimp during the period of investigation are shown in table IV-4 and figure IV-1. Apparent U.S. consumption decreased between 2009 and 2010, but then increased in 2011, increasing overall by 1.5 percent over the entire period. The value of apparent U.S. consumption increased in each year between 2009 and 2011, with an overall increase of 31.8 percent over the period.

[5] See Part II, Table II-2.

[6] Commerce import statistics for HTS subheadings HTS numbers 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040,0306.16.0003, 0306.16.0006, 0306.16.0009, 0306.16.0012, 0306.16.0015, 0306.16.0018, 0306.16.0021, 0306.16.0024, 0306.16.0027, 0306.16.0040, 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.20.1010, 1605.20.1030, 1605.21.1030, and 1605.29.1010.

Table IV-4
Frozen warmwater shrimp: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2009-11, January-August 2011, and January-August 2012

Item	Calendar year			January-August[1]	
	2009	2010	2011	2011	2012
	Quantity (*1,000 pounds*)				
Wild catch landings	261,830	198,992	234,196	154,632	***
Farmed production[2]	3,801	2,974	2,192	2,192	2,922
Exports	12,221	11,175	19,259	12,541	9,990
Domestic production	253,410	190,791	217,129	144,283	***
Converted U.S. shipments[3]	159,395	120,008	136,574	90,754	***
U.S. imports from--					
China	49,600	54,591	42,032	21,400	18,393
Ecuador	133,935	141,620	160,422	109,086	127,867
India	42,486	65,444	104,960	56,939	71,484
Indonesia	145,391	126,661	146,747	99,475	104,327
Malaysia	39,466	52,721	63,415	30,899	30,278
Thailand	394,308	414,954	375,072	223,779	172,029
Vietnam	88,490	100,834	91,503	53,216	49,818
Subtotal (subject)	893,678	956,825	984,150	594,793	574,196
Nonsubject countries	222,951	172,475	174,570	90,732	99,703
All countries	1,116,629	1,129,300	1,158,720	685,525	673,899
Total U.S. consumption	1,276,024	1,249,308	1,295,294	776,279	***

Table continued on next page.

Table IV-4--*Continued*
Frozen warmwater shrimp: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2009-11, January-August 2011, and January-August 2012

Item	Calendar year			January-August[1]	
	2009	2010	2011	2011	2012
	Value (*1,000 dollars*)				
U.S. shipments[4]	631,478	543,805	701,782	468,898	***
U.S. imports from--					
China	145,582	174,857	159,147	79,062	65,119
Ecuador	339,850	418,571	540,443	367,019	410,713
India	161,163	308,832	529,412	285,585	300,994
Indonesia	487,326	485,466	686,296	463,158	448,918
Malaysia	113,842	153,999	212,566	101,584	107,939
Thailand	1,324,191	1,480,787	1,655,821	965,963	737,336
Vietnam	379,595	511,515	504,949	291,251	277,377
Subtotal (subject)	2,951,547	3,534,025	4,288,634	2,553,621	2,348,398
Nonsubject countries	720,432	638,578	681,566	345,903	369,641
All countries	3,671,979	4,172,604	4,970,199	2,899,524	2,718,038
Total U.S. consumption	4,303,457	4,716,409	5,671,982	3,368,423	***

[1] 2012 data is preliminary and only available through August, 2012. 2012 Wild catch landings for NC, GA, and SC were not available, as such, South Atlantic partial year data for 2011 and 2012 only includes Florida East Coast landings.

[2] Partial year data is the same as full year data because farmed shrimp is typically stocked in April and harvested in July through October.

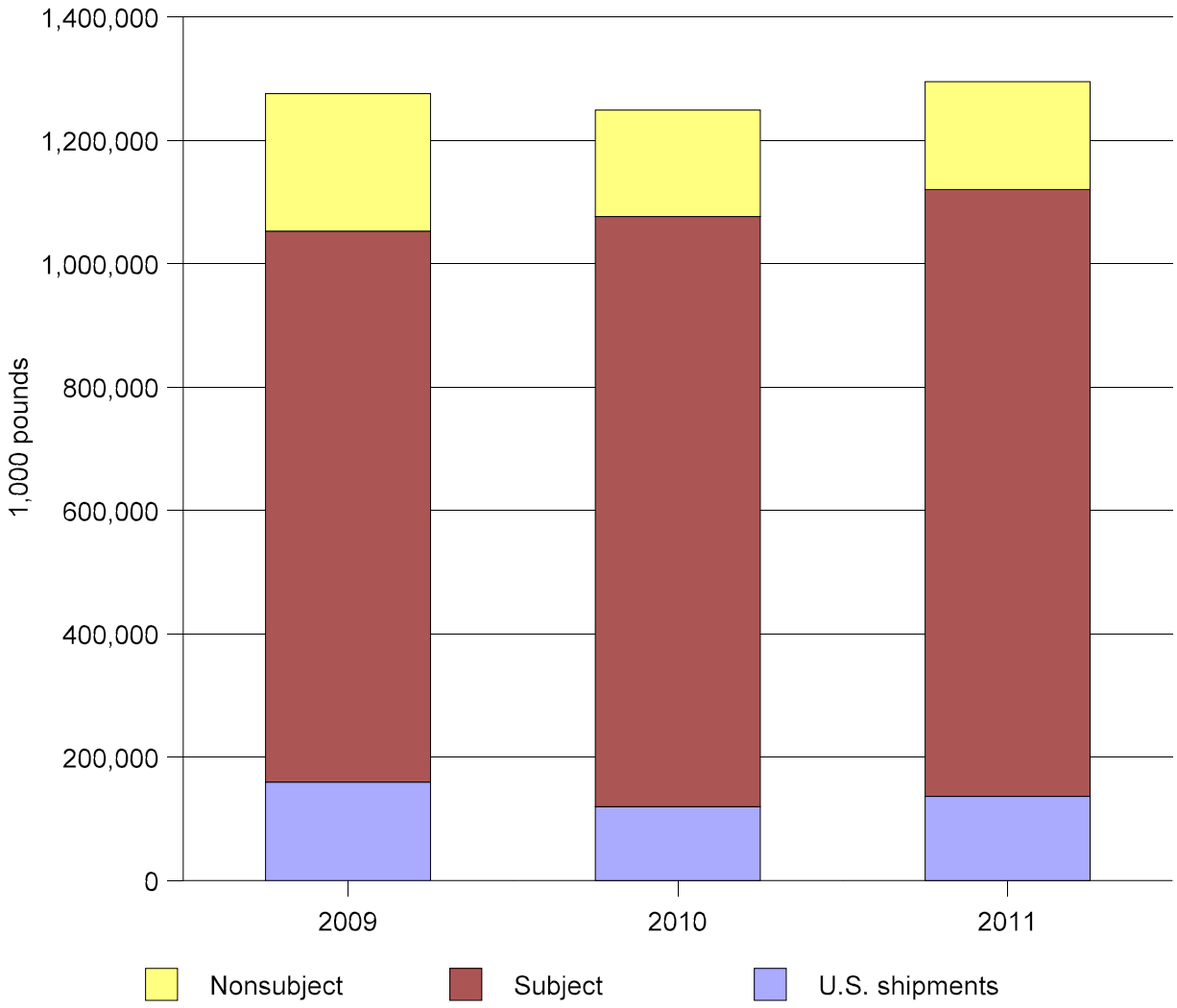
[3] U.S. production has been converted to pounds of headless shell-on weight using a conversion factor fo 0.629.

[4] U.S. processor shipment values estimated using an average of Urner Barry price series for 6 intermediate sizes of brown and white shrimp.

Note.–Because of rounding, figures may not add to the totals shown.

Source: Wild catch and farmed production compiled from National Marine Fisheries Service "Fisheries of the United States" 2009, 2010, and 2011. January - August 2011 wild catch landings data compiled from www.st.nmfs.noaa.gov/st1/commercial/landings/monthly_landings.html. January - August 2012 wild catch landings data from NOAA Fisheries Service, ***. 2011 and 2012 farmed production from staff interview with Granvil Treece, Texas A&M. U.S. imports compiled from official import statistics, HTS numbers 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.20.1010, 1605.20.1030, 1605.21.1030, 1605.29.1010. U.S. exports compiled from official export statistics, using the same HTS numbers as imports in chapter 03. The Schedule B export numbers used for chapter 16 are 1605.20.1010, 1605.20.1025, and 1605.21.1025.

Figure IV-1
Frozen warmwater shrimp: Apparent U.S. consumption, by sources, 2009-11



Source: Table IV-4.

U.S. MARKET SHARES

U.S. market share data are presented in table IV-5. The U.S. shipments' market share fluctuated from 2009 to 2011 but decreased overall by 2 percentage points. The market share of imports of frozen warmwater shrimp from subject countries increased by 6 percentage points from 2009 to 2011. Imports from nonsubject countries decreased by 4 percentage points from 2009 to 2011.

Table IV-5
Frozen warmwater shrimp: U.S. consumption and market shares, 2009-11, January-August 2011, and January-August 2012

Item	Calendar year			January-August	
	2009	2010	2011	2011	2012
	Quantity (*1,000 pounds*)				
Apparent U.S. consumption	1,276,024	1,249,308	1,295,294	776,279	***
	Value (*1,000 dollars*)				
Apparent U.S. consumption	4,303,457	4,716,409	5,671,982	3,368,423	***
	Share of quantity (*percent*)				
U.S. shipments	12.5	9.6	10.5	11.7	***
U.S. imports from--					
China	3.9	4.4	3.2	2.8	***
Ecuador	10.5	11.3	12.4	14.1	***
India	3.3	5.2	8.1	7.3	***
Indonesia	11.4	10.1	11.3	12.8	***
Malaysia	3.1	4.2	4.9	4.0	***
Thailand	30.9	33.2	29.0	28.8	***
Vietnam	6.9	8.1	7.1	6.9	***
Subtotal (subject)	70.0	76.6	76.0	76.6	***
Nonsubject countries	17.5	13.8	13.5	11.7	***
All countries	87.5	90.4	89.5	88.3	***

Table continued on next page.

Table IV-5--*Continued*
Frozen warmwater shrimp: U.S. consumption and market shares, 2009-11, January-August 2011, and January-August 2012

Item	Calendar year			January-August	
	2009	2010	2011	2011	2012
	Share of value (*percent*)				
U.S. shipments	14.7	11.5	12.4	13.9	***
U.S. imports from--					
China	3.4	3.7	2.8	2.3	***
Ecuador	7.9	8.9	9.5	10.9	***
India	3.7	6.5	9.3	8.5	***
Indonesia	11.3	10.3	12.1	13.8	***
Malaysia	2.6	3.3	3.7	3.0	***
Thailand	30.8	31.4	29.2	28.7	***
Vietnam	8.8	10.8	8.9	8.6	***
Subtotal (subject)	68.6	74.9	75.6	75.8	***
Nonsubject countries	16.7	13.5	12.0	10.3	***
All countries	85.3	88.5	87.6	86.1	***

Note.–Because of rounding, figures may not add to the totals shown.

Source: Compiled from data presented in table IV-4.

RATIO OF IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of frozen warmwater shrimp is presented in table IV-6. Imports from subject countries represented 720.6 percent of U.S. production in 2011, an increase of 28.5 percent since 2009.

Table IV-6
Frozen warmwater shrimp: Ratio of U.S. imports to converted U.S. production, by source, 2009-11

Item	Calendar year		
	2009	2010	2011
	Ratio of U.S. imports to converted U.S. production (*percent*)		
China	31.1	45.5	30.8
Ecuador	84.0	118.0	117.5
India	26.7	54.5	76.9
Indonesia	91.2	105.5	107.4
Malaysia	24.8	43.9	46.4
Thailand	247.4	345.8	274.6
Vietnam	55.5	84.0	67.0
Subtotal (subject)	560.7	797.3	720.6
Nonsubject countries	139.9	143.7	127.8
All countries	700.5	941.0	848.4

Note.–Because of rounding, figures may not add to the totals shown. January-September 2011 and 2012 converted production data not presented.

Source: Compiled from National Marine Fisheries Service “Fisheries of the United States” 2009, 2010, and 2011 production data, converted to pounds of headless shell-on weight using a conversion factor of 0.629; and from official Commerce statistics.

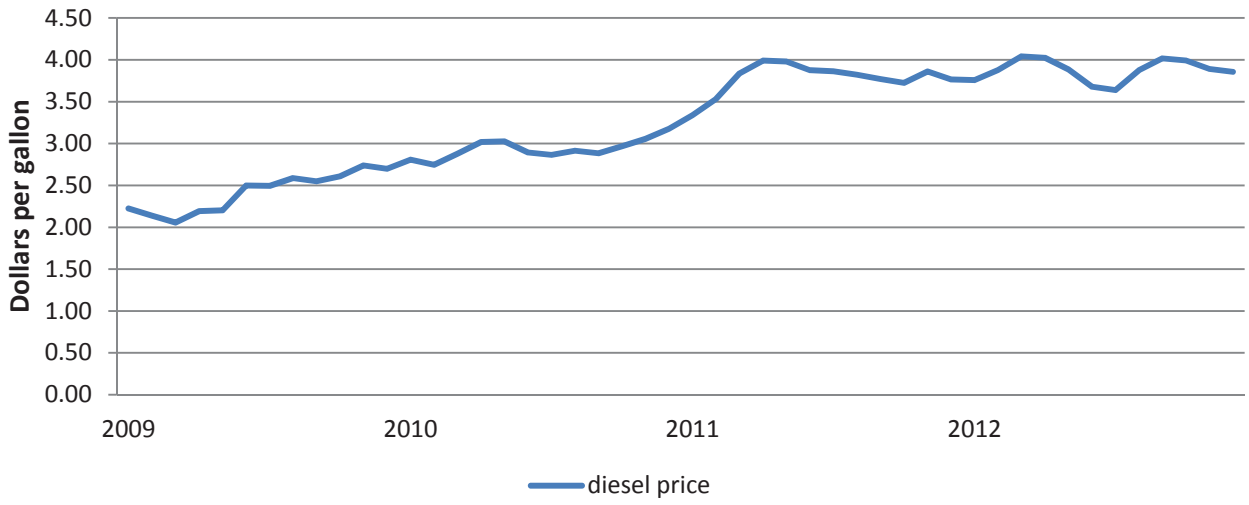
PART V: PRICING DATA

FACTORS AFFECTING PRICE

Production Costs

U.S. processors reported that the most important cost for fishermen is the cost of fuel, and with rising fuel cost fishermen need higher prices for shrimp in order to continue fishing.[1] Diesel prices in the Gulf Coast region nearly doubled from January 2009 to May 2011; however, since then prices have fluctuated, but not increased markedly (Figure V-1).

Figure V-1
Cost: Gulf coast diesel price by month, January 2010-September 2012



Source: http://www.eia.gov/petroleum/gasdiesel/

U.S. Inland Transportation Costs

Twenty-two U.S. processors provided usable U.S. transportation costs, averaging 5 percent and ranging from 1 to 20 percent of the total delivered cost of their U.S. shipments.[2] Twenty-two importers reported usable U.S. transportation costs, averaging 5 percent and ranging from 1 to 16 percent of total delivered costs.

[1] Conference transcript, p. 39 (Babin).
[2] Transportation costs reported as 50 percent or higher, or as zero were not used.

PRICING PRACTICES

Pricing Methods

Most firms report selling warmwater shrimp on a spot basis.[3] Thirty-eight U.S. processors reported that they set prices for frozen warmwater shrimp on a transaction-by-transaction basis, 12 reported price lists, and 5 reported contracts. Forty importers reported setting prices on a transaction-by-transaction basis, 27 reported contracts, and 17 price lists. Price lists may be issued as frequently as once per week and may contain different prices for different sizes and species, for freezing method (block or IQF), and for the extent of peeling. U.S. processors' and importers' short-term contracts were generally three to six months, fixed both price and quantity, were not typically renegotiable, and did not typically contain meet-or-release provisions. Importers' long-term contracts were for 1-3 years, and may fix quantity, or fix both price and quantity, and typically did not have meet-or-release provisions. Respondents report that because they are able to provide contracts for frozen warmwater shrimp where U.S. processors are less able to make contracts, importers therefore are the only ones who are able to compete in markets with the longer lead times required for advertising promotions.[4]

Sales Terms and Discounts

Thirty-two of 43 responding processors and 20 of 49 responding importers reported that the majority of their sales were on a delivered basis; 11 processors and 13 importers reported that most sales were on a free on board (fob) basis; while an additional 10 importers, but no processors, reported using both fob and delivered basis. Thirty-five of 36 responding U.S. processors and 26 of 29 responding importers reported sales terms of 30 days.

Overall, 26 of 43 responding U.S. processors, and 30 of 44 responding importers reported offering no or limited discounts. However, 13 U.S. processors and 11 importers reported offering quantity or total volume discounts; and 10 U.S. processors and 4 importers offer other types of discounts.[5]

PRICE DATA

The Commission requested U.S. processors and U.S. importers of frozen warmwater shrimp to provide quarterly data for the total quantity and value of frozen warmwater shrimp that was shipped to unrelated customers in the U.S. market. Quarterly data were requested for the period January 2009–September 2012. The products for which pricing data were requested are as follows:

Product 1.-- Frozen, raw warmwater shrimp or prawns, all species, 71 to 90 count, headless, peeled (whether or not deveined), tail-off, block frozen (cut or not cut).

Product 2.-- Frozen, raw warmwater shrimp or prawns, all species, 41 to 50 count, P&D (peeled and deveined), tail-off, block frozen (cut or not cut).

Product 3.-- Frozen, raw warmwater shrimp or prawns, all species, 10 to 15 count, headless, shell-on, block frozen.

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[3] Thirty-five of 41 responding U.S. processors and 24 of 43 responding importers reported selling the majority of warmwater shrimp in the spot market; 24 processors and 15 importers sold all their product on a spot basis.

[4] Conference transcript, p. 100 (Bloom).

[5] Three processors and one importer offered both quantity discounts and other discounts.

Product 4.-- Frozen, cooked warmwater shrimp or prawns, all species, 26 to 30 count, P&D (peeled and deveined), headless, tail-on or tail-off, IQF (individually quick frozen).

Thirty U.S. processors[6] and 40 importers[7] provided usable price data for sales of the four products, although not all firms reported prices for all products and all quarters. Reported pricing products represented *** percent of U.S. shipments of U.S.-produced products and 0.4 percent of imported product from China, 5.2 percent of imports from Ecuador, 2.2 percent of imports from India, 4.5 percent of imports from Indonesia, 15.4 percent of imports from Malaysia, 3.1 percent for imports from Thailand, and 3.1 percent of imports from Vietnam. Price data are presented in tables V-1 to V-4 and figures V-2 to V-5.

[6] Processors providing usable price data were: ***.
[7] Importers providing usable price data were: ***.

Table V-1
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,[1] and margins of underselling/(overselling), by quarter, January 2009-September 2012

	United States		China			Ecuador		
Period	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	3.23	853,145	***	***	***	2.79	275,277	13.8
April.-June	2.86	1,479,307	***	***	***	3.22	335,768	(12.7)
July-Sept.	2.51	1,353,281	***	***	***	2.71	238,688	(7.8)
Oct.-Dec.	2.63	1,017,789	***	***	***	2.82	282,892	(7.1)
2010:								
Jan.-March	3.24	939,319	***	***	***	2.77	559,426	14.5
April.-June	3.85	979,897	***	***	***	2.67	674,295	30.6
July-Sept.	3.03	1,196,355	***	***	***	2.63	663,810	13.2
Oct.-Dec.	3.05	1,060,885	***	***	***	2.85	479,444	6.8
2011:								
Jan.-March	3.15	815,263	***	***	***	2.95	505,975	6.1
April.-June	2.71	1,457,912	***	***	***	2.91	566,574	(7.7)
July-Sept.	2.79	1,503,283	***	***	***	2.88	550,386	(3.1)
Oct.-Dec.	3.61	830,008	***	***	***	***	***	***
2012:								
Jan.-March	3.99	735,206	***	***	***	2.93	641,044	26.6
April.-June	3.47	1,405,985	***	***	***	2.88	626,267	16.8
July-Sept.	3.06	1,315,899	***	***	***	2.96	602,185	3.1
	United States		**India**			**Indonesia**		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	3.23	853,145	--	0	--	***	***	***
April.-June	2.86	1,479,307	--	0	--	3.58	127,147	(25.2)
July-Sept.	2.51	1,353,281	--	0	--	***	***	***
Oct.-Dec.	2.63	1,017,789	--	0	--	***	***	***
2010:								
Jan.-March	3.24	939,319	***	***	***	***	***	***
April.-June	3.85	979,897	--	0	--	***	***	***
July-Sept.	3.03	1,196,355	***	***	***	***	***	***
Oct.-Dec.	3.05	1,060,885	***	***	***	***	***	***
2011:								
Jan.-March	3.15	815,263	***	***	***	***	***	***
April.-June	2.71	1,457,912	--	0	--	4.31	132,438	(59.2)
July-Sept.	2.79	1,503,283	***	***	***	3.92	52,625	(40.3)
Oct.-Dec.	3.61	830,008	***	***	***	***	***	***
2012:								
Jan.-March	3.99	735,206	***	***	***	***	***	***
April.-June	3.47	1,405,985	--	0	--	***	***	***
July-Sept.	3.06	1,315,899	***	***	***	***	***	***

Table continued on next page.

Table V-1--*Continued*
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 1,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

Period	United States		Malaysia			Thailand		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	3.23	853,145	***	***	***	***	***	***
April.-June	2.86	1,479,307	***	***	***	3.18	45,790	(11.2)
July-Sept.	2.51	1,353,281	***	***	***	***	***	***
Oct.-Dec.	2.63	1,017,789	***	***	***	3.55	43,656	(34.6)
2010:								
Jan.-March	3.24	939,319	***	***	***	3.05	98,255	5.9
April.-June	3.85	979,897	***	***	***	3.30	73,859	14.4
July-Sept.	3.03	1,196,355	***	***	***	3.30	210,216	(9.0)
Oct.-Dec.	3.05	1,060,885	***	***	***	3.74	36,850	(22.6)
2011:								
Jan.-March	3.15	815,263	3.21	770,620	(1.9)	4.13	261,604	(31.2)
April.-June	2.71	1,457,912	***	***	***	4.18	261,516	(54.5)
July-Sept.	2.79	1,503,283	3.59	3,166,546	(28.3)	4.21	228,662	(50.8)
Oct.-Dec.	3.61	830,008	***	***	***	4.15	206,241	(14.9)
2012:								
Jan.-March	3.99	735,206	2.75	159,790	31.0	***	***	***
April.-June	3.47	1,405,985	2.75	139,780	20.7	***	***	***
July-Sept.	3.06	1,315,899	***	***	***	***	***	***

	United States		Vietnam			Mexico	
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)
2009:							
Jan.-March	3.23	853,145	***	***	***	--	0
April.-June	2.86	1,479,307	3.16	10,459	(10.6)	--	0
July-Sept.	2.51	1,353,281	***	***	***	***	***
Oct.-Dec.	2.63	1,017,789	***	***	***	--	0
2010:							
Jan.-March	3.24	939,319	***	***	***	--	0
April.-June	3.85	979,897	***	***	***	--	0
July-Sept.	3.03	1,196,355	***	***	***	--	0
Oct.-Dec.	3.05	1,060,885	***	***	***	--	0
2011:							
Jan.-March	3.15	815,263	***	***	***	--	0
April.-June	2.71	1,457,912	***	***	***	--	0
July-Sept.	2.79	1,503,283	3.69	20,869	(32.2)	--	0
Oct.-Dec.	3.61	830,008	***	***	***	--	0
2012:							
Jan.-March	3.99	735,206	***	***	***	--	0
April.-June	3.47	1,405,985	***	***	***	--	0
July-Sept.	3.06	1,315,899	***	***	***	--	0

[1] Product 1.—Frozen, raw warmwater shrimp or prawns, all species, 71 to 90 count, headless, peeled (whether or not deveined), tail-off, block frozen (cut or not cut).

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-2
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 2,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

	United States		Ecuador			India		
Period	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-Mar.	3.71	385,438	2.67	1,257,385	28.2	--	0	--
April.-June	3.29	594,814	***	***	***	--	0	--
July-Sept.	2.63	1,095,020	2.83	790,277	(7.4)	--	0	--
Oct.-Dec.	2.67	632,633	2.98	709,655	(11.3)	--	0	--
2010:								
Jan.-Mar.	3.16	344,782	2.67	1,132,936	15.6	***	***	***
April.-June	3.64	360,511	2.99	1,589,898	17.9	--	0	--
July-Sept.	3.41	752,600	3.03	1,246,229	11.1	***	***	***
Oct.-Dec.	3.25	814,530	3.23	1,076,591	0.8	***	***	***
2011:								
Jan.-Mar.	3.74	586,732	***	***	***	--	0	--
April.-June	3.76	479,855	3.13	1,212,892	16.8	--	0	--
July-Sept.	3.71	1,780,600	3.14	1,150,780	15.3	***	***	***
Oct.-Dec.	4.10	665,004	3.08	764,937	24.9	--	0	--
2012:								
Jan.-Mar.	4.43	319,586	3.25	1,945,964	26.6	***	***	***
April.-June	4.21	658,932	2.96	1,523,561	29.7	***	***	***
July-Sept.	3.93	1,438,008	2.98	921,318	24.1	***	***	***
	United States		**Indonesia**			**Malaysia**		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-Mar.	3.71	385,438	***	***	***	***	***	***
April.-June	3.29	594,814	3.27	294,243	0.6	***	***	***
July-Sept.	2.63	1,095,020	3.46	155,306	(31.6)	***	***	***
Oct.-Dec.	2.67	632,633	3.20	201,386	(19.8)	***	***	***
2010:								
Jan.-Mar.	3.16	344,782	***	***	***	***	***	***
April.-June	3.64	360,511	***	***	***	3.06	262,196	16.0
July-Sept.	3.41	752,600	3.22	286,787	5.5	***	***	***
Oct.-Dec.	3.25	814,530	3.17	323,579	2.6	***	***	***
2011:								
Jan.-Mar.	3.74	586,732	***	***	***	***	***	***
April.-June	3.76	479,855	3.82	113,785	(1.7)	***	***	***
July-Sept.	3.71	1,780,600	3.94	155,956	(6.2)	***	***	***
Oct.-Dec.	4.10	665,004	3.70	102,463	9.7	3.55	1,000,496	13.4
2012:								
Jan.-Mar.	4.43	319,586	3.53	115,715	20.3	3.27	80,660	26.1
April.-June	4.21	658,932	3.71	96,543	11.9	***	***	***
July-Sept.	3.93	1,438,008	3.69	94,122	6.1	***	***	***

Table continued on next page.

Table V-2--*Continued*
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 2,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

Period	United States		Thailand			Vietnam		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	3.71	385,438	***	***	***	***	***	***
April.-June	3.29	594,814	***	***	***	***	***	***
July-Sept.	2.63	1,095,020	***	***	***	***	***	***
Oct.-Dec.	2.67	632,633	***	***	***	***	***	***
2010:								
Jan.-March	3.16	344,782	***	***	***	***	***	***
April.-June	3.64	360,511	***	***	***	***	***	***
July-Sept.	3.41	752,600	***	***	***	***	***	***
Oct.-Dec.	3.25	814,530	***	***	***	***	***	***
2011:								
Jan.-March	3.74	586,732	***	***	***	***	***	***
April.-June	3.76	479,855	***	***	***	***	***	***
July-Sept.	3.71	1,780,600	***	***	***	***	***	***
Oct.-Dec.	4.10	665,004	***	***	***	***	***	***
2012:								
Jan.-March	4.43	319,586	***	***	***	5.55	125,377	(25.3)
April.-June	4.21	658,932	***	***	***	***	***	***
July-Sept.	3.93	1,438,008	***	***	***	5.19	185,667	(32.0)

Period	United States		Mexico	
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)
2009:				
Jan.-March	3.71	385,438	***	***
April.-June	3.29	594,814	***	***
July-Sept.	2.63	1,095,020	***	***
Oct.-Dec.	2.67	632,633	***	***
2010:				
Jan.-March	3.16	344,782	***	***
April.-June	3.64	360,511	***	***
July-Sept.	3.41	752,600	--	0
Oct.-Dec.	3.25	814,530	--	0
2011:				
Jan.-March	3.74	586,732	--	0
April.-June	3.76	479,855	***	***
July-Sept.	3.71	1,780,600	***	***
Oct.-Dec.	4.10	665,004	***	***
2012:				
Jan.-March	4.43	319,586	***	***
April.-June	4.21	658,932	***	***
July-Sept.	3.93	1,438,008	--	0

[1] Product 2.—Frozen, raw warmwater shrimp or prawns, all species, 41 to 50 count, P&D (peeled and deveined), tail-off, block frozen (cut or not cut).

Note--Only one price was available for product 2 from China, ***.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-3
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 3,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

Period	United States		Ecuador			India		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	5.71	276,793	***	***	***	6.08	82,584	(6.5)
April.-June	5.54	356,966	***	***	***	6.22	107,648	(12.3)
July-Sept.	5.01	497,709	***	***	***	6.18	73,940	(23.4)
Oct.-Dec.	5.64	589,371	***	***	***	5.98	58,680	(6.1)
2010:								
Jan.-March	5.66	480,178	***	***	***	6.81	71,924	(20.3)
April.-June	7.50	434,147	***	***	***	8.44	101,048	(12.5)
July-Sept.	7.01	416,226	***	***	***	9.13	106,232	(30.2)
Oct.-Dec.	7.34	419,756	***	***	***	8.26	126,446	(12.5)
2011:								
Jan.-March	8.60	198,727	***	***	***	9.01	206,917	(4.7)
April.-June	8.78	509,705	***	***	***	8.78	181,672	(0.1)
July-Sept.	7.52	689,080	***	***	***	9.04	211,696	(20.3)
Oct.-Dec.	7.74	591,600	***	***	***	8.53	180,497	(10.2)
2012:								
Jan.-March	7.30	419,618	***	***	***	8.59	154,730	(17.6)
April.-June	6.91	383,955	***	***	***	8.02	178,891	(16.1)
July-Sept.	6.43	722,315	***	***	***	7.26	161,733	(13.0)
	United States		**Indonesia**			**Malaysia**		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	5.71	276,793	***	***	***	***	***	***
April.-June	5.54	356,966	6.25	41,016	(12.7)	***	***	***
July-Sept.	5.01	497,709	6.18	73,800	(23.5)	--	0	--
Oct.-Dec.	5.64	589,371	6.28	47,836	(11.3)	--	0	--
2010:								
Jan.-March	5.66	480,178	6.89	82,984	(21.7)	--	0	--
April.-June	7.50	434,147	7.93	101,472	(5.7)	--	0	--
July-Sept.	7.01	416,226	8.98	84,888	(28.0)	--	0	--
Oct.-Dec.	7.34	419,756	8.74	44,898	(19.1)	--	0	--
2011:								
Jan.-March	8.60	198,727	9.41	60,683	(9.3)	***	***	***
April.-June	8.78	509,705	9.11	173,540	(3.8)	***	***	***
July-Sept.	7.52	689,080	9.14	55,967	(21.6)	***	***	***
Oct.-Dec.	7.74	591,600	8.38	29,490	(8.2)	***	***	***
2012:								
Jan.-March	7.30	419,618	9.55	32,128	(30.8)	***	***	***
April.-June	6.91	383,955	6.64	31,936	3.8	***	***	***
July-Sept.	6.43	722,315	***	***	***	***	***	***

Table continued on next page.

Table V-3--*Continued*
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 3,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

	United States		Thailand			Vietnam		
Period	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	5.71	276,793	--	0	--	5.92	224,908	(3.6)
April.-June	5.54	356,966	--	0	--	5.88	271,471	(6.2)
July-Sept.	5.01	497,709	--	0	--	7.71	299,821	(54.0)
Oct.-Dec.	5.64	589,371	--	0	--	***	***	***
2010:								
Jan.-March	5.66	480,178	--	0	--	6.36	309,893	(12.2)
April.-June	7.50	434,147	--	0	--	***	***	***
July-Sept.	7.01	416,226	--	0	--	***	***	***
Oct.-Dec.	7.34	419,756	***	***	***	8.13	251,657	(10.7)
2011:								
Jan.-March	8.60	198,727	***	***	***	***	***	***
April.-June	8.78	509,705	***	***	***	***	***	***
July-Sept.	7.52	689,080	***	***	***	8.08	187,005	(7.4)
Oct.-Dec.	7.74	591,600	***	***	***	***	***	***
2012:								
Jan.-March	7.30	419,618	***	***	***	***	***	***
April.-June	6.91	383,955	--	0	--	***	***	***
July-Sept.	6.43	722,315	--	0	--	7.69	210,018	(19.7)

	United States		Mexico	
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)
2009:				
Jan.-March	5.71	276,793	***	***
April.-June	5.54	356,966	***	***
July-Sept.	5.01	497,709	***	***
Oct.-Dec.	5.64	589,371	***	***
2010:				
Jan.-March	5.66	480,178	***	***
April.-June	7.50	434,147	***	***
July-Sept.	7.01	416,226	***	***
Oct.-Dec.	7.34	419,756	***	***
2011:				
Jan.-March	8.60	198,727	***	***
April.-June	8.78	509,705	***	***
July-Sept.	7.52	689,080	***	***
Oct.-Dec.	7.74	591,600	***	***
2012:				
Jan.-March	7.30	419,618	8.07	121,450
April.-June	6.91	383,955	***	***
July-Sept.	6.43	722,315	***	***

[1] Product 3.— Frozen, raw warmwater shrimp or prawns, all species, 10 to 15 count, headless, shell-on, block frozen.

Note.—No price data were reported for product 3 from China.

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-4
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 4,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

	United States		China			Ecuador		
Period	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	***	***	--	0	--	4.09	158,782	***
April.-June	***	***	--	0	--	***	***	***
July-Sept.	***	***	--	0	--	4.23	87,802	***
Oct.-Dec.	***	***	--	0	--	***	***	***
2010:								
Jan.-March	***	***	***	***	***	3.86	225,221	***
April.-June	***	***	--	0	--	4.18	693,625	***
July-Sept.	***	***	***	***	***	4.66	183,460	***
Oct.-Dec.	***	***	***	***	***	4.74	242,858	***
2011:								
Jan.-March	***	***	***	***	***	***	***	***
April.-June	5.79	212,243	***	***	***	4.42	494,858	23.7
July-Sept.	5.37	132,910	***	***	***	5.12	235,031	4.5
Oct.-Dec.	***	***	***	***	***	4.22	168,239	***
2012:								
Jan.-March	***	***	***	***	***	4.17	610,781	***
April.-June	5.57	87,803	***	***	***	4.25	471,362	23.8
July-Sept.	5.20	153,977	--	0	--	4.32	491,010	17.0
	United States		**India**			**Indonesia**		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	***	***	***	***	***	4.21	1,877,422	***
April.-June	***	***	***	***	***	4.57	1,589,379	***
July-Sept.	***	***	3.67	104,222	***	4.30	1,134,118	***
Oct.-Dec.	***	***	4.68	58,290	***	4.32	735,069	***
2010:								
Jan.-March	***	***	4.14	117,848	***	4.37	715,940	***
April.-June	***	***	4.27	220,668	***	4.47	942,217	***
July-Sept.	***	***	4.22	274,898	***	4.48	1,579,141	***
Oct.-Dec.	***	***	4.96	227,586	***	4.29	1,363,348	***
2011:								
Jan.-March	***	***	5.51	293,872	***	5.09	1,027,105	***
April.-June	5.79	212,243	5.39	447,007	7.0	5.28	1,123,529	8.9
July-Sept.	5.37	132,910	5.29	556,304	1.5	5.12	1,163,143	4.6
Oct.-Dec.	***	***	5.78	341,518	***	5.65	900,817	***
2012:								
Jan.-March	***	***	6.13	389,077	***	4.98	1,314,167	***
April.-June	5.57	87,803	5.78	391,243	(3.7)	4.87	1,372,716	12.6
July-Sept.	5.20	153,977	5.06	482,253	2.8	4.79	1,477,441	7.9

Table continued on next page.

Table V-4--*Continued*
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 4,[1] and margins of underselling/(overselling), by quarter, January 2009 to September 2012

Period	United States		Malaysia			Thailand		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	Margin
2009:								
Jan.-March	***	***	--	0	--	4.87	1,667,676	***
April.-June	***	***	***	***	***	5.01	2,585,047	***
July-Sept.	***	***	***	***	***	4.78	2,529,388	***
Oct.-Dec.	***	***	--	0	--	4.78	3,689,257	***
2010:								
Jan.-March	***	***	--	0	--	4.77	2,509,082	***
April.-June	***	***	--	0	--	4.96	3,175,671	***
July-Sept.	***	***	--	0	--	4.98	2,461,544	***
Oct.-Dec.	***	***	***	***	***	5.85	4,009,933	***
2011:								
Jan.-March	***	***	***	***	***	6.13	1,669,636	***
April.-June	5.79	212,243	***	***	***	6.59	1,814,914	(13.8)
July-Sept.	5.37	132,910	***	***	***	6.86	1,247,092	(27.8)
Oct.-Dec.	***	***	***	***	***	6.92	2,574,070	***
2012:								
Jan.-March	***	***	***	***	***	6.79	1,321,773	***
April.-June	5.57	87,803	***	***	***	6.83	1,312,248	(22.5)
July-Sept.	5.20	153,977	***	***	***	6.34	1,404,909	(21.8)

	United States		Vietnam			Mexico		
	Price (*dollars per pound*)	Quantity (*pounds*)	Price (*dollars per pound*)	Quantity (*pounds*)	Margin	Price (*dollars per pound*)	Quantity (*pounds*)	
2009:								
Jan.-March	***	***	4.62	174,143	***	***	***	
April.-June	***	***	5.57	247,235	***	--	0	
July-Sept.	***	***	5.28	145,549	***	--	0	
Oct.-Dec.	***	***	5.69	438,179	***	***	***	
2010:								
Jan.-March	***	***	5.27	205,302	***	***	***	
April.-June	***	***	5.41	204,112	***	--	0	
July-Sept.	***	***	6.13	165,175	***	--	0	
Oct.-Dec.	***	***	***	***	***	--	0	
2011:								
Jan.-March	***	***	5.42	160,801	***	--	0	
April.-June	5.79	212,243	5.95	210,589	(2.8)	--	0	
July-Sept.	5.37	132,910	6.76	191,830	(25.9)	--	0	
Oct.-Dec.	***	***	7.40	460,655	***	--	0	
2012:								
Jan.-March	***	***	7.07	111,141	***	--	0	
April.-June	5.57	87,803	6.74	144,553	(20.9)	***	***	
July-Sept.	5.20	153,977	6.69	196,263	(28.5)	***	***	

[1] Product 4.—Frozen, cooked warmwater shrimp or prawns, all species, 26 to 30 count, P&D (peeled and deveined), headless, tail-on or tail-off, IQF (individually quick frozen).

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-2
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic and imported product 1, by quarter, January 2009-September 2012

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Figure V-3
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic product 2, by quarter, January 2009-September 2012

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Figure V-4
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic product 3, by quarter, January 2009-September 2012

* * * * * * *

Figure V-5
Frozen warmwater shrimp: Weighted-average f.o.b. prices and quantities of domestic product 4, by quarter, January 2009-September 2012

* * * * * * *

Price trends

Over the period examined, the prices for product 1 fluctuated; U.S. prices declined overall from January 2009 and September 2012, while the prices of most imports increased over the period. Prices for product 2 were higher than prices reported for product 1, with U.S. prices fluctuating and most import prices falling within the range of U.S. prices over the period; Vietnamese prices, however, tended to be much higher. U.S. product 3 prices rose in 2010, peaked in 2011 and then declined; most import prices were higher than U.S. prices but followed a similar pattern. U.S. product 4 prices tended to follow an annual cyclical pattern but prices rose in the first half of 2010 and have not returned to 2009 levels. There appears to be a great deal of variation in prices of imported product 4. Table V-5 summarizes the price changes over the period.

Table V-5
Frozen warmwater shrimp: Summary of weighted-average f.o.b. prices for products 1 through 4 from the United States and subject countries

Item	Number of Quarters	Low price (per pound)	High price (per pound)	Change in price[1] (percent)
	Product 1			
U.S. product 1	15	2.51	3.99	(5.5)
Chinese product 1	15	***	***	23.4
Ecuador product 1	15	2.63	3.22	6.3
Indian product 1	8	***	***	(2)
Indonesian product 1	15	***	***	26.2
Malaysian product 1	15	***	***	(22.2)
Thailand product 1	15	***	***	85.6
Vietnamese product 1	15	***	***	31.6
	Product 2			
U.S. product 2	15	2.63	4.43	5.7
Chinese product 2	1	***	***	(2)
Ecuador product 2	15	2.67	3.25	11.8
Indian product 2	7	***	***	(2)
Indonesian product 2	15	***	3.94	24.3
Malaysian product 2	15	2.95	***	0.5
Thailand product 2	15	***	***	16.4
Vietnamese product 2	15	***	***	44.4
	Product 3			
U.S. product 3	15	5.01	8.78	12.6
Ecuador product 3	15	***	***	4.3
Indian product 3	15	5.98	9.13	19.4
Indonesian product 3	15	***	9.55	11.9
Malaysian product 3	9	***	***	(11.8)
Thailand product 3	6	***	***	(2)
Vietnamese product 3	15	5.88	***	30.0
	Product 4			
U.S. product 4	15	***	5.79	21.3
Chinese product 4	9	***	***	(2)
Ecuador product 4	15	***	***	5.4
Indian product 4	15	***	6.13	54.0
Indonesian product 4	15	4.21	5.65	13.8
Malaysian product 4	10	***	***	62.1
Thailand product 4	15	4.77	6.92	30.2
Vietnamese product 4	15	4.62	7.40	44.8

[1] Percentage change is based on unrounded data.
[2] Changes are not reported for products for which data were not available in both the first and last year of the period.

Source: Compiled from data submitted in response to Commission questionnaires.

Underselling and overselling summary

As shown in table V-6, there were 350 instances where prices for domestic warmwater shrimp and that imported from subject countries could be compared. Overall, subject imports were priced lower than domestic product in 138 of the possible comparisons; the average margin of underselling was 13.2 percent. Subject import prices were higher than domestic prices in 212 comparisons; the average margin of overselling was 21.9 percent. Data by country are provided in table V-7.

Table V-6
Frozen warmwater shrimp: Instances of underselling/overselling and the range and average margins, January 2009-September 2012

	Total					
	Underselling			Overselling		
Product	No.	Range (*percent*)	Average margin (*percent*)	No.	Range (*percent*)	Average margin (*percent*)
1	29	3.1-31.0	12.2	69	(1.0-84.7)	(23.4)
2	50	0.4-30.1	13.6	33	(0.9-58.3)	(22.7)
3	12	1.9-22.5	10.1	63	(0.1-65.1)	(20.1)
4	47	1.4-26.1	12.4	47	(0.2-59.5)	(21.6)
Total	138	0.4-31.0	12.6	212	(0.1-84.7)	(21.9)

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-7
Frozen warmwater shrimp: Instances of underselling/overselling and the range and average margin by country, January 2009-September 2012

	Underselling			Overselling		
Product	No.	Range (*percent*)	Average margin (*percent*)	No.	Range (*percent*)	Average margin (*percent*)
	China					
1	3	***	7.2	12	***	(20.7)
2	0	--	--	1	***	***
3	0	--	--	0	--	--
4	9	***	14.2	0	--	--
Total	12	***	11.2	13	***	***
	Ecuador					
1	10	3.1-30.6	15.0	5	(3.1-12.7)	(7.7)
2	13	0.8-29.7	18.9	2	(7.4-11.3)	(9.4)
3	0	--		15	***	(39.1)
4	13	***	15.8	2	***	(31.4)
Total	36	0.8-30.6	16.7	24	(3.1-65.1)	(29.4)
	India					
1	5	***	16.8	3	***	(8.7)
2	5	***	16.5	2	***	(4.7)
3	0	--		15	(0.1-30.2)	(13.7)
4	9	***	12.0	6	***	(11.8)
Total	19	1.4-29.2	14.4	26	(0.1-30.2)	(12.0)
	Indonesia					
1	1	***	***	14	(***-59.2)	(31.8)
2	9	0.6-20.3	9.1	6	(***-31.6)	(13.0)
3	1	3.8	3.8	14	(3.8-30.8)	(14.8)
4	11	***	10.1	4	***	(9.6)
Total	22	1.8-20.3	9.2	38	(1.4-59.2)	(20.3)
	Malaysia					
1	4	***-31.0	17.4	11	***	(15.3)
2	12	***	16.0	3	***	(15.8)
3	6	***	14.5	3	***	(13.2)
4	0	--	--	10	***	(25.6)
Total	22	2.8-31.0	15.6	29	(0.9-48.6)	(18.9)
	Thailand					
1	3	5.9-***	13.9	12	(9.0-54.5)	(29.3)
2	10	***	9.4	5	***	(11.0)
3	1	***	3.4	5	***	(15.4)
4	3	***	7.4	12	***	(21.2)
Total	17	0.4-25.8	9.5	34	(1.4-54.5)	(21.7)
	Vietnam					
1	3	***	16.7	12	***	(28.1)
2	1	***	***	14	***	(38.0)
3	4	***	6.7	11	(3.6-54.0)	(13.6)
4	2	***	2.8	13	***	(25.6)
Total	10	1.9-24.2	8.6	50	(1.0-84.7)	(27.1)

Source: Compiled from data submitted in response to Commission questionnaires.

Nonsubject Prices

Prices for imported shrimp from Mexico were higher than prices for product imported from subject countries in 99 of 170 possible instances and higher than U.S.-produced frozen warmwater shrimp in 27 of 32 possible instances.

LOST SALES LOST REVENUES

U.S. processors provided eight lost sales and no lost revenues allegations due to imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam (table V-8). Seven of these were reported as shifting purchases from U.S. product to imported product; one was reported as receiving a bid for domestic product which was rejected because the price was above that of imported product. Processors were unable to provide the price that was rejected in most of the lost sales, therefore purchasers were asked to provide quantities and prices.[8] The total volume of reported lost sales ranges from *** to *** pounds. The value of those lost sales for which the producers gave was $***. No purchaser has yet to respond to the verification request.[9]

Table V-8
Frozen warmwater shrimp: Lost sales allegations as reported by U.S. producers

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[8] Purchasers were requested to provide the prices they paid for imported product if they purchased imported product because its price was lower than U.S. prices therefore the price they report is a lower bound on what the U.S. price could have been during the period. This price was requested because this price would be relatively easy to report. Purchasers were also requested to report the actual quantities of subject imports purchased.

[9] Staff attempted to contact purchasers using fax. None of the fax numbers provided were usable. Staff then sent purchasers letters via Fedex.

PART VI: FINANCIAL EXPERIENCE OF U.S. PROCESSORS

Background

Thirty-six domestic firms provided usable financial results on their operations processing frozen warmwater shrimp.[1] With some exceptions, the majority of these processors reported their financial results on a calendar-year basis either using generally accepted accounting principles ("GAAP") or a cash/tax basis form of accounting. While also reporting primarily on a calendar-year basis, the eighty nine fishermen whose responses were considered usable reported their financial results primarily on a tax/cash basis.[2]

Commercial sales make up the majority of revenue reported by processors and fisherman with a relatively small amount classified separately as transfers or internal consumption. Accordingly, a single revenue line item is presented in the relevant tables below. Similarly, while tolling activity (from both a revenue and cost perspective) is reflected in the overall operations of processors, it is not separately identified and/or presented.

Processing Operations on Frozen Warmwater Shrimp

Income-and-loss data for processors are presented in table V1-1. A variance analysis of these operations is presented in table VI-2.[3]

The processors whose financial results make up the information presented in this section of the report reflect a relatively wide range in terms of the amount of company-specific revenue generated. While some operational differences may distinguish smaller processors from larger processors, such as the extent to which more capital-intensive IQF freezing is used, testimony at the staff conference indicated that processors (all sizes) compete in the same markets.[4] Additionally, while processors may be integrated to some extent with respect to the domestic shrimp input, this was described as the exception rather than the rule.[5]

As shown in table VI-1, there was a relatively large decline in sales volume in 2010 followed by a partial recovery in 2011. At the staff conference, this pattern was generally attributed to the Gulf oil spill in 2010 and the corresponding closure of large areas of the Gulf of Mexico to shrimp harvesting which in

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[1] Twenty four additional processors provided information that was generally considered unusable and is therefore not reflected in this section of the staff report. USITC auditor notes (preliminary phase).

[2] Information on warmwater shrimp operations of fisherman, including reported financial results, are presented in appendix E. Responses which were not filed in a timely manner and/or determined to be incomplete are not included in appendix E. Ibid.

[3] The Commission's variance analysis is calculated in three parts: sales variance, cost of goods sold ("COGS") variance, and sales, general and administrative ("SG&A") expenses variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the COGS and SG&A variances) and a corresponding volume (quantity) variance. The variance of total processing COGS is presented in table VI-2 instead of the components of COGS due to apparent inconsistencies in the extent to which U.S. processors reported the separate components of COGS (see note to table VI-1 and footnote 7). The sales or cost variance is calculated as the change in unit price/cost times the new volume, while the volume variance is calculated as the change in volume times the old unit price/cost. Summarized at the bottom of the variance analysis table, the price variance is from sales, the net cost/expense variance is the sum of those items from COGS and SG&A, respectively, and the net volume variance is the sum of the sales, COGS, and SG&A volume variances.

[4] Conference transcript, p. 53 (Drake).

[5] Conference transcript, p. 59 (Drake).

Table VI-1
Frozen warmwater shrimp: Results of processors' operations, calendar years 2009-2011, January-September 2011, January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Quantity (*1,000* pounds)				
Total net sales quantity	212,264	181,959	192,962	147,637	136,273
	Value ($*1,000*)				
Total net sales value	651,397	662,102	724,971	548,171	523,174
Cost of goods sold:					
Total cost of goods sold[1]	592,910	612,348	673,875	507,621	488,615
Gross profit	58,487	49,754	51,096	40,550	34,559
Total SG&A expenses[2]	46,500	43,919	48,812	34,817	41,068
Operating income or (loss)	11,987	5,835	2,284	5,733	(6,509)
Interest expense	4,785	4,410	3,939	2,482	2,552
Other expenses	6,527	8,191	16,635	6,414	7,344
Other income items[3]	19,210	20,322	42,869	22,607	50,298
Net income	19,886	13,556	24,580	19,444	33,893
Depreciation	6,618	6,069	6,609	3,425	3,805
Estimated cash flow	26,504	19,625	31,189	22,869	37,698
	Ratio to net sales (*percent*)				
Cost of goods sold[1]	91.0	92.5	93.0	92.6	93.4
Gross profit	9.0	7.5	7.0	7.4	6.6
SG&A expenses[2]	7.1	6.6	6.7	6.4	7.9
Operating income or (loss)	1.8	0.9	0.3	1.0	(1.2)
Net income	3.1	2.0	3.4	3.5	6.5

Table continued on next page.

Table VI-1--*Continued*
Frozen warmwater shrimp: Results of processors' operations, calendar years 2009-2011, January-September 2011, January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Unit value ($*1,000*)				
Total net sales	3.07	3.64	3.76	3.71	3.84
Cost of goods sold:					
Total cost of goods sold[1]	2.79	3.37	3.49	3.44	3.59
Gross profit	0.28	0.27	0.26	0.27	0.25
SG&A expenses[2]	0.22	0.24	0.25	0.24	0.30
Operating income or (loss)	0.06	0.03	0.01	0.04	(0.05)
	Number of processors reporting				
Operating losses	13	19	17	11	14
Data	36	36	35	35	35

[1] The Commission's U.S. processor questionnaire requested that processors report the following costs: shrimp and prawns (domestic), shrimp and prawns (imported), all other raw material costs, direct labor, and other factory costs. While some processors reported these cost components as requested, a number of processors effectively reported all relevant costs in a single line item; e.g., cost of "shrimp and prawns (domestic)." USITC auditor notes (preliminary phase). Accordingly and in order to avoid presenting potentially misleading cost trends, a single line item for COGS is presented in this table (see also footnote 7).
[2] See footnote 8 regarding the increase in interim 2012 SG&A expenses.
[3] See footnote 9 regarding the classification of "other income."

Source: Compiled from data submitted in response to Commission questionnaires.

turn reduced the supply of domestic shrimp feedstock.[6] As shown in appendix E, fishermen reported a similar directional trend in sales volume in 2010 and 2011. Notwithstanding the decline in processor sales volume in 2010, overall revenue increased marginally compared to 2009 due to a relatively large positive price variance. As shown in table VI-2 (variance analysis), the industry reported positive prices variances throughout the period with the 2009-10 variance being the most substantial.

While the components of COGS are not presented separately due to concerns regarding consistency (see note to table VI-1 and footnote 7), the more detailed cost information reported to the Commission in general indicates that domestic shrimp was the primary input (ranging from a low of 65.5 percent of COGS in 2009 to a high of 77.1 percent in interim 2011) with the increase in its share corresponding to a relative decline in the share of imported shrimp input (ranging from a high of 22.3 percent of COGS in 2009 to a low of 12.1 percent in interim 2011).[7] Other inputs (all other raw

[6] Conference transcript, p. 36 (Kimbrough).

[7] USITC auditor notes (preliminary phase). Larger-volume processors for the most part reported the requested COGS detail with variations in company-specific cost shares likely reflecting operational differences; e.g., ***. Smaller volume processors, in contrast, were more likely to report an aggregated COGS value in the shrimp input cost line item; i.e., what could nominally be interpreted as the cost of procured shrimp also included costs associated with peeling and packing. Ibid.

Table VI-2
Frozen warmwater shrimp: Variance analysis of processors' operations, calendar years 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			Jan.-Sept.
	2009-11	2009-10	2010-11	2011-12
	Value ($1,000)			
Total net sales:				
Price variance	132,808	103,707	22,830	17,196
Volume variance	(59,235)	(93,002)	40,039	(42,193)
Total net sales variance	73,574	10,705	62,869	(24,997)
Cost of sales:				
Net cost of sales:				
Cost variance	(134,881)	(104,090)	(24,496)	(20,066)
Volume variance	53,916	84,652	(37,030)	39,072
Total net cost of sales variance	(80,965)	(19,438)	(61,527)	19,006
Gross profit variance	(7,391)	(8,733)	1,342	(5,991)
SG&A expenses:				
Expense variance	(6,541)	(4,058)	(2,237)	(8,930)
Volume variance	4,228	6,639	(2,656)	2,680
Total SG&A variance	(2,312)	2,581	(4,893)	(6,250)
Operating income variance	(9,703)	(6,153)	(3,551)	(12,242)
Summarized as:				
Price variance	132,808	103,707	22,830	17,196
Net cost/expense variance	(141,422)	(108,148)	(26,733)	(28,996)
Net volume variance	(1,090)	(1,711)	353	(441)

Source: Compiled from data submitted in response to Commission questionnaires.

materials, direct labor, and other factory costs) as a share of total COGS remained within a relatively narrow range throughout the period.

Table VI-1 shows that the COGS-to-sales ratio for processing operations increased during the period which in turn reflects a pattern of higher average sales values that consistently failed to offset corresponding increases in average COGS. The higher average sales values reported by fishermen (see appendix E) appears to be generally consistent with the pattern of higher input costs reported by processors.

With respect to the level of absolute gross profit collectively generated by U.S. processors (see table VI-1), the negative impact of reduced gross profit margins was magnified by the sharp decline in

sales volume in that year and then mitigated to some extent by the partial recovery of sales volume in 2011. Lower absolute gross profit in interim 2012 compared to interim 2011 reflects a combination of both lower sales volume and a continued contraction of the industry's gross profit margin.

With the exception of interim 2012 (see footnote 8), U.S. processors' SG&A expense ratios (total SG&A expenses divided by total sales value) moved within a relatively narrow range: from a high of 7.1 percent in 2009 to a low of 6.4 percent in interim 2011. The absence of notable variations in SG&A expense ratios for most of the period generally indicates that the pattern of U.S. processors' absolute operating income is largely explained at the level of gross profitability which, as noted above, was negatively impacted by an increasing COGS-to-sales ratio and an overall decline in sales volume.[8]

As shown in table VI-1, a notable feature of the U.S. processors' financial results is the amount of "other income" reported: ranging from a low of $19.2 million in 2009 to a high of $50.3 million in interim 2012. While "other income" includes a variety of items, the most significant after 2009 appears to be settlement disbursements related to the Gulf oil spill with a smaller relative share accounted for by CDSOA receipts.[9] At the staff conference, petitioners took the position that the impact of disbursements related to the Gulf oil spill should be considered a non-operating item in terms of evaluating the industry's financial results.[10] In contrast, respondents generally believe that the Commission's analysis should take into account the positive impact of both Gulf oil spill settlements and CDSOA receipts and consider these items to be functional equivalents of operating income.[11]

As shown in appendix E and with respect to fishermen operations, disbursements and revenue generated from activity related to the Gulf oil spill were classified below primary warmwater shrimp operations. Similarly, as indicated above (see footnote 9), the majority of other income reported by processors after 2009 appears to be related to the Gulf oil spill. While this classification is generally consistent with the intent of the "other income and expenses" section (i.e., to isolate income and expenses not directly related to the primary operations being examined), the pervasive impact of the Gulf oil spill on the industry's overall operations arguably may raise questions about how subsequent settlement income and related revenue should be taken into account.

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[8] As originally reported and with respect to the U.S. processors whose financial results were considered usable, the interim 2012 SG&A expense ratio was higher compared to preceding periods due in large part to the interim 2012 SG&A expenses reported by ***. January 31, 2013 e-mail to *** from USITC auditor.
***. USITC auditor notes (preliminary phase).

[9] In the context of the Commission's standard income statement format for reviews, CDSOA receipts have traditionally been classified below operating income to distinguish them from the primary operations being examined. The above observation that "other income" after 2009 reflects in large part income/distributions related to the Gulf oil spill is based on supplemental information reported by U.S. processors regarding the non-recurring items (table III-9 of U.S. processor questionnaire) included in their financial results. USITC auditor notes (preliminary phase). To the extent that this supplemental information was not reported by all processors in the format requested by the Commission, the amount of CDSOA receipts and/or Gulf oil spill income/distributions included in "other income" cannot be determined directly. While U.S. processors were not required to identify specifically CDSOA receipts and/or Gulf oil spill income/disbursement in their financial results (table III-10 of U.S. processor questionnaire), it was generally expected that these items would be reported in "other income."

[10] Conference transcript, pp. 54-55 (Drake). With regard to another case involving the classification/treatment of "other income," petitioners' counsel referenced Coated Paper and the receipt by U.S. producers of income pursuant to a refundable tax credit. According to petitioners' counsel, an important distinction in Coated Paper is that there was an argument that the "other income" in that case directly impacted the industry's COGS-to-sales ratio. In contrast, settlement money from the Gulf oil spill, according to petitioners' counsel, only affected the industry's financial results below operating income. Conference transcript, p. 55 (Drake).

[11] Conference transcript, pp. 138-139 (Connely).

CAPITAL AND INVESTMENT

The Commission requested that U.S. processors and fishermen describe any actual or anticipated negative effects on their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of frozen warmwater shrimp and prawns from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. The comments/responses of U.S. processors and U.S. fishermen are presented in appendix F and appendix G, respectively.

Capital Expenditures

The responding processors' combined data on capital expenditures are shown in table VI-3.[12]

Table VI-3
Frozen warmwater shrimp: Processors' capital expenditures, calendar years 2009-2011, January-September 2011, and January-June 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
Capital expenditures:	Value (*$1,000*)				
Total capital expenditures	4,671	10,202	7,700	4,114	4,793

Source: Compiled from data submitted in response to Commission questionnaires.

While some processors reported relatively consistent levels of capital expenditures throughout the period, others reported sporadic capital expenditures or none at all.[13] Based on testimony at the staff conference and while there was no industry-specific strategy/plan to use CDSOA funds for reinvestment, at least some of the reported capital expenditures during the period examined reflect the reinvestment of CDSOA funds.[14] As also described by industry witnesses at the staff conference, company-specific capital expenditures were limited to some extent by low relative profitability and reduced access to financing.[15] A comparison of table VI-3 and table VI-1 shows that the total amount of reported capital expenditures ($27.4 million) during the period examined was somewhat higher compared to total depreciation expense ($23.1 million).

[12] ***. Accordingly, R&D expenses are not separately presented in table VI-3.

[13] ***. USITC auditor notes (preliminary phase).

[14] Conference transcript p. 56 (Drake).

[15] Conference transcript p. 40 (Babin), pp. 46-47 (Gibson).

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the nature of the alleged subsidies was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

Generally speaking, common to the seven subject countries, the vast majority of the imported frozen warmwater shrimp came from farmed, rather than wild-caught, inputs; there were very limited home markets; and the most important export markets were the United States, the EU, and Japan.[1] In total, 114 foreign producer questionnaires were used to assemble the following data. The vast majority of producers/exporters did not have product shifting and only two firms reported inventories[2] in the United States. The majority of reported constraints on production were freezing capacity, live shrimp supply, machinery or equipment other than storage capacity, and labor availability. The majority also did not anticipate any changes in operations in the future.

THE INDUSTRY IN CHINA

Table VII-1 presents data provided by Chinese producers/exporters with respect to their warmwater shrimp operations in China. Three firms provided useable data. Together, their exports to the United States were equivalent to *** percent of subject U.S. imports from China in 2011.

Table VII-1
Frozen warmwater shrimp: Chinese production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

* * * * * * *

THE INDUSTRY IN ECUADOR

Table VII-2 presents data provided by Ecuadorian producers/exporters through their counsel with respect to their warmwater shrimp operations in Ecuador. Nine firms, all of which exported to the United States, provided useable data. The exports to the United States of these firms were equivalent to 58.4 percent of subject U.S. imports from Ecuador in 2011.

[1] Canada, Australia, New Zealand, Malaysia, and other Pacific Rim countries were other frequently cited markets.

[2] The total for these two firms is as follows (in 1,000 pounds): *** in 2009; *** in 2010; *** in 2011; *** in January-September 2011; and *** in January -September 2012.

Table VII-2
Frozen warmwater shrimp: Ecuadorian production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

Item	Actual experience					Projections	
				January-September			
	2009	2010	2011	2011	2012	2012	2013
				Quantity (*1,000 pounds*)			
Capacity	312,569	474,527	498,848	397,414	478,735	603,754	624,015
Beginning inventories	5,872	8,473	12,306	14,605	21,159	19,187	20,517
Production	180,108	200,863	278,613	206,938	227,045	236,559	258,345
Shipments:							
Internal consumption	1,287	2,032	1,686	1,232	688	1,147	924
Home market	5,669	5,631	8,238	6,133	6,453	5,680	4,994
Exports to--							
The United States	83,479	84,629	93,613	81,282	82,793	90,775	89,420
All other markets	97,281	115,331	161,685	115,747	150,986	154,445	178,896
Total exports	180,760	199,960	255,298	197,029	233,779	245,220	268,316
Total shipments	187,716	207,623	265,222	204,394	240,920	252,047	274,234
End of period inventories	8,473	12,306	17,332	20,878	22,499	9,004	8,150
				Ratios and shares (*percent*)			
Capacity utilization	57.6	42.3	55.9	52.1	47.4	39.2	41.4
Internal consumption	0.7	1.0	0.6	0.6	0.3	0.5	0.3
Home market	3.0	2.7	3.1	3.0	2.7	2.3	1.8
Exports to--							
The United States	44.5	40.8	35.3	39.8	34.4	36.0	32.6
All other markets	51.8	55.5	61.0	56.6	62.7	61.3	65.2
Total exports	96.3	96.3	96.3	96.4	97.0	97.3	97.8
Share of total quantity of shipments	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Inventories to production	4.7	6.1	6.2	7.6	7.4	3.8	3.2
Inventories to total shipments	4.5	5.9	6.5	7.7	7.0	3.6	3.0

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

THE INDUSTRY IN INDIA

Table VII-3 presents data provided by Indian producers/exporters through their counsel or directly with respect to their warmwater shrimp operations in India. Twenty-eight firms reported exports to the United States. The shipments of these firms to the United States were equivalent to 85.3 percent of subject U.S. imports from India in 2011.

Table VII-3
Frozen warmwater shrimp: Indian production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

Item	Actual experience					Projections	
				January-September			
	2009	2010	2011	2011	2012	2012	2013
	Quantity (*1,000 pounds*)						
Capacity	617,182	632,632	687,259	540,769	579,429	702,800	710,882
Beginning inventories	18,437	13,169	18,186	17,600	20,423	15,611	22,930
Production	99,877	121,861	162,897	124,423	153,302	196,695	207,888
Shipments:							
Internal consumption	15	57	18	11	11	12	3
Home market	211	50	66	48	308	275	296
Exports to--							
The United States	35,632	52,154	89,505	68,005	85,781	115,909	124,579
All other markets	70,862	66,618	74,243	57,375	57,435	77,401	83,789
Total exports	106,494	118,772	163,748	125,380	143,216	193,310	208,368
Total shipments	106,720	118,879	163,832	125,439	143,535	193,597	208,667
End of period inventories	13,602	18,438	20,163	19,004	29,749	22,787	27,040
	Ratios and shares (*percent*)						
Capacity utilization	16.2	19.3	23.7	23.0	26.5	28.0	29.2
Internal consumption	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Home market	0.2	0.0	0.0	0.0	0.2	0.1	0.1
Exports to--							
The United States	33.4	43.9	54.6	54.2	59.8	59.9	59.7
All other markets	66.4	56.0	45.3	45.7	40.0	40.0	40.2
Total exports	99.8	99.9	99.9	100.0	99.8	99.9	99.9
Share of total quantity of shipments	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Inventories to production	13.6	15.1	12.4	11.5	14.6	11.6	13.0
Inventories to total shipments	12.7	15.5	12.3	11.4	15.5	11.8	13.0

[1] Less than 0.5 percent.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

THE INDUSTRY IN INDONESIA

Table VII-4 presents data provided by Indonesian producer/exporters with respect to their frozen warmwater shrimp operations in Indonesia. Fifteen firms, all of which exported to the United States, provided useable data. Together, their exports to the United States were equivalent to 77.5 percent of subject U.S. imports from Indonesia in 2011.

Table VII-4
Frozen warmwater shrimp: Indonesian production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

Item	Actual experience					Projections	
				January-September			
	2009	2010	2011	2011	2012	2012	2013
	Quantity (*1,000 pounds*)						
Capacity	323,147	310,485	303,700	238,625	218,804	278,308	278,943
Beginning inventories	19,709	15,703	15,129	15,019	20,921	14,020	9,559
Production	164,473	144,900	173,497	125,192	127,534	167,184	170,810
Shipments:							
Internal consumption	21	71,877	3402	2,296	753	753	502
Home market	7,981	3,905	2,353	1,800	1,935	3,650	5,000
Exports to--							
The United States	99,737	90,251	113,671	83,131	90,495	121,150	118,370
All other markets	56,282	48,862	45,973	33,949	33,686	45,940	53,389
Total exports	156,019	139,112	159,644	117,081	124,181	167,090	171,759
Total shipments	164,021	214,894	165,399	121,177	126,869	171,493	177,261
End of period inventories	15,378	19,338	22,856	18,668	24,150	13,385	13,014
	Ratios and shares (*percent*)						
Capacity utilization	50.9	46.7	57.1	52.5	58.3	60.1	61.2
Internal consumption	([1])	33.4	2.1	1.9	0.6	0.4	0.3
Home market	4.9	1.8	1.4	1.5	1.5	2.1	2.8
Exports to--							
The United States	60.8	42.0	68.7	68.6	71.3	70.6	66.8
All other markets	34.3	22.7	27.8	28.0	26.6	26.8	30.1
Total exports	95.1	64.7	96.5	96.6	97.9	97.4	96.9
Share of total quantity of shipments	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Inventories to production	9.3	13.3	13.2	11.2	14.2	8.0	7.6
Inventories to total shipments	9.4	9.0	13.8	11.6	14.3	7.8	7.3

[1] Less than 0.5 percent.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

THE INDUSTRY IN MALAYSIA

Table VII-6 presents data provided by Malaysian producer/exporters with respect to their frozen warmwater shrimp operations in Malaysia. Three firms, all of which exported to the United States, provided useable data. Together, their exports to the United States were equivalent to *** percent of subject U.S. imports from Malaysia in 2011.

Table VII-5
Frozen warmwater shrimp: Malaysian production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

* * * * * * *

THE INDUSTRY IN THAILAND

Table VII-6 presents data provided by Thai producer/exporters with respect to their frozen warmwater shrimp operations in Thailand. Twenty-eight firms, all of which exported to the United States, provided useable data. Together, their exports to the United States were equivalent to 88.2 percent of subject U.S. imports from Thailand in 2011.

THE INDUSTRY IN VIETNAM

Table VII-7 presents data provided by Vietnamese producers/exporters with respect to their frozen warmwater shrimp operations in Vietnam. Twenty-eight firms, all of which exported to the United States, provided useable data. The shipments to the United States for these firms were equivalent to 41.0 percent of subject U.S. imports from Vietnam in 2011.

Table VII-6
Frozen warmwater shrimp: Thai production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

Item	Actual experience					Projections	
				January-September			
	2009	2010	2011	2011	2012	2012	2013
	Quantity (*1,000 pounds*)						
Capacity	817,010	882,861	893,838	683,240	661,017	808,493	812,158
Beginning inventories	120,067	130,162	114,848	116,380	118,733	115,088	111,013
Production	659,677	600,988	564,834	412,218	349,928	435,527	426,048
Shipments:							
Internal consumption	63,573	15,166	8,632	6,588	7,966	10,106	9,661
Home market	42,035	36,131	28,914	22,421	19,890	25,665	23,890
Exports to--							
The United States	356,697	366,455	330,778	242,050	176,022	225,722	214,069
All other markets	184,355	201,991	194,265	139,207	143,809	176,031	184,593
Total exports	541,052	568,446	525,043	381,257	319,831	401,753	398,662
Total shipments	646,660	619,743	562,589	410,266	347,687	437,524	432,213
End of period inventories	130,759	115,949	118,951	118,630	121,588	111,998	103,252
	Ratios and shares (*percent*)						
Capacity utilization	80.7	68.1	63.2	60.3	52.9	53.9	52.5
Internal consumption	9.8	2.4	1.5	1.6	2.3	2.3	2.2
Home market	6.5	5.8	5.1	5.5	5.7	5.9	5.5
Exports to--							
The United States	55.2	59.1	58.8	59.0	50.6	51.6	49.5
All other markets	28.5	32.6	34.5	33.9	41.4	40.2	42.7
Total exports	83.7	91.7	93.3	92.9	92.0	91.8	92.2
Share of total quantity of shipments	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Inventories to production	19.8	19.3	21.1	21.6	26.1	25.7	24.2
Inventories to total shipments	20.2	18.7	21.1	21.7	26.2	25.6	23.9

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VII-7
Frozen warmwater shrimp: Vietnamese production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

Item	Actual experience					Projections	
				January-September			
	2009	2010	2011	2011	2012	2012	2013
	Quantity (*1,000 pounds*)						
Capacity	272,496	311,044	324,864	248,278	240,741	275,953	272,188
Beginning inventories	57,227	49,624	59,872	58,697	56,454	38,099	33,050
Production	185,153	225,343	197,048	145,082	132,152	176,466	205,891
Shipments:							
Internal consumption	36,431	32,806	36,044	27,735	27,143	18,965	14,032
Home market	12,331	19,815	14,171	10,238	8,704	9,076	9,914
Exports to--							
The United States	38,124	51,040	37,508	28,452	20,235	33,665	32,337
All other markets	131,629	135,232	130,822	94,785	85,591	107,555	113,561
Total exports	169,753	186,272	168,330	123,237	105,825	141,221	145,898
Total shipments	218,515	238,892	218,545	161,210	141,672	169,262	169,844
End of period inventories	46,134	60,926	59,390	62,264	64,212	43,549	40,924
	Ratios and shares (*percent*)						
Capacity utilization	67.9	72.4	60.7	58.4	54.9	63.9	75.6
Internal consumption	16.7	13.7	16.5	17.2	19.2	11.2	8.3
Home market	5.6	8.3	6.5	6.4	6.1	5.4	5.8
Exports to--							
The United States	17.4	21.4	17.2	17.6	14.3	19.9	19.0
All other markets	60.2	56.6	59.9	58.8	60.4	63.5	66.9
Total exports	77.7	78.0	77.0	76.4	74.7	83.4	85.9
Share of total quantity of shipments	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Inventories to production	24.9	27.0	30.1	32.2	36.4	24.7	19.9
Inventories to total shipments	21.1	25.5	27.2	29.0	34.0	25.7	24.1

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

THE SEVEN SUBJECT COUNTRIES

Generally speaking, common to the seven subject countries, the vast majority of the imported frozen warmwater shrimp came from farmed, rather than wild-caught, inputs; there were very limited home markets; and the most important export markets were the United States, the EU, and Japan. Table

VII-8 presents the combined data provided by the subject foreign producers/exporters with respect to their frozen warmwater shrimp operations.

Table VII-8
Frozen warmwater shrimp: Combined subject countries production capacity, production, shipments, and inventories, 2009-11, January-September 2011, January-September 2012, and projected 2012-13

Item	Actual experience					Projections	
				January-September			
	2009	2010	2011	2011	2012	2012	2013
	Quantity (*1,000 pounds*)						
Capacity	2,440,856	2,710,741	2,810,268	2,186,634	2,259,976	2,774,847	2,804,376
Beginning inventories	243,106	238,005	250,329	252,227	278,013	242,203	225,600
Production	1,357,503	1,378,443	1,461,830	1,065,767	1,029,944	1,269,824	1,350,190
Shipments:							
Internal consumption	101,327	121,938	49,911	38,015	36,515	31,017	25,122
Home market	76,338	72,744	61,807	47,153	43,776	53,962	55,144
Exports to--							
The United States	657,843	688,518	702,146	529,693	478,429	617,017	607,560
All other markets	555,175	589,627	632,789	455,202	486,281	583,306	647,371
Total exports	1,213,018	1,278,145	1,334,934	984,895	964,709	1,200,324	1,254,931
Total shipments	1,390,683	1,472,827	1,446,652	1,070,063	1,045,000	1,285,303	1,335,197
End of period inventories	235,220	256,945	279,015	268,310	290,502	229,255	221,145
	Ratios and shares (*percent*)						
Capacity utilization	55.6	50.9	52.0	48.7	45.6	45.8	48.1
Internal consumption	7.3	8.3	3.5	3.6	3.5	2.4	1.9
Home market	5.5	4.9	4.3	4.4	4.2	4.2	4.1
Exports to--							
The United States	47.3	46.7	48.5	49.5	45.8	48.0	45.5
All other markets	39.9	40.0	43.7	42.5	46.5	45.4	48.5
Total exports	87.2	86.8	92.3	92.0	92.3	93.4	94.0
Share of total quantity of shipments	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Inventories to production	17.3	18.6	19.1	18.9	21.2	18.1	16.4
Inventories to total shipments	16.9	17.4	19.3	18.8	20.8	17.8	16.6

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

Freezing capacities

Reported total and allocated freezing capacity for 103 of the 144 reporting foreign producers' freeze-processed products at their facilities since 2009 is presented in table VII-9.

Table VII-9
Frozen warmwater shrimp: Freezing capacity, 2009-11, January-September 2001, and January-September 2012

Item	2009	2010	2011	January-September	
				2011	2012
			(*Quantity* in 1,000 pounds)		
Total potential freezing capacity	2,621,641	2,884,072	3,096,670	2,355,965	2,505,550
allocated to frozen warmwater shrimp	2,094,054	2,304,473	2,492,216	1,895,803	2,020,012
Total block freezing capacity	1,071,312	1,125,306	1,192,408	921,393	960,016
Total IQF freezing capacity	1,396,296	1,604,573	1,741,677	1,308,725	1,661,256
Source: Compiled from data submitted in response to Commission questionnaires.					

U.S. INVENTORIES OF FROZEN WARMWATER SHRIMP FROM SUBJECT COUNTRIES

As discussed earlier, only two firms reported U.S. inventories accounting for less than 0.5 percent of subject imports.

U.S. IMPORTERS' CURRENT ORDERS

The Commission requested importers to indicate whether they imported or arranged for the importation of frozen warmwater shrimp from subject and nonsubject countries after September 30, 2012. Table VII-10 presents reported arranged imports by 30 importers.

ANTIDUMPING INVESTIGATIONS IN THIRD-COUNTRY MARKETS

According to the World Bank's Global Antidumping Database, which covers most countries through 2011, there are no other orders concerning shrimp.

Table VII-10
Frozen warmwater shrimp: Arranged imports after September 30, 2012

Country	Oct. - Dec. 2012	Jan. - Mar. 2013	Apr. - June 2013	July - Sept. 2013	Oct.2012 - Sept. 2013
	(*Quantity* in 1,000 pounds)				
China	7,065	4,300	144	0	11,509
Ecuador	8,032	4,221	573	341	13,166
India	21,293	12,023	5,900	6,579	45,795
Indonesia	21,593	12,078	6,935	4,901	45,506
Malaysia	5,041	2,546	1,750	3,150	12,488
Thailand	39,986	18,730	12,388	6,806	77,909
Vietnam	15,910	7,986	6,298	0	30,193
Subtotal, subject	118,919	61,883	33,987	21,777	236,566
All other sources	32,306	24,537	24,208	25,220	106,272
Source: Compiled from data submitted in response to Commission questionnaires.					

INFORMATION ON NONSUBJECT COUNTRIES

In assessing whether the domestic industry is materially injured or threatened with material injury "by reason of subject imports," the legislative history states "that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) 'to ensure that it is not attributing injury from other sources to the subject imports.'"[3]

Global Market

Imports of warmwater shrimp from nonsubject countries are available both as farmed and wild-caught. Mexico is the sixth-largest source of U.S. frozen shrimp imports and provides both farmed and wild-caught warmwater shrimp, with the wild-caught subject to the same seasonal supply surge as U.S. production. Mexico is the leading nonsubject source of wild-caught warmwater shrimp imports. In 2008, however, Mexico's production was approximately 68 percent farmed and 32 percent wild-caught, reflecting an increased reliance on aquaculture from several years earlier. Other nonsubject country sources, primarily for farmed shrimp, include Bangladesh, Honduras, and Peru.[4]

[3] Mittal Steel Point Lisas Ltd. v. United States, Slip Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

[4] Dubay, Kristen, Saori Tokuoka, and Gary Gereffi. A Value Chain Analysis of the Sinaloa, Mexico Shrimp Fishery. Duke University, Center on Globalization, Governance & Competitiveness, March 2010. http://cggc.duke.edu/environment/CGGC_SinaloaShrimp_Report.pdf.

APPENDIX A

FEDERAL REGISTER NOTICES

Table A-1
Frozen warmwater shrimp: *Federal Register* notices

Publication date	Title and citation
January 4, 2013	*Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam; Institution of Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 78 FR 764
January 25, 2013	*Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 78 FR 5416

APPENDIX B

CONFERENCE WITNESSES

CALENDAR OF PUBLIC PRELIMINARY CONFERENCE

Those listed below are scheduled to appear as witnesses at the United States International Trade Commission's preliminary conference:

Subject: Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam

Inv. Nos.: **7**01-TA-491-497 (Preliminary)

Date and Time: January 18, 2013 - 9:30 a.m.

Sessions will be held in connection with this preliminary investigation in the ALJ Courtroom B (Room 111), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:	**TIME ALLOCATION:**
Petitioner (**Elizabeth J. Drake**, Stewart and Stewart)	5 minutes
Respondents (**Warren E. Connelly**, Akin Gump Strauss Hauer & Feld LLP)	5 minutes

In Support of the Imposition of Countervailing Duty Orders:	**TIME ALLOCATION:**
Stewart and Stewart Washington, DC on behalf of	60 minutes

and

Leake and Anderson, LLP
New Orleans, LA
on behalf of

The Coalition of Gulf Shrimp Industries ("COGSI")

Carson Kimbrough, President, Carson & Co., Inc.

Alan Gibson, President and Owner, Tidelands Seafood Co., Inc.

Daniel J. Babin, General Manger, Gulf Fish Inc.

In Support of the Imposition of
Countervailing Duty Orders (continued):

Ernest Anderson, President, Graham Shrimp Co., Inc.

Jonathan McLendon, Vice President, Biloxi Freezing & Processing, Inc. and M&M Processing, LLC
David Chauvin, David Chauvin's Seafood Company Inc.

C. David Veal, Executive Director, Coalition Of Gulf Shrimp Industries

Terence P. Stewart)
Eric P. Salonen)
Elizabeth J. Drake) – OF COUNSEL
Philip A. Butler)
Jennifer M. Smith)
Edward T. Hayes)

In Opposition to the Imposition of
Countervailing Duty Orders:

TIME ALLOCATION:

60 minutes total

White & Case LLP
Washington, D.C.
on behalf of

Andaman Seafood Co., Ltd.
Chanthaburi Frozen Food Co., Ltd.
Chanthaburi Seafoods Co., Ltd.
Phatthana Seafood Co., Ltd.
Phatthana Frozen Food Co., Ltd.
Sea Wealth Frozen Food Co., Ltd.
Rubcion Resources, LLC (collectively "Rubicon Group")

Mark McCloskey, Senior Vice President, Purchasing and Product Development, The H&N Group

Jay C. Campbell)
) – OF COUNSEL
Keir Whitson)

In Opposition to the Imposition of
Countervailing Duty Orders (continued):

Arent Fox LLP
Washington, D.C.
on behalf of

Seafood Exporters Association of India ("SEAI")

Elias Sait, Secretary General, SEAI

Robert Paterson, President and Chief Executive Officer, Tampa Bay Fisheries

Mark P. Lunn) – OF COUNSEL

Trade Pacific PLLC
Washington, D.C.
on behalf of

Eastern Fish Company
Chicken of the Sea Frozen Foods
Marine Gold Products Limited
Pakfood Public Company Limited
Thai Royal Frozen Food Company Limited
Thai Union Frozen Products Public Company Limited
Thai Union Seafood Company Limited

Eric Bloom, President, Eastern Fish Company

Carlos A. Faria, Vice President of Operations, Chicken of the Sea Frozen Foods

Robert G. Gosselink) – OF COUNSEL

Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.
on behalf of

The National Chamber of Aquaculture

Warren E. Connelly)
) – OF COUNSEL
Jarrod M. Goldfeder)

In Opposition to the Imposition of
Countervailing Duty Orders (continued):

Mayer Brown LLP
Washington, D.C.
on behalf of

The Government of Indonesia
Indonesia Fishery Product Processing &
Marketing Association

Duane W. Layton)
) – OF COUNSEL
Jing Zhang)

REBUTTAL/CLOSING REMARKS:

Petitioner (**Elizabeth J. Drake**, Stewart and Stewart)	10 minutes
Respondents (**Mark P. Lunn**, Arent Fox LLP *and* **Robert G. Gosselink**, Trade Pacific PLLC)	10 minutes

-END-

APPENDIX C

SUMMARY DATA

Table C-1

Frozen warmwater shrimp: Summary data concerning the U.S. market, 2009-11, January-September 2011, and January-September 2012 [1]

(Quantity=1,000 pounds; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per pound; Period changes=percent--exceptions noted)

	Report data					Period changes			
				January-September (1)					Jan.-Sept. (1)
	2009	2010	2011	2011	2012	2009-11	2009-10	2010-11	2011-12
U.S. consumption quantity: (1)									
Amount	1,276,024	1,249,308	1,295,294	776,279	***	1.5	(2.1)	3.7	***
Producers' share (2)	12.5	9.6	10.5	11.7	***	(1.9)	(2.9)	0.9	***
Importers' share (2):									
China	3.9	4.4	3.2	2.8	***	(0.6)	0.5	(1.1)	***
Ecuador	10.5	11.3	12.4	14.1	***	1.9	0.8	1.0	***
India	3.3	5.2	8.1	7.3	***	4.8	1.9	2.9	***
Indonesia	11.4	10.1	11.3	12.8	***	(0.1)	(1.3)	1.2	***
Malaysia	3.1	4.2	4.9	4.0	***	1.8	1.1	0.7	***
Thailand	30.9	33.2	29.0	28.8	***	(1.9)	2.3	(4.3)	***
Vietnam	6.9	8.1	7.1	6.9	***	0.1	1.1	(1.0)	***
Subtotal, subject	70.0	76.6	76.0	76.6	***	5.9	6.6	(0.6)	***
Nonsubjectcountries	17.5	13.8	13.5	11.7	***	(4.0)	(3.7)	(0.3)	***
Total imports	87.5	90.4	89.5	88.3	***	1.9	2.9	(0.9)	***
U.S. consumption value: (1)									
Amount	4,303,457	4,716,409	5,671,982	3,368,423	***	31.8	9.6	20.3	***
Producers' share (2)	14.7	11.5	12.4	13.9	***	(2.3)	(3.1)	0.8	***
Importers' share (2):									
China	3.4	3.7	2.8	2.3	***	(0.6)	0.3	(0.9)	***
Ecuador	7.9	8.9	9.5	10.9	***	1.6	1.0	0.7	***
India	3.7	6.5	9.3	8.5	***	5.6	2.8	2.8	***
Indonesia	11.3	10.3	12.1	13.8	***	0.8	(1.0)	1.8	***
Malaysia	2.6	3.3	3.7	3.0	***	1.1	0.6	0.5	***
Thailand	30.8	31.4	29.2	28.7	***	(1.6)	0.6	(2.2)	***
Vietnam	8.8	10.8	8.9	8.6	***	0.1	2.0	(1.9)	***
Subtotal, subject	68.6	74.9	75.6	75.8	***	7.0	6.3	0.7	***
Nonsubjectcountries	16.7	13.5	12.0	10.3	***	(4.7)	(3.2)	(1.5)	***
Total imports	85.3	88.5	87.6	86.1	***	2.3	3.1	(0.8)	***
U.S. imports from:									
China:									
Quantity	49,600	54,591	42,032	28,407	21,633	(15.3)	10.1	(23.0)	(23.8)
Value	145,582	174,857	159,147	106,181	75,733	9.3	20.1	(9.0)	(28.7)
Unit value	$2.94	$3.20	$3.79	$3.74	$3.50	29.0	9.1	18.2	(6.3)
Ending inventory quantity	***	***	***	***	***	(3)	(3)	(3)	***
Ecuador:									
Quantity	133,935	141,620	160,422	121,864	138,853	19.8	5.7	13.3	13.9
Value	339,850	418,571	540,443	411,389	445,209	59.0	23.2	29.1	8.2
Unit value	$2.54	$2.96	$3.37	$3.38	$3.21	32.8	16.5	14.0	(5.0)
Ending inventory quantity	***	***	***	***	***	***	***	***	***
India:									
Quantity	42,486	65,444	104,960	72,433	90,320	147.0	54.0	60.4	24.7
Value	161,163	308,832	529,412	365,157	372,197	228.5	91.6	71.4	1.9
Unit value	$3.79	$4.72	$5.04	$5.04	$4.12	33.0	24.4	6.9	(18.3)
Ending inventory quantity	2,982	19,789	25,914	20,653	23,877	769.0	563.6	31.0	15.6
Indonesia:									
Quantity	145,391	126,661	146,747	111,798	116,090	0.9	(12.9)	15.9	3.8
Value	487,326	485,466	686,296	522,372	493,977	40.8	(0.4)	41.4	(5.4)
Unit value	$3.35	$3.83	$4.68	$4.67	$4.26	39.5	14.3	22.0	(8.9)
Ending inventory quantity	13,316	10,263	16,099	15,273	13,162	20.9	(22.9)	56.9	(13.8)
Malaysia:									
Quantity	39,466	52,721	63,415	40,324	35,542	60.7	33.6	20.3	(11.9)
Value	113,842	153,999	212,566	132,841	124,460	86.7	35.3	38.0	(6.3)
Unit value	$2.88	$2.92	$3.35	$3.29	$3.50	16.2	1.3	14.8	6.3
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Thailand:									
Quantity	394,308	414,954	375,072	261,328	196,756	(4.9)	5.2	(9.6)	(24.7)
Value	1,324,191	1,480,787	1,655,821	1,138,813	836,122	25.0	11.8	11.8	(26.6)
Unit value	$3.36	$3.57	$4.41	$4.36	$4.25	31.5	6.3	23.7	(2.5)
Ending inventory quantity	45,315	40,715	53,030	51,002	39,985	17.0	(10.2)	30.2	(21.6)
Vietnam:									
Quantity	88,490	100,834	91,503	64,380	57,139	3.4	13.9	(9.3)	(11.2)
Value	379,595	511,515	504,949	353,209	311,539	33.0	34.8	(1.3)	(11.8)
Unit value	$4.29	$5.07	$5.52	$5.49	$5.45	28.6	18.3	8.8	(0.6)
Ending inventory quantity	***	***	***	***	***	***	***	***	***
Subject sources:									
Quantity	893,678	956,825	984,150	700,534	656,333	10.1	7.1	2.9	(6.3)
Value	2,951,547	3,534,025	4,288,634	3,029,961	2,659,237	45.3	19.7	21.4	(12.2)
Unit value	$3.30	$3.69	$4.36	$4.33	$4.05	31.9	11.8	18.0	(6.3)
Ending inventory quantity	95,450	97,012	124,473	111,478	108,819	30.4	1.6	28.3	(2.4)
Nonsubject sources:									
Quantity	222,951	172,475	174,570	110,715	116,366	(21.7)	(22.6)	1.2	5.1
Value	720,432	638,578	681,566	419,105	431,129	(5.4)	(11.4)	6.7	2.9
Unit value	$3.23	$3.70	$3.90	$3.79	$3.70	20.8	14.6	5.5	(2.1)
Ending inventory quantity	11,902	11,786	8,578	6,765	6,362	(27.9)	(1.0)	(27.2)	(6.0)
All sources:									
Quantity	1,116,629	1,129,300	1,158,720	811,249	772,699	3.8	1.1	2.6	(4.8)
Value	3,671,979	4,172,604	4,970,199	3,449,067	3,090,366	35.4	13.6	19.1	(10.4)
Unit value	$3.29	$3.69	$4.29	$4.25	$4.00	30.4	12.4	16.1	(5.9)
Ending inventory quantity	107,352	108,798	133,051	118,243	115,181	23.9	1.3	22.3	(2.6)

Table continued next page

Table C-1--Continued
Frozen warmwater shrimp: Summary data concerning the U.S. market, 2009-11, January-September 2011, and January-September 2012
(Quantity=1,000 pounds; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per pound; Period changes=percent--exceptions noted)

	Report data					Period changes			
				January-September					Jan.-Sept.
	2009	2010	2011	2011	2012	2009-11	2009-10	2010-11	2011-12
U.S. producers':									
Average capacity quantity	658,566	687,265	704,850	506,682	522,909	7.0	4.4	2.6	3.2
Production quantity	222,231	181,325	198,011	151,706	144,039	(10.9)	(18.4)	9.2	(5.1)
Capacity utilization (2) (4)	32.9	25.6	27.4	29.2	26.9	(5.5)	(7.2)	1.7	(2.2)
U.S. shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity	***	***	***	***	***	***	***	***	***
Value	***	***	***	***	***	***	***	***	***
Unit value	***	***	***	***	***	***	***	***	***
Ending inventory quantity	35,865	33,699	38,357	34,508	46,105	6.9	(6.0)	13.8	33.6
Inventories/total shipments (2)	16.6	18.1	19.8	17.3	25.5	3.2	1.5	1.7	8.2
Production workers	2,069	1,859	1,922	1,830	1,783	(7.1)	(10.1)	3.4	(2.6)
Hours worked (1,000s)	3,885	3,143	3,321	2,807	2,714	(14.5)	(19.1)	5.7	(3.3)
Wages paid ($1,000)	49,677	43,340	47,411	36,606	35,490	(4.6)	(12.8)	9.4	(3.0)
Productivity (lbs per hour) (4)	53.8	54.0	56.5	51.2	50.8	5.0	0.2	4.7	(0.7)
Unit labor costs (4)	$0.23	$0.25	$0.25	$0.25	$0.25	6.9	7.2	(0.3)	2.3
Net Sales:									
Quantity	212,264	181,959	192,962	147,637	136,273	(9.1)	(14.3)	6.0	(7.7)
Value	651,397	662,102	724,971	548,171	523,174	11.3	1.6	9.5	(4.6)
Unit value	$3.07	$3.64	$3.76	$3.71	$3.84	22.5	18.6	3.3	3.5
Cost of goods sold (COGS)	592,910	612,348	673,875	507,621	488,615	13.7	3.3	10.0	(3.7)
Gross profit of (loss)	58,487	49,754	51,096	40,550	34,559	(12.6)	(14.9)	2.7	(14.8)
SG&A expenses	46,500	43,919	48,812	34,817	41,068	5.0	(5.6)	11.1	18.0
Operating income or (loss)	11,987	5,835	2,284	5,733	(6,509)	(80.9)	(51.3)	(60.9)	(3)
Capital expenditures	4,671	10,202	7,700	4,114	4,793	64.8	118.4	(24.5)	16.5
Unit COGS	$2.79	$3.37	$3.49	$3.44	$3.59	25.1	20.8	3.6	4.4
Unit SG&A expenses	$0.22	$0.24	$0.25	$0.24	$0.30	13.6	9.1	4.2	25.0
Unit operating income or (loss)	$0.06	$0.03	$0.01	$0.04	($0.05)	(83.3)	(50.0)	(66.7)	(3)
COGS/sales (2)	91.0	92.5	93.0	92.6	93.4	2.0	1.5	0.5	0.8
Operating income or (loss)/sales (2)	1.8	0.9	0.3	1.0	(1.2)	(1.5)	(0.9)	(0.6)	(2.2)

Notes:
(1) All partial year period data are January to September, except consumption data which are January to August as 2012 NOAA data are only available for this 8 month period.
(2) Report data are in percent and period changes are in percentage points.
(3) Undefined.
(4) Calculations exclude data for firms that did not report both data elements necessary for the calculation.

APPENDIX D

TARIFF TREATMENT

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quantity	Rates of Duty 1 General	1 Special	2
0306 (con.)		Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; smoked crustaceans, whether in shell or not, whether or not cooked before or during the smoking process; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine; flours, meals and pellets of crustaceans, fit for human consumption (con.):				
		Frozen (con.):				
0306.17.00		Other shrimps and prawns		Free		Free
		Shell-on, imported in accordance with Statistical Note 1 to this chapter:				
	03	Count size (headless weight) less than 33 per kg (15s)	kg			
	06	Count size (headless weight) 33-45 per kg (15-20s)	kg			
	09	Count size (headless weight) 46-55 per kg (21-25s)	kg			
	12	Count size (headless weight) 56-66 per kg (26-30s)	kg			
	15	Count size (headless weight) 67-88 per kg (31-40s)	kg			
	18	Count size (headless weight) 89-110 per kg (41-50s)	kg			
	21	Count size (headless weight) 111-132 per kg (51-60s)	kg			
	24	Count size (headless weight) 133-154 per kg (61-70s)	kg			
	27	Count size (headless weight) more than 154 per kg (70s)	kg			
	40	Peeled, imported in accordance with Statistical Note 1 to this chapter	kg			
0306.19.00		Other, including flours, meals and pellets of crustaceans, fit for human consumption		Free		Free
	10	Freshwater crawfish	kg			
	30	Antarctic krill (*Euphausia superba*)	kg			
	61	Other	kg			
		Not frozen:				
0306.21.00	00	Rock lobster and other sea crawfish (*Palinurus spp., Panulirus spp., Jasus spp.*)	kg	Free		Free
0306.22.00		Lobsters (*Homarus spp.*)		Free		Free
	10	Live	kg			
	90	Other	kg			

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quantity	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
1605 (con.)		Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved (con.):				
		Shrimps and prawns:				
1605.21		Not in airtight containers:				
1605.21.05	00	Products containing fish meat; prepared meals..	kg.	5%	Free (A*,AU,BH, CA,CL,CO,E,IL, J,JO,MA,MX, OM,P,PA,PE,SG) 3% (KR)	20%
1605.21.10		Other.		Free		Free
		Frozen, imported in accordance with Statistical Note 1 to this chapter:				
	20	Breaded.	kg			
	30	Other.	kg			
	50	Other, imported in accordance with Statistical Note 1 to this chapter.	kg			
1605.29		Other:				
1605.29.05	00	Products containing fish meat; prepared meals..	kg.	5%	Free (A*,AU,BH, CA,CL,CO,E,IL,J, JO,MA,MX,OM, P,PA,PE,SG) 3% (KR)	20%
1605.29.10		Other.		Free		Free
	10	Frozen, imported in accordance with Statistical Note 1 to this chapter.	kg			
	40	Other, imported in accordance with Statistical Note 1 to this chapter.	kg			
1605.30		Lobster:				
1605.30.05		Products containing fish meat; prepared meals.		10%	Free (A,AU,BH,CA, CL,CO,E,IL,J,JO, MA,MX,OM,P,PA, PE,SG) 3.3% (KR)	20%
	10	In airtight containers.	kg			
	90	Other.	kg			
1605.30.10		Other.		Free		Free
		Lobster meat, cooked by steaming or boiling in water and out of shell, whether or not frozen but not further prepared or preserved:				
	10	Frozen.	kg			
	30	Not frozen.	kg			
		Other:				
	50	In airtight containers.	kg			
	90	Other.	kg			
1605.40		Other crustaceans:				
1605.40.05	00	Products containing fish meat; prepared meals.	kg.	Free		20%
1605.40.10		Other.		Free		Free
	10	Peeled freshwater crawfish tail meat.	kg			
	90	Other.	kg			
		Molluscs:				
1605.51		Oysters:				
1605.51.05	00	Products containing fish meat; prepared meals.	kg.	Free		20%
		Other:				
1605.51.40	00	Smoked.	kg.	Free		7.5%
1605.51.50	00	Other.	kg.	4.7%	Free (A+,AU,BH, CA,CL,CO,D,E, IL,J,JO,MA,MX, OM,P,PA,PE,SG) 3.7% (KR)	12.5%
1605.52		Scallops, including queen scallops:				
1605.52.05	00	Products containing fish meat; prepared meals.	kg.	Free		20%
1605.52.60	00	Other.	kg.	Free		Free

APPENDIX E

U.S. FISHERMEN DATA

Table E-1
Frozen warmwater shrimp: U.S. fishermen, position on the petition, Location, quantity of harvest in 2011, and share of reported harvest in 2011

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Table E-2
Frozen warmwater shrimp: U.S. fishermen's shipments, by types, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September--	
	2009	2010	2011	2011	2012
U.S. shipments (*1,000 pounds)*	9,787	8,212	9,915	7,035	5,931
U.S. shipments (*1,000 dollars*)	24,428	31,912	39,638	27,428	22,662
U.S. shipments (*per pound*)	$2.50	$3.89	$4.00	$3.90	$3.82
Note.–No company reported transfers to related firms, other U.S. shipments, or exports.					
Source: Compiled from data submitted in response to Commission questionnaires.					

Table E-3
Frozen warmwater shrimp: U.S. fishermen's quantity harvested and employment-related data, 2009-11, January-September 2011, and January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
Warmwater shrimp harvested (*pounds)*	9,054,746	7,122,217	9,294,355	6,680,524	5,517,176
Production and related workers (PRWs)	225	230	233	233	233
Hours worked by PRWs (*hours*)	286,930	299,193	301,057	218,306	195,935
Wages paid to PRWs (*dollars*)	6,036,367	8,093,616	10,182,494	6,949,469	5,481,768
Days boat at sea	17,242	18,051	18,235	13,241	12,260
Source: Compiled from data submitted in response to Commission questionnaires.					

Table E-4
Warmwater shrimp: Financial results of fishermen, calendar years 2009-2011, January-September 2011, January-September 2012

Item	Calendar year			January-September	
	2009	2010	2011	2011	2012
	Quantity (*1,000* pounds)				
Net sales quantity	12,811	10,202	12,482	8,760	7,283
	Value ($*1,000*)				
Net sales value	31,090	39,642	48,203	33,576	29,848
Operating expenses	30,362	37,105	44,868	30,053	28,439
Net income before salaries	728	2,537	3,335	3,524	1,409
Officer/partner salaries	204	269	274	81	107
Other rev. and Gulf oil spill compensation	486	2,406	2,342	881	1,846
Net income	1,010	4,674	5,403	4,324	3,148
	Ratio to net sales (*percent*)				
Operating expenses	97.7	93.6	93.1	89.5	95.3
Net income before salaries	2.3	6.4	6.9	10.5	4.7
Net income	3.2	11.8	11.2	12.9	10.5
	Unit value ($*1,000*)				
Net sales value	2.43	3.89	3.86	3.83	4.10
Operating expenses	2.37	3.64	3.59	3.43	3.90
Net income before salaries	0.06	0.25	0.27	0.40	0.19
Officer/partner salaries	0.02	0.03	0.02	0.01	0.01
Other rev. and Gulf oil spill compensation	0.04	0.24	0.19	0.10	0.25
Net income	0.08	0.46	0.43	0.49	0.43
	Value ($*1,000*)				
Capital expenditures	1,142	645	800	723	738
	Number of fishermen reporting				
Net losses before salaries	42	29	22	19	42
Net losses	36	17	14	16	34
Data	88	89	89	89	89

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX F

ALLEGED EFFECTS OF IMPORTS ON U.S. PROCESSORS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested that U.S. processors describe any actual or anticipated negative effects since January 1, 2009 on their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of frozen warmwater shrimp and prawns from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Unless specifically noted, the processors did not distinguish between China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam in their comments. The responses of those processors that provided useable financial results data are as follows:

Actual Negative Effects

Bama Sea Products	***.
Bayou Shrimp Proc.	***.
Biloxi Freezing	***.
Bluewater Shrimp	***.
Bon Secour	***.
Carson & Co.	***.
CF Gollott	***.
Dominick's Seafood	***.
DoRan Seafood	***.
Fisherman's Reef	***.
Golden Gulf Coast	***.
Graham Shrimp	***.
Gulf Crown	***.
Gulf Fish	***.
Gulf Island Shrimp	***.
Gulf Pride	***.
Gulf South	***.
Hi Seas of Dulac	***.
Indian Ridge Shrimp	***.
Int. Oceanic Ent.	***.
JBS Packing	***.
Lafitte Frozen Foods	***.
Lazaretta Packing	***.
Lighthouse Seafood	***.
Ocean Harvest	***.
Ocean Pride	***.
Paul Piazza & Sons	***.
Penguin Frozen Foods	***.
RA Lesso Brokerage	***.
Seagold	***.
Sea Pearl Seafood	***.
Tampa Bay Fisheries	***.
Texas Gulf Seafood	***.
Tideland Seafood	***.
Tommy's Seafood	***.
Wood's Fisheries	***.

Anticipated Negative Effects

Bama Sea Products	***.
Bayou Shrimp Proc.	***.
Biloxi Freezing	***.
Bluewater Shrimp	***.
Bon Secour	***.
Carson & Co.	***.
CF Gollott	***.
Dominick's Seafood	***.
DoRan Seafood	***.
Fisherman's Reef	***.
Golden Gulf Coast	***.
Graham Shrimp	***.
Gulf Crown	***.
Gulf Fish	***.
Gulf Island Shrimp	***.
Gulf Pride	***.
Gulf South	***.
Hi Seas of Dulac	***.
Indian Ridge Shrimp	***.
Int. Oceanic Ent.	***.
JBS Packing	***.
Lafitte Frozen Foods	***.
Lazaretta Packing	***.
Lighthouse Seafood	***.
Ocean Harvest	***.
Ocean Pride	***.
Paul Piazza & Sons	***.
Penguin Frozen Foods	***.
RA Lesso Brokerage	***.
Seagold	***.
Sea Pearl Seafood	***.
Tampa Bay Fisheries	***.
Texas Gulf Seafood	***.
Tideland Seafood	***.
Tommy's Seafood	***.
Wood's Fisheries	***.

APPENDIX G

ALLEGED EFFECTS OF IMPORTS ON U.S. FISHERMEN'S EXISTING DEVELOPMENT AND PRODUCTION EFFORTS GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested that U.S. fishermen describe any actual or anticipated negative effects since January 1, 2009 on their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of frozen warmwater shrimp and prawns from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Unless specifically noted, fishermen did not distinguish between China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam in their comments. A summary of the responses of those fishermen that provided useable trade data are as follows:

Actual and Anticipated Negative Effects

Nineteen U.S. fishermen reported no actual negative effects, while 48 fishermen reported that they experienced actual negative effects. With respect to those fishermen reporting actual negative effects, the impact was classified as follows: cancellations, postponement, or rejection of expansion project (34); denial or rejection of investment proposal (12), reduction in the size of capital investments (25); rejection of bank loans (15); lower of credit rating (13); and "other" (20).

Seventy-five fishermen reported anticipated negative effects, while zero reported that they anticipated no negative effects.[1]

[1] The total number of fishermen reporting usable trade date, 85, is greater than the total number reporting the extent of actual negative effects, 67, or anticipated negative effects, 75. These differences generally reflect the fact that not all fishermen reporting usable trade data responded to the above-referenced questions regarding actual and/or anticipated negative effects.