DATES: Effective Date: January 25, 2013.


SUPPLEMENTARY INFORMATION:

The Petitions

On December 28, 2012, the Department of Commerce (“Department”) received petitions filed in proper form by the Coalition of Gulf Shrimp Industries (“the petitioner”), a trade or business association whose members manufacture, produce, or wholesale a domestic like product in the United States. In response to the Department’s requests, the petitioner provided timely information supplementing the Petitions on January 9, 2013, January 10, 2013, January 11, 2013, and January 14, 2013.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (“the Act”), the petitioner alleges that manufacturers, producers, or importers of certain frozen warmwater shrimp from the People’s Republic of China (“China”), Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam (“Vietnam”), receive countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing frozen shrimp in the United States.

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because they are an interested party as defined in section 771(9)(E) of the Act, and the petitioner has demonstrated sufficient industry support, pursuant to section 771(4)(E) of the Act, with respect to the investigations that it requests the Department initiate.

Period of Investigation

The period of investigation is January 1, 2011, through December 31, 2011.

Scope of the Investigations

The products covered by these investigations are certain frozen warmwater shrimp (“frozen shrimp”) from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. For a full description of the scope of each of these investigations, please see the “Scope of the Investigations” in Appendix I to this notice.

Comments on Scope of Investigations

During our review of the Petitions, the Department had discussions pertaining to the proposed scope with the petitioner to ensure that the scope language in the Petitions was an accurate reflection of the products for which the domestic industry is seeking relief. The petitioner determined the proposed scope should be clarified, and it filed a modification to the language of the scope described in the Petitions to reflect those clarifications. Moreover, as discussed in the preamble to the regulations, we are setting aside a period of time for interested parties to raise issues regarding product coverage. This period for scope comments is intended to provide the Department with ample opportunity to consider all issues and to consult with parties prior to the issuance of the preliminary determinations. The Department encourages interested parties to submit such comments by 5:00 p.m. EST on Wednesday, February 6, 2013, which is 20 calendar days from the signature date of this notice.

Filing Requirements

All submissions to the Department must be filed electronically using Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). An electronically filed document must be received successfully in its entirety by the Department’s


2 See “Determination of Industry Support for the Petition” below.


4 See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27213 [May 19, 1997].
electronic records system, IA ACCESS, by the time and date set by the Department. Documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.6

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam for consultations with respect to the Petitions.

Consultations were held with the government of China via teleconference on January 10, 2013;7 Consultations were held in Washington, DC, with the Royal Thai Government on January 11, 2013;8 with the governments of India, Indonesia, and Malaysia on January 14, 2013;9 with the government of Vietnam on January 15, 2013;10 and with the government of Ecuador on January 16, 2013.11 All memoranda are on file electronically via IA ACCESS. Access to IA ACCESS is available in the Central Records Unit (“CRU”), Room 7046, of the main Department of Commerce Building.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether the “domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the “industry.” While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.12

Section 771(10) of the Act defines the 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 under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that certain frozen warmwater shrimp, as defined in the scope of the investigations, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.13

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with respect to the domestic like product as defined in the “Scope of the Investigations” section above. To establish industry support, the petitioner provided its production of the domestic like product in 2011 and compared this to the total production of the domestic like product by the entire domestic industry.14 The petitioner calculated total 2011 production of the domestic like product based on data on the volume of frozen shrimp produced in the United States in 2011 from the

7 Information on help using IA ACCESS can be found at https://iaaccess.trade.gov/help/ and a handbook can be found at https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.
8 See Ex-Parte Memorandum, “Consultations with Officials from the Government of the PRC” (January 14, 2013).
National Oceanic and Atmospheric Administration ("NOAA"). The Department contacted NOAA officials with respect to these data on January 11, 2013, to learn the means by which NOAA derived these production amounts.\textsuperscript{18} The petitioner noted in the Petitions that the data from NOAA included both warmwater and coldwater frozen shrimp processed in 2011. To adjust the NOAA data to reflect only the processing of warmwater shrimp, the petitioner used data on landings of coldwater shrimp from the National Marine Fisheries Service, a division of NOAA. The petitioner explained that this is the same methodology and data used by the Department in prior antidumping investigations on frozen warmwater shrimp.\textsuperscript{16} We contacted NOAA with respect to the data relied upon by the petitioner, and are satisfied with the quality and accuracy of that data. However, during our communications with NOAA, NOAA provided us with updated 2011 figures. Accordingly, we have relied upon the updated NOAA data for purposes of measuring industry support.\textsuperscript{17}

On January 11, 2013, the Government of Thailand raised concerns about industry support during its consultations with the Department.\textsuperscript{18} On January 14, 2013, the Government of India ("GOI") also raised concerns about industry support during its consultations with the Department.\textsuperscript{19} The GOI reiterated those same concerns in a letter filed on January 16, 2013.\textsuperscript{20} On January 14, 2013, Marine Gold Products Limited, Thai Union Frozen Products Public Co., Ltd., Thai Union Seafood Co., Ltd., Pakfood Public Company Limited, and Thai Royal Frozen Food Co., Ltd. (collectively, "Thai Exporters"), self-identified subject merchandise, also filed a submission challenging industry support.\textsuperscript{17}

Based on information provided in the Petitions, supplemental submissions, and other information readily available to the Department, we determine that the petitioner has met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.\textsuperscript{23} Based on information provided in the Petitions and supplemental submissions, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.\textsuperscript{24}

The Department finds that the petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) of the Act and it has demonstrated sufficient industry support, pursuant to section 771(4)(E) of the Act, with respect to the CVD investigations that it is requesting the Department initiate.\textsuperscript{25}

\textsuperscript{13} See Memorandum to the File from Vicki Flynn, Office of Policy, Regarding National Oceanic and Atmospheric Administration Statistics (January 11, 2013).
\textsuperscript{14} See Exhibit I–4 (which contains the “AD Investigation Initiation Checklist: Certain Frozen and Canned Warmwater Shrimp from Thailand” (Public Version) (January 20, 2004)).
\textsuperscript{15} For further discussion, see Memorandum to the File, “National Oceanic and Atmospheric Administration (‘NOAA’) Statistics,” (January 15, 2013).
\textsuperscript{16} See China Initiation Consultation Memorandum.
\textsuperscript{17} See China Consultation Memorandum.
\textsuperscript{18} See Letter from the GOI dated January 16, 2013, “Petition filed by the Coalition of Gulf Shrimp Industries on 28 December 2012 seeking initiation of a countervailing duty investigation against imports of Certain Frozen Warmwater Shrimp from, inter alia, India.”

\textsuperscript{21} See Vietnam Consultation Memorandum.
\textsuperscript{22} For further discussion of these submissions, see China Initiation Checklist, Ecuador Initiation Checklist, India Initiation Checklist, Indonesia Initiation Checklist, Malaysia Initiation Checklist, Thailand Initiation Checklist, and Vietnam Initiation Checklist, at Attachment II.
\textsuperscript{23} See China Initiation Checklist, Ecuador Initiation Checklist, India Initiation Checklist, Indonesia Initiation Checklist, Malaysia Initiation Checklist, Thailand Initiation Checklist, and Vietnam Initiation Checklist, at Attachment II.

Injury Test

Because China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam are “Subsidies Agreement Countries” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. The petitioner alleges that subject imports from China and Vietnam exceed the negligibility threshold provided for under section 771(24)(A) of the Act. In addition, the petitioner alleges that subject imports from Ecuador, India, Indonesia, Malaysia, and Thailand exceed the negligibility threshold provided for under section 771(24)(B) of the Act, which states that in countervailing duty petitions, imports of subject merchandise from developing countries must exceed the negligibility threshold of 4 percent.

The petitioner contends that the industry’s injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenue; reduced shipments and production; increased inventories; decline in financial performance; and reduction in employment data and wages paid.\textsuperscript{26} We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.\textsuperscript{27}

\textsuperscript{21} See China Initiation Checklist, Ecuador Initiation Checklist, India Initiation Checklist, Indonesia Initiation Checklist, Malaysia Initiation Checklist, Thailand Initiation Checklist, and Vietnam Initiation Checklist, at Attachment II.
Initiation of Countervailing Duty Investigations

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

In the Petitions, the petitioner alleges that producers of frozen shrimp in China, Ecuador, India, Indonesia, Malaysia, Thailand and Vietnam benefited from countervailable subsidies bestowed by their respective governments. In addition to subsidies allegedly provided to processors of frozen shrimp, the Petitions include subsidies allegedly provided to producers of fresh shrimp. According to the petitioner, the producers of frozen shrimp often have their own integrated aquaculture operations or are cross-owned with farming operations that supply fresh shrimp.28 In these situations, the petitioner states that subsidies tied to the production of fresh shrimp will be attributed to the processed product, citing 19 CFR 351.525(b)(5)(ii) and 351.525(b)(6)(iv).

(With respect to cross-owned suppliers of fresh shrimp and the requirements of 19 CFR 351.525(b)(6)(iv), the petitioner points to the ITC's finding that fresh shrimp is overwhelmingly used to produce frozen shrimp29 in support of its claim that fresh shrimp is “primarily dedicated” to the frozen product.) Alternatively, the petitioner claims that the Department should investigate subsidies to producers of fresh shrimp and deem such subsidies to be provided with respect to the frozen product under section 771B of the Act, which addresses processed agricultural products (including fishery products).

In support, the petitioner claims that: (i) The demand for fresh shrimp is substantially dependent on the demand for frozen shrimp and (ii) the processing of the fresh shrimp into frozen shrimp adds limited value and the essential character of the raw product is not changed. In support, the petitioner refers to the above-cited finding by the ITC and to its finding that processing adds 19–24 percent of the final value.30 According to the petitioner, the Department has previously found this level of value added to be limited.31 Moreover, the petitioner states that the essential character of the fresh shrimp is not changed with processing. Based on the petitioner’s allegation in each of the Petitions regarding the relationship between fresh and frozen shrimp, the Department is including in its investigations programs that allegedly provide subsidies to producers of fresh shrimp as well as programs that allegedly provide subsidies to producers of frozen shrimp.

The Department has examined the Petitions on frozen shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand and Vietnam and finds that they comply with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, or exporters of frozen shrimp from the China, Ecuador, India, Indonesia, Malaysia, Thailand and Vietnam receive countervailable subsidies.

The People’s Republic of China

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 25 alleged programs. For the other five programs, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see China Initiation Checklist.

Indonesia

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 14 alleged programs. The petitioner also made a sufficient allegation of debt forgiveness and uncreditworthiness regarding a certain Indonesian producer/exporter of subject merchandise. We intend to investigate these allegations if this company is selected as a mandatory company respondent in the investigation. For one program, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see Indonesia Initiation Checklist.

Malaysia

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 16 alleged programs. For the other two programs, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see Malaysia Initiation Checklist.

Thailand

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 12 alleged programs. For the other three programs, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see Thailand Initiation Checklist.

Vietnam

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 20 alleged programs. For two programs, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see Vietnam Initiation Checklist.

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28 The petitioner has provided supporting information for these claims in each of the petitions. For a full discussion, see the Initiation Checklist for each country.
30 Shrimp AD Sunset at Table III–11.
A public version of the Petitions to the Governments of China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of subsidized frozen shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam are materially injuring, or threatening material injury to, a U.S. industry. Negative ITC determinations with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures, 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information. Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives, in all segments of any AD or CVD proceedings initiated on or after March 14, 2011. The formats for the revised certifications are provided at the end of the Interim Final Rule. Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the Interim Final Rule, or in the format provided in the Interim Final Rule. The Department intends to reject factual information submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 17, 2013.

Paul Piquazo,
Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

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, devined or not devined, 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 Peneaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannamei), banana prawn (Peneaus merguiensis), fleshy prawn (Peneaus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Peneaus subtilis), southern pink shrimp (Peneaus notialis), southern rough shrimp (Trachypenaeus cuvieri), southern white shrimp (Peneaus schmitti), blue shrimp (Peneaus stylirostris), western white shrimp (Peneaus occidentalis), and Indian white prawn (Peneaus 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, the battered
shrimp product is also coated with a wet
viscous layer containing egg and/or milk, and
par-fried.

The products included in the scope of
these investigations are currently classified
under the following HTSUS subheadings:
0306.17.00.03, 0306.17.00.06, 0306.17.00.09,
0306.17.00.12, 0306.17.00.15, 0306.17.00.18,
0306.17.00.21, 0306.17.00.24, 0306.17.00.27,
0306.17.00.40, 1605.21.10.30 and
1605.29.10.10. These HTSUS subheadings
are provided for convenience and for
customs purposes only and are not
dispositive, but rather the written description
of the scope is dispositive.