



A-351-838  
A-533-840  
A-570-893  
A-549-822  
Sunset Reviews  
Public Document  
ADCVD/II/KJ

DATE: June 28, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Second  
Sunset Reviews of the Antidumping Duty Orders on Certain  
Frozen Warmwater Shrimp from Brazil, India, the People's  
Republic of China, and Thailand

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### Summary

We analyzed the responses of the interested parties in the sunset reviews of the antidumping duty (AD) orders covering certain frozen warmwater shrimp from Brazil, India, the People's Republic of China (PRC), and Thailand.<sup>1</sup> We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

### Background

On March 1, 2016, the Department of Commerce (the Department) published the notice of initiation of the second sunset review of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand, pursuant to section 751(c) of the

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<sup>1</sup> The sunset review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam will be discussed within a separate *Federal Register* notice due to the fact that adequate substantive responses were filed by both domestic and respondent interested parties in that review and, as a result, we are conducting a full sunset review in that case.



Tariff Act of 1930, as amended (the Act).<sup>2</sup> The Department received a notice of intent to participate from the Ad Hoc Shrimp Trade Action Committee (AHSTAC, petitioner in the underlying investigation) and the American Shrimp Processors Association (ASPA) within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> AHSTAC claimed interested party status under section 771(9)(C) of the Act, stating that its individual members are each producers in the United States of a domestic like product. ASPA claimed interested party status under section 771(9)(E) of the Act stating that it is a trade association, the majority of whose members are producers and/or processors of a domestic like product in the United States.

The Department received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> We received no substantive responses from respondent interested parties with respect to the orders on certain frozen warmwater shrimp from Brazil, India, the PRC, or Thailand, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand.

## History of the Orders

### *Brazil*

On December 23, 2004, the Department published its final determination in the less-than-fair-value (LTFV) investigation of certain frozen and canned warmwater shrimp from Brazil.<sup>5</sup> On February 1, 2005, the Department published the amended final determination and antidumping

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<sup>2</sup> See *Initiation of Five-Year (“Sunset”) Review*, 81 FR 10578 (March 1, 2016).

<sup>3</sup> See AHSTAC March 8, 2016, submission “Second Sunset Review of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, Thailand, the People’s Republic of China and the Socialist Republic of Vietnam: Entry of Appearance, Notice of Intent to Participate in Review and APO Application.” See also ASPA March 16, 2016, submissions “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Brazil (A-351-838): Notice of Intent to Participate of the American Shrimp Processors Association,” “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from India (A-533-840): Notice of Intent to Participate of the American Shrimp Processors Association,” “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from the People’s Republic of China (A-570-893): Notice of Intent to Participate of the American Shrimp Processors Association,” “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Thailand (A-549-822): Notice of Intent to Participate of the American Shrimp Processors Association,” and “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (A-552-802): Notice of Intent to Participate of the American Shrimp Processors.”

<sup>4</sup> See AHSTAC March 29, 2016, submission “Second Sunset Review of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, Thailand, the People’s Republic of China and the Socialist Republic of Vietnam: Substantive Response to Notice of Initiation” (AHSTAC substantive); see also, ASPA March 31, 2016, submissions “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Brazil (A-351-838): Substantive Response to Notice of Initiation” (ASPA Brazil), “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from India (A-533-840): Substantive Response to Notice of Initiation” (APSA India), “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from the People’s Republic of China (A-570-893): Substantive Response to Notice of Initiation” (ASPA China), and “Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Thailand (A-549-822): Substantive Response to Notice of Initiation” (ASPA Thailand) (collectively, domestic interested parties’ substantive submissions).

<sup>5</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004).

duty order on certain frozen warmwater shrimp from Brazil.<sup>6</sup> The Department found the following antidumping duty margins:

Empresa de Armazenagem Frigorifica Ltda./ Maricultura Netuno S.A.	7.94
Central de Industrializacao de Distribuicao de Alimentos Ltda./Cia. Exportadora de Produtos do Mar (Produmar)	4.97
Norte Pesca, S.A.	67.80
All-Others Rate	7.05

Since the continuation of the order as a result of final affirmative determination in the first sunset review of the order,<sup>7</sup> the Department has rescinded five administrative reviews based on determinations of no shipments/entries and/or withdrawal of review requests.<sup>8</sup>

### *India*

On December 23, 2004, the Department published its final determination in the LTFV investigation of certain frozen and canned warmwater shrimp from India.<sup>9</sup> On February 1, 2005, the Department published the amended final determination and antidumping duty order on certain frozen warmwater shrimp from India.<sup>10</sup> The Department found the following antidumping duty margins:

Devi Sea Foods Ltd.	4.94
Hindustan Lever Ltd.	15.36
Nekkanti Seafoods Ltd.	9.71
All-Others Rate	10.17

Since the continuation of the order as a result of final affirmative determinations in the first sunset review of the order,<sup>11</sup> the Department has issued the final results in five administrative

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<sup>6</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) (*Brazil Duty Order*).

<sup>7</sup> See *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders*, 76 FR 23972 (April 29, 2011) (*Continuation*).

<sup>8</sup> See *Certain Frozen Warmwater Shrimp From Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 76 FR 38360 (June 30, 2011); *Certain Frozen Warmwater Shrimp From Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 77 FR 32498 (June 1, 2012); *Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review; 2012-2013*, 78 FR 30272 (May 22, 2013); *Certain Frozen Warmwater Shrimp From Brazil: Rescission of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 26934 (May 12, 2014); and *Certain Frozen Warmwater Shrimp From Brazil: Rescission of Antidumping Duty Administrative Review; 2015-2016*, 81 FR 31226 (May 18, 2015).

<sup>9</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004).

<sup>10</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (February 1, 2005) (*India Duty Order*).

<sup>11</sup> See *Continuation*.

reviews<sup>12</sup> and two changed circumstances reviews.<sup>13</sup> The Department is currently conducting two administrative reviews.<sup>14</sup>

### PRC

On December 8, 2004, the Department published its final determination in the LTFV investigation of certain frozen and canned warmwater shrimp from the PRC.<sup>15</sup> On February 1, 2005, the Department published the amended final determination and antidumping duty order on certain frozen warmwater shrimp from the PRC.<sup>16</sup> The Department found the following antidumping duty margins:

Allied Pacific Group	80.19
Yelin Enterprise Co. Hong Kong	82.27
Shantou Red Garden Foodstuff Co., Ltd.	27.89
Zhanjiang Guolian Aquatic Products Co., Ltd.*	0.07
PRC-Wide Rate	112.81
Separate Rate	53.68

\*Zhanjiang Guolian Aquatic Products Co., Ltd. was excluded from the antidumping duty order because it was found to have a *de minimis* margin.

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<sup>12</sup> See *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination*, 76 FR 41203 (July 13, 2011) (covering 201 producers/exporters and finding margins ranging from 1.36 to 2.31 percent); *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40848 (July 11, 2012) (covering 184 producers/exporters and finding margins ranging from 0.13 to 2.51 percent); *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013) (covering 193 producers/exporters and finding margins ranging from 0.00 to 3.49 percent); *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 51309 (August 28, 2014) (covering 205 producers/exporters and finding margins ranging from 1.97 to 3.01 percent); and *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 54524 (September 10, 2015) (covering 211 producers/exporters and finding margins ranging from 2.63 to 3.28 percent).

<sup>13</sup> See *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India*, 77 FR 73619 (December 11, 2012) (finding that Apex Frozen Foods Private Limited (Apex Frozen) is the successor-in-interest to Apex Exports (Apex) for purposes of determining antidumping duty cash deposits and liabilities). See also *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India*, 79 FR 71384 (December 2, 2014) (finding that Premier Marine Products Private Limited (PPL) is the successor-in-interest to Premier Marine Products (PMP) for purposes of determining antidumping duty cash deposits and liabilities).

<sup>14</sup> See *Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2014-2015*, 81 FR 12705 (March 10, 2016) (covering 223 producers/exporters and preliminarily finding margins ranging from 0.80 to 8.32 percent); and *Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews*, 81 FR 20351 (April 7, 2016) (2016 Initiation).

<sup>15</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004).

<sup>16</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005) (PRC Duty Order).

Since the continuation of the order as a result of final affirmative determinations in the first sunset review of the order,<sup>17</sup> the Department implemented a determination under section 129 of the Uruguay Round Agreements Act regarding the offsetting of dumped comparisons with non-dumped comparisons when making average-to-average comparisons of export price and normal value in the investigation challenged by the PRC before the World Trade Organization.<sup>18</sup> In addition, the Department has issued the final results in five administrative reviews,<sup>19</sup> rescinded one administrative review,<sup>20</sup> and issued the final reconsideration of a 2007 successor-in-interest changed circumstances review.<sup>21</sup> The Department is currently conducting an administrative review of 75 producers/exporters during the period February 1, 2015 through January 31, 2016.<sup>22</sup>

### *Thailand*

On December 23, 2004, the Department published its final determination in the LTFV investigation of certain frozen and canned warmwater shrimp from Thailand.<sup>23</sup> On February 1, 2005, the Department published the amended final determination and antidumping duty order on

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<sup>17</sup> See *Continuation*.

<sup>18</sup> See *Certain Frozen Warmwater Shrimp From the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18957 (March 28, 2013) (finding the recalculated margins to be 0.00 for three respondents and 22.58 percent for 39 separate rate companies).

<sup>19</sup> See *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011)(covering 82 companies and finding margins ranging from 0.00 to 112.81 percent) revised on remand with respect to one company as detailed in *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results*, 79 FR 32217 (June 4, 2014), affirmed in *Ad Hoc Shrimp Trade Action Committee v. United States*, 802 F 3d 1339 (Fed Cir. 2015); *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) (covering 83 companies and finding margins ranging from 0.00 to 112.81 percent); *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013) (finding four companies did not have any reviewable entries of subject merchandise during the period of review, and finding margins for 70 companies ranging from 0.00 to 112.81 percent); *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014)(finding that one company did not have any reviewable entries during the period of review and finding the PRC-wide margin of 112.81 percent was applicable to all other companies subject to the review); *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75533 (December 18, 2014) (finding two companies did not have reviewable entries during the period of review and finding that 58 companies under review are part of the PRC-wide entity subject to the margin of 112.81 percent).

<sup>20</sup> See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2014-2015*, 80 FR 35935 (June 23, 2015) (rescinded based on withdrawal of review requests).

<sup>21</sup> See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Reconsideration of Changed Circumstances Review*, 78 FR 76106 (December 16, 2013) (reversing the prior determination that Hilltop International was the successor-in-interest to Yelin Enterprise Co. Hong Kong and finding instead, that Hilltop International should properly be considered part of the PRC-wide entity).

<sup>22</sup> See *2016 Initiation*.

<sup>23</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004).

certain frozen warmwater shrimp from Thailand.<sup>24</sup> The Department found the following antidumping duty margins:

The Rubicon Group	5.91
Thai I-Mei Frozen Foods Co., Ltd.	5.29
The Union Frozen Products Co., Ltd.	6.82
All-Others Rate	5.95

The above margins were amended effective January 16, 2009, when the Department implemented a determination under section 129 of the Uruguay Round Agreements Act regarding the offsetting of dumped sales with non-dumped sales when making average-to-average comparisons of export price and normal value in the investigation challenged by Thailand before the World Trade Organization.<sup>25</sup> The Section 129 Final Determination resulted in amended margins and the revocation of the order with respect to two respondents, as shown below.

The Rubicon Group	1.94, revoked
Thai I-Mei Frozen Foods Co., Ltd.	1.81, revoked
The Union Frozen Products Co., Ltd.	5.34
All-Others Rate	5.34

Since the continuation of the order as a result of final affirmative determinations in the first sunset review of the order,<sup>26</sup> the Department has issued the final results in four administrative reviews<sup>27</sup> and one changed circumstances review.<sup>28</sup> The Department also rescinded one administrative review<sup>29</sup> and is currently conducting two administrative reviews.<sup>30</sup>

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<sup>24</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (February 1, 2005) (*Thailand Duty Order*).

<sup>25</sup> See *Implementation of the Findings of the WTO Panel in United States--Antidumping Measure on Shrimp From Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Thailand*, 74 FR 5638 (January 30, 2009).

<sup>26</sup> See *Continuation*.

<sup>27</sup> See *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) (covering 152 producers/exporters and finding margins ranging from 0.41 to 0.73 percent); *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40574 (July 10, 2012) (covering 156 producers/exporters and finding margins ranging from 0.97 to 1.78 percent); *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011-2012*, 78 FR 42497 (July 16, 2013) (covering 149 producers/exporters and finding margins of 0.00 and revoking the order effective February 1, 2012, with respect to Marine Gold Products Limited); and *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306 (August 28, 2014) (covering 159 producers/exporters and finding margins of 1.10 percent).

<sup>28</sup> See *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From Thailand*, 81 FR 222 (January 5, 2016) (finding that Thai Union Group Public Co., Ltd. (Thai Union Group) is the successor-in-interest to Thai Union Frozen Products Public Co., Ltd. (Thai Union Frozen) for purposes of determining antidumping duty cash deposits and liabilities).

<sup>29</sup> See *Certain Frozen Warmwater Shrimp From Thailand: Rescission of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 41259 (July 15, 2014).

## Scope of the Orders

The products covered by the orders include 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,<sup>31</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the orders. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the orders.

Excluded from the orders are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted 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 IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product

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<sup>30</sup> See *Certain Frozen Warmwater Shrimp From Thailand; Preliminary Results of Antidumping Duty Administrative Review, Rescission of Review, in Part, and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 12696 (March 10, 2016) (covering 163 producers/exporters and preliminarily finding margins ranging from 0.00 to 1.36 percent); and *Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews*, 81 FR 20351 (April 7, 2016).

<sup>31</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

On February 1, 2005, the Department excluded canned warmwater shrimp and prawns from the scope of the orders pertaining to Brazil, India, the PRC, and Thailand to reflect the International Trade Commission's (ITC's) determination that a domestic industry in the United States was not materially injured or threatened with material injury by reason of imports of canned warmwater shrimp and prawns from Brazil, the PRC, or Thailand.<sup>32</sup>

On January 23, 2007, the Department issued amended orders clarifying that only frozen warmwater shrimp and prawns are subject to the orders.<sup>33</sup> On October 29, 2009, the Department filed the Final Results of Redetermination Pursuant to Court Remand with the Court of International Trade in which the Department determined that "dusted" shrimp is included within the scope of the investigations.

The products covered by the orders are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the orders is dispositive.

### Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),<sup>34</sup> the House Report,<sup>35</sup> and the Senate Report,<sup>36</sup> the Department's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.<sup>37</sup> In addition, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or

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<sup>32</sup> See *Certain Frozen or Canned Warmwater Shrimp and Prawns From Brazil, China, Ecuador, India, Thailand and Vietnam*, 70 FR 3943 (January 27, 2005); *Brazil Duty Order*; *India Duty Order*; *PRC Duty Order*; *Thailand Duty Order*.

<sup>33</sup> See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (January 23, 2007).

<sup>34</sup> See HR. Doc. 103-316, vol. 1 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

<sup>35</sup> See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

<sup>36</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>37</sup> See SAA at 879; see also House Report at 56.

recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the orders; (b) imports of the subject merchandise ceased after the issuance of the orders; (c) dumping was eliminated after the issuance of the orders and import volumes for the subject merchandise declined significantly.<sup>38</sup> Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>39</sup>

Furthermore, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.<sup>40</sup> When analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.<sup>41</sup>

In addition, section 752(c)(3) of the Act states that the magnitude of the dumping margin likely to prevail if the orders were revoked shall be provided by the Department to the ITC. Generally, the Department selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.<sup>42</sup> In certain circumstances, however, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").<sup>43</sup> Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>44</sup>

On February 14, 2012, the Department announced it was modifying its practice in sunset reviews, such that it would not rely on weighted-average dumping margins calculated using the "zeroing" methodology found to be inconsistent with World Trade Organization (WTO)

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<sup>38</sup> See SAA at 889-890; see also House Report at 63-64; Senate Report at 52; *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy*).

<sup>39</sup> See SAA at 889-890; see also House Report at 63.

<sup>40</sup> See, *e.g.*, *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>41</sup> See *Ferrovandium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum.

<sup>42</sup> See SAA at 890; see also *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>43</sup> See SAA at 890-91.

<sup>44</sup> See *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

obligations.<sup>45</sup> In the *Final Modification for Reviews*, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.<sup>46</sup> The Department further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>47</sup>

### Discussion of the Issues

Below we address the comments of the interested parties.

#### 1. Likelihood of Continuation or Recurrence of Dumping

##### Interested Party Comments

The domestic interested parties assert that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise.<sup>48</sup>

Citing to the final results of administrative reviews of the orders conducted by the Department, the domestic interested parties assert that Brazilian, Chinese, Indian and Thai shrimp imports continue to be dumped into the United States.<sup>49</sup> Relying on import statistics from the USITC Dataweb, the domestic interested parties assert that the volume of subject merchandise imported from Brazil and China has declined substantially.<sup>50</sup> In addition, domestic interested parties assert that while imports from Thailand initially increased after the issuance of the order, they have declined significantly over the last four years.<sup>51</sup> Domestic interested parties acknowledge that the volume of subject merchandise imported into the United States from India has increased substantially since the imposition of the order.<sup>52</sup> Nonetheless, the domestic interested parties state that the administrative reviews conducted by the Department reveal that the foreign producers and exporters have continued to sell subject merchandise in the United States at less than fair value.<sup>53</sup>

Citing to the Department’s *Policy Bulletin*, the domestic interested parties conclude that the Department should determine that revocation of an antidumping duty order is inappropriate

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<sup>45</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 8109.

<sup>48</sup> See domestic interested parties’ substantive submissions.

<sup>49</sup> *Id.*

<sup>50</sup> See ASHTA substantive at 18 and 23, ASPA Brazil at 11, and ASPA China at 11-12.

<sup>51</sup> See ASHTA substantive at 36 and ASPA Thailand at 11-12.

<sup>52</sup> See ASHTA substantive at 29 and ASPA India at 11.

<sup>53</sup> See ASHTA substantive at 18, 24, 30, and 37, and ASPA Brazil at 10, ASPA China at 11, ASPA India at 11, and ASPA Thailand at 11.

where dumping continued at any level above *de minimis* after the issuance of the order.<sup>54</sup> In sum, the domestic interested parties argue that record evidence strongly supports the conclusion that dumping of certain frozen warmwater shrimp by producers, manufacturers, and exporters from Brazil, India, the PRC, and Thailand would be likely to continue or recur if the orders were to be revoked.

Department's Position:

As explained in the Legal Framework section above, the Department's determinations of likelihood will be made on an order-wide basis.<sup>55</sup> In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>56</sup> In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

*Brazil:* The Department examined the ITC Dataweb data provided by the domestic interested parties for the relevant periods which show that, subsequent to the imposition of the antidumping duty order, imports of certain frozen warmwater shrimp from Brazil have decreased to nearly zero. The complete withdrawal by the Brazilian respondents from the U.S. market indicates that the Brazilian producers/exporters are not able to sell subject merchandise in any volumes in the U.S. market under the discipline of the order. Accordingly, the Department determines that dumping is likely to recur if the order is revoked.

*India:* The Department examined the ITC Dataweb data provided by the domestic interested parties for the relevant periods which show that imports of certain frozen warmwater shrimp from India decreased after the imposition of the order. The results of the five administrative reviews completed since the 2011 continuation of the order indicate that Indian producers have continued to dump when selling their product in the U. S. market during the post-order period. Therefore, the Department determines that dumping is likely to continue if the order is revoked.

*PRC:* The Department examined the ITC Dataweb data provided by the domestic interested parties for the relevant periods which show that imports of certain frozen warmwater shrimp from the PRC decreased significantly after the imposition of the order. The results of the five administrative reviews completed since the 2011 continuation of the order indicate that PRC producers have continued to engage in significant levels of dumping when selling their product in the U. S. market during the post-order period. Therefore, the Department determines that dumping is likely to continue if the order is revoked.

*Thailand:* The Department examined the ITC Dataweb data provided by the domestic interested parties for the relevant periods which show that imports of certain frozen warmwater shrimp from Thailand increased after the imposition of the order. Given the continued existence of

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<sup>54</sup> *Id.* and *Policy Bulletin*.

<sup>55</sup> See SAA at 879 and House Report at 56.

<sup>56</sup> See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

dumping margins for Thai producers in the four administrative reviews completed since the 2011 continuation of the order, it is unlikely that respondents would be able to sell at pre-order volumes without dumping. Accordingly, the Department determines that dumping is likely to continue if the order was revoked.

## 2. Magnitude of the Margin Likely to Prevail

### Interested Party Comments

The domestic interested parties note that in recent sunset reviews the Department has determined the magnitude of the dumping margin likely to prevail in the event of revocation by identifying the “weighted-average margins up to” a specific percentage.<sup>57</sup>

#### *Brazil*

With respect to Brazil, the domestic interested parties note that in the original investigation, the 67.80 percent rate determined for Norte Pesca, S.A., was based on adverse facts available. Therefore, the domestic interested parties argue that, consistent with the Department’s recent practice, the Department should determine that revocation of the AD order on shrimp from Brazil would be likely to lead to continuation or recurrence of dumping up to the weighted-average dumping margin of 67.80 percent.<sup>58</sup>

#### *India*

The domestic interested parties note that the Department has determined above *de minimis* dumping margins in the two most recently completed administrative reviews using a WTO-consistent methodology. In addition, they note that the Department determined an adverse facts available rate of 110.90 percent in the second administrative review. Therefore, domestic interested parties argue that, consistent with the guidance of the SAA, the *Policy Bulletin*, and the Department’s recent modification of its practice in sunset reviews, the Department should determine that revocation of the AD order on shrimp from India would be likely to lead to continuation or recurrence of dumping up to the weighted-average dumping margin of 110.9 percent.<sup>59</sup>

#### *PRC*

The domestic interested parties assert that in the Section 129 proceeding with regard to the original investigation, the Department found dumping margins as high as 112.81 percent. Therefore, consistent with the Department’s recent practice, the Department should determine that revocation of the AD order on shrimp from the PRC would be likely to lead to continuation or recurrence of dumping up to the weighted-average dumping margin of 112.81 percent.<sup>60</sup>

#### *Thailand*

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<sup>57</sup> See AHSTAC substantive at 48 (citing to Issues and Decision Memorandum (at p. 20) accompanying *Polyethylene Retail Carrier Bags from Indonesia, Malaysia, the People’s Republic of China, Taiwan, Thailand, and the Socialist Republic of Vietnam: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 80 FR 39997 (July 13, 2015)).

<sup>58</sup> See ASHTA substantive at 51 and ASPA Brazil at 13.

<sup>59</sup> See ASHTA substantive at 49-50 and ASPA India at 13.

<sup>60</sup> See ASHTA substantive at 49 and ASPA China at 14.

The domestic interested parties note that in the Section 129 proceeding with regard to the original investigation, the Department found dumping margins as high as 5.34 percent. Therefore, consistent with the Department's recent practice, the Department should determine that revocation of the AD order on shrimp from Thailand would be likely to lead to continuation or recurrence of dumping up to the weighted-average dumping margin of 5.34 percent.<sup>61</sup>

#### Department's Position:

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department's preference is to select a rate from the investigation because it is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.<sup>62</sup> Under certain circumstances, however, we may select a more recently calculated rate to report to the ITC.<sup>63</sup>

Finally, as indicated in the "Legal Framework" section above, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*. Instead, we may rely on other available rates, or we may recalculate weighted-average dumping margins using our current offsetting methodology in extraordinary circumstances.<sup>64</sup>

#### *Brazil*

After considering the dumping margins determined in the LTFV investigation, we find it appropriate to provide the ITC the margin of 67.80 percent from the original investigation, which was based on adverse facts available, as the rate up to which dumping is likely to continue or recur.

#### *India*

In the prior sunset review of the order on India, we determined it was appropriate to provide the ITC with the margins from the LTFV investigation for the magnitude of the margin likely to prevail because these margins best reflected the behavior of manufacturers, producers, and exporters without the discipline of an order in place. However, as discussed above and in the *Final Modification for Reviews*, the Department modified its practice in sunset reviews such that it now limits its reliance to margins that are not calculated using the "zeroing" methodology found to be WTO-inconsistent, apart from the most extraordinary circumstances.

The Department reviewed its official records to establish whether the dumping margins determined in the LTFV investigation were calculated using zeroing. We agree with the domestic interested parties that in the two most recently completed administrative reviews the Department determined above *de minimis* rates using a WTO-consistent methodology. Further,

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<sup>61</sup> See ASHTA substantive at 49- and, ASPA Thailand at 14.

<sup>62</sup> See SAA at 890 and *Policy Bulletin*, at section II.B.1; see also, e.g., *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying Issues and Decision Memorandum at Issue 2.

<sup>63</sup> See section 752(c)(3) of the Act and, e.g., *Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000), and the accompanying Issues and Decision Memorandum at Comment 3 (citing SAA at 890-91 and House Report at 64).

<sup>64</sup> *Id.*

we agree that the margin of 110.90 percent, determined in the second administrative review, was based on adverse facts available and therefore, is WTO-consistent. Therefore, because the margins in the LTFV investigation we calculated using zeroing, we find it appropriate to provide the margin of 110.90 percent as the rate up to which dumping is likely to continue or recur.

*PRC*

With respect to the PRC, given the decline in imports since the imposition of the order and the existence of continued dumping margins throughout the life of the order, the Department finds that if the order is revoked, it is likely that the Chinese producers/exporters would continue dumping and resume selling in significant volumes. As noted above, the Department amended the final determination rates from the LTFV investigation, based on the implementation of the Section 129 Final Determination. The PRC-wide rate, which remained unchanged in the Section 129 Final Determination, was based on adverse facts available. Therefore, we find it appropriate to provide the margin of 112.81 percent as the rate up to which dumping is likely to continue or recur.

*Thailand*

We agree with the domestic interested parties that the investigation rates as recalculated in the Section 129 Final Determination are margins that have not been found to be WTO-inconsistent. Therefore, we find that the amended margin of 5.34 percent, determined in the Section 129 Final Determination, is the rate up to which dumping is likely to continue or recur.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand would be likely to lead to continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 67.80 percent for Brazil, 110.90 percent for India, 112.81 percent for the PRC, and 5.34 percent for Thailand.

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of sunset reviews in the *Federal Register*.

Agree

Disagree

  
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 Paul Piquado  
 Assistant Secretary  
 for Enforcement and Compliance

28 JUNE 2016  
 Date