

BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A-351-838, A-331-802, A-533-840, A-549-822, A-570-893, A-552-802)

Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Initiation of Antidumping Duty Investigations

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: David Goldberger at (202) 482-4136 (Brazil and Ecuador), Michael Strollo at 202-482-0629 (India and Thailand); Alex Villanueva at (202) 482-3208 (People's Republic of China and Socialist Republic of Vietnam); Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

INITIATION OF INVESTIGATIONS:

The Petitions

On December 31, 2003, the Department of Commerce ("the Department") received petitions filed in proper form by the Ad Hoc Shrimp Trade Action Committee, an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp ("the petitioner"). The petitioner filed amendments to the petitions on January 12, 2004.

In accordance with section 732(b)(1) of the Tariff Act of 1930 (“the Act”), the petitioner alleges that imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People’s Republic of China (“the PRC”) and the Socialist Republic of Vietnam (“Vietnam”), are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Brazil, Ecuador, India, Thailand, the PRC and Vietnam, are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(G) of the Act and it has demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate. See infra, “Determination of Industry Support for the Petitions.”

#### Scope of Investigations

The scope of these investigations include certain warmwater shrimp and prawns, whether frozen or canned, 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>1</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through either freezing or canning and which are sold in any count size.

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<sup>1</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

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 investigations. 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 investigations.

Excluded from the scope are (1) breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope 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,

1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for Customs and Border Protection (“CBP”) purposes only and are not dispositive, but rather the written descriptions of the scope of these investigations is dispositive.

As discussed in the preamble to the Department’s regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration’s Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

#### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department’s industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) 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 732(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.

Section 771(4)(A) of the Act defines the “industry” as the producers of a domestic like product. In investigations involving some processed agricultural products, the statute allows the Department also to include producers of the raw agricultural product with the definition of the industry. See 771(4)(E) of the Act. For a full discussion, see the January 20, 2004, Memorandum to Joseph Spetrini and Jeffrey May from James Doyle, Norbert Gannon, Alex Villanueva, and Christopher Riker entitled “Antidumping Duty Petitions on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Domestic Like Product Analysis and Calculation of Industry Support” (“DLP and Industry Support Memo”). The 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 (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 the law.<sup>2</sup>

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<sup>2</sup> See Algoma Steel Corp. Ltd. v. United States, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988) (“the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV”).

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.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the “Scope of Investigations” section, above. At this time, the Department has no basis on the record to find the petition’s definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition. For a discussion of the domestic like product analysis in this case, see the DLP and Industry Support Memo.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (see DLP and Industry Support Memo). Specifically, based on the analysis contained in the DLP and Industry Support Memo, the Department finds that producers supporting the petition represent over 50 percent of total production of the domestic like product.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

#### Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices, constructed value (“CV”), and factors of

production are discussed in greater detail in the country-specific Initiation Checklists, as appropriate. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will re-examine the information and revise the margin calculations.

Regarding an investigation involving a non-market economy (“NME”) country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country’s NME status and the granting of separate rates to individual exporters. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China, 59 FR 22585, 22586-87 (May 2, 1994).

#### Brazil

##### Export Price

The anticipated period of investigation (“POI”) for Brazil is October 1, 2002, through September 30, 2003.

The petitioner based export price (“EP”) on average unit values (“AUVs”) of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions were made to derive U.S. prices. See the Initiation Checklist.

##### Normal Value

The petitioner based normal value (“NV”) on home market ex-factory price quotes from Brazilian producers of head-on, shell-on frozen warmwater shrimp which it obtained from market research. See the January 16, 2004, Memorandum to the File from David Goldberger and Jim Nunno entitled “Telephone Conversation with Foreign Market Researcher.” These prices were adjusted to reflect headless, shell-on frozen warmwater shrimp, comparable to that which is imported into the United States. The petitioner made currency conversions based on the average of the daily real/U.S. dollar exchange rates as posted on the Department's website. See the Initiation Checklist.

The estimated dumping margins in the petition, based on comparisons of EP to NV, ranged from 32 percent to 349 percent.

#### Ecuador

##### Export Price

The anticipated POI for Ecuador is October 1, 2002, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions were made to derive U.S. prices. See the Initiation Checklist.

##### Normal Value

During the course of the initiation, the petitioner placed on the record information which indicated that there is no viable home market for certain frozen and canned warmwater shrimp from Ecuador because nearly all shrimp produced in Ecuador is produced for the export market. We confirmed this information based on our conversation with the market researcher. See the January 16,

2004, Memorandum to the File from David Goldberger and Jim Nunno entitled “Telephone Conversation with Foreign Market Researcher.”

In selecting the third-country market, the petitioner chose Italy because: 1) it is the largest third-country market for scope merchandise outside of the United States during the POI; 2) the aggregate quantity of scope merchandise sold by Ecuadorian exporters to Italy accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and 3) the product sold to the Italian market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioner’s selection of Italy as the comparison market to be reasonable.

The petitioner based NV on prices published by the Torino, Italy Chamber of Commerce for the same count sizes upon which it based EP. **These prices were adjusted to reflect headless, shell-on shrimp, comparable to that which is imported into the United States. The petitioner further adjusted these prices by deducting importer and wholesaler mark-ups, import charges and international freight.** Finally, the petitioner made currency conversions based on the average of the daily euro/U.S. dollar exchange rates as posted on the Department’s website. See the Initiation Checklist.

The estimated dumping margins in the petition, based on comparisons of EP to NV, ranged from 85 percent to 166 percent.

### India

#### Export Price

The anticipated POI for India is October 1, 2002, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. Although the AUVs used were net of international freight, insurance and import charges, the petitioner made a deduction for import charges, as well as foreign inland freight, to derive U.S. prices. We adjusted the petitioner's EP calculation by not deducting an amount for foreign inland freight and U.S. import expenses because the petitioner either provided inadequate support to deduct these expenses from EP in the petition, or the starting price did not include them. See the Initiation Checklist.

#### Normal Value

The petitioner claims that the home market is not viable for purposes of calculating normal value. Section 773(a)(1)(C)(iii) of the Act provides that the Department may determine that home market sales are inappropriate as a basis for determining normal value if the particular market situation would not permit a proper comparison. In the petition, the petitioner placed on the record information which indicated that virtually all of the frozen and canned warmwater shrimp sold in the home market is of non-export quality. We confirmed this information based on our conversations with the market researcher. See the January 16, 2004, Memorandum to the File from Alice Gibbons and Jim Nunno entitled "Telephone Conversations with Foreign Market Researcher." Because the home market does not constitute a valid basis for calculating normal value, the petitioner provided sales of warmwater shrimp to India's largest export market, Japan. According to the petitioner, this is consistent with the Department's prior practice. See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile, 63 FR 31411, 31418 (June 9, 1998). Although we have accepted

the petitioner's claim for purposes of initiating this case, we will continue to examine the issue of home market viability as this case progresses.

In selecting the third-country market, the petitioner chose Japan because: 1) it is the largest third-country market for scope merchandise outside of the United States during the POI; 2) the aggregate quantity of scope merchandise sold by Indian exporters to Japan accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and 3) the product sold to the Japanese market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioner's selection of Japan as the comparison market to be reasonable.

The petitioner based NV on publicly listed price quotations from the Tokyo Central Wholesale Market for the same count sizes upon which it based EP. **These prices were adjusted to reflect headless, shell-on and frozen warmwater shrimp, comparable to that which is imported into the United States.** The petitioner further adjusted NV by deducting import charges. We revised the petitioner's calculation of the average yen/U.S. dollar exchange rate by calculating a simple average of the daily rates as posted on the Department's website rather than monthly averages as posted on the Federal Reserve's website. In addition, as noted in the EP section above, we adjusted the petitioner's calculation by not deducting an amount for foreign inland freight expenses. Because the proposed foreign inland freight adjustment to NV is based on the identical information as the proposed adjustment to EP, we similarly find that the petitioner provided inadequate support to substantiate this adjustment. Therefore, we have also not deducted foreign inland freight expenses from NV. See the Initiation Checklist.

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales by Indian producers in the relevant foreign market were made at prices below the cost of production (“COP”) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action (“SAA”), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103-316 at 833 (1994). The SAA, at 833, states that “Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.”

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have “reasonable grounds to believe or suspect” that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. Id.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (“COM”); selling, general, and administrative expenses (“SG&A”); financial expenses; and packing expenses. Here, the petitioner calculated the COM based on its own production experience, adjusted for known differences between costs to produce frozen and canned warmwater shrimp in the United States and in India using publically available information. Specifically, for fresh shrimp, the petitioner used consumption rates published by the National Marine Fisheries Service. The petitioner used the U.S.

producers' own consumption rates for other raw materials, direct labor and energy. To adjust the U.S. producers' costs associated with fresh shrimp, the petitioner relied upon market research. To adjust the U.S. producers' costs associated with sodium tripolyphosphate and packing materials, the petitioner relied upon Indian import statistics as published by the Government of India Ministry of Commerce and Industry. To adjust the U.S. producers' costs associated with labor, the petitioner relied upon Government of India Labor Bureau statistics. To adjust the U.S. producers' costs associated with utilities, the petitioner relied upon Organization for Economic Cooperation and Development's ("OECD") statistics. The petitioner relied upon its own overhead costs, except for depreciation, which was based on the 2002 financial statements of two Indian seafood processors. To calculate SG&A and financial expense, the petitioner relied upon the 2002 financial statements of two Indian seafood processors.

Based on a comparison of the Japanese market prices for frozen and canned warmwater shrimp to the COP calculated in the petition, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Japan.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in the United States on CV. The petitioner calculated CV using the same COM, SG&A, and financial expense figures used to compute the Japanese third-country market costs. The petitioner did not include any amount for profit. Therefore, CV is equivalent to COP.

Based on the changes noted above, the recalculated dumping margins for certain frozen and canned warmwater shrimp from India range from 82.30 percent to 110.90 percent.

People's Republic of China

Export Price

The anticipated POI for the PRC is April 1, 2003, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions for these expenses were made to derive U.S. prices. See the Initiation Checklist.

Normal Value

The PRC is an NME country and no determination to the contrary has yet been made by the Department. See the Initiation Checklist. In accordance with section 771(18)(c)(i) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China, 68 FR 27530, 27531 (May 20, 2003) ("Saccharin").<sup>3</sup> Accordingly, the petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C).

The petitioner based NV on factors of production. The petitioner asserted that it did not have specific, reliable information on the factors of production incurred for subject merchandise in the PRC.

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<sup>3</sup> The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation and this investigation. Therefore, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with 773(c) of the Act.

Therefore, the petitioner relied upon an average of factors of production ratios used in the United States for the NV calculation. Specifically, the petition used production factors provided by several U.S. warmwater shrimp processors. See the petitioner's January 12 submission at Attachment A. The petitioner argues that because these companies are significant producers of the domestic like product, their experience is an appropriate model for estimating the costs of PRC manufacturers. The model accounts for the amount of each manufacturing input required to produce one pound of frozen warmwater shrimp. The main factor is raw warmwater shrimp; however, other factors of production included in the NV calculation are: tripolyphosphate, labor, electricity, water, overhead and packing materials. See the Initiation Checklist.

The petitioner selected India as the surrogate country. The petitioner argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer of comparable merchandise.<sup>4</sup> Based on the information provided by the petitioner, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. See the Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials,

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<sup>4</sup> As noted in the India section of this notice, the Indian home market for warmwater shrimp is not viable. However, this situation does not lessen India's ability to be properly designated as the appropriate primary surrogate country for the PRC and Vietnam. Pursuant to section 773(c) of the Act, an appropriate surrogate country is a market economy country that is (A) at a level of comparable economic development to the NME country, and (B) a significant producer of comparable merchandise. India is economically comparable to both the PRC and Vietnam, and India is the second largest producer of shrimp in the world after the PRC. See Petition at Volume I, page 8. It follows that India is an appropriate surrogate for purposes of this initiation and these investigations.

the petitioner used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, Korea and Thailand, in light of the prevalence of export subsidies in those countries. See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People's Republic of China, 67 FR 71137, 71139 (Nov. 29, 2002). For inputs valued in Indian rupees and not contemporaneous with the POI (i.e., April 2003 - September 2003), the petitioner used information from the wholesale price indices ("WPI") in India as published in the International Financial Statistics by the International Monetary Fund to determine the appropriate adjustments for inflation. In addition, the petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI.

To value raw warmwater shrimp, the major input, the petitioner used a market researcher to determine the cost of shrimp in India. See the January 16, 2004, Memorandum to the File from John LaRose and Jim Nunno entitled "Telephone Conversation with Foreign Market Researcher." The research was conducted in Mumbai, India and completed in December 2003. Sodium tripolyphosphate and packing materials were valued by the petitioner using Indian import statistics, as reported in the Monthly Statistics of Foreign Trade of India. The price information from the Monthly Statistics of Foreign Trade of India represents cumulative import values for the period April 2002 to March 2003. To value water, the petitioner calculated a surrogate value based on price data in India as reported by the Second Water Utilities Data Book, Asian and Pacific Region, published by the Asian Development Bank. Electricity in India was valued by the petitioner using the OECD Energy Prices and Taxes data. In accordance with 19 CFR 351.408(c)(3), the Department calculates and

publishes the surrogate values for labor to be used in NME cases. **Therefore, to value labor, the petitioner relied on published wage rates and a labor rate of \$0.83 per hour.**

The petitioner calculated surrogate financial ratios (depreciation, SG&A and profit) using the 2001 financial statements of two Indian seafood processors that process marine products. To calculate a single surrogate ratio for overhead, depreciation, SG&A, and profit, the petitioner calculated a simple average for the two Indian seafood processors.

**In its calculation of the surrogate profit and financial expenses, the petitioner included a zero value expense when averaging the experiences of the two Indian seafood processors.**

However, it is the Department's practice not to average a zero expense into the calculation of the surrogate financial ratios. See Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide From Australia, Greece, Ireland, Japan, South Africa and the People's Republic of China, 68 FR 51551 (Aug. 27, 2003) ("EMD"). Therefore, the Department has recalculated the surrogate financial ratios. See the Initiation Checklist at Attachment II. In addition, the petitioner included U.S. producer costs in the normal value calculation of non-depreciation overhead because they were unable to identify those unique costs in the Indian surrogate company financial statements. However, section 773(c)(4) of the Act states that "{t}he administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economies that are – (A) at a level of economic development comparable to that of the non market economy, and (B) significant producers of comparable merchandise." Therefore, U.S. prices or costs are not appropriate for use as surrogate values. See, e.g., Notice of Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan,

the Peoples Republic of China, the Republic of Korea, and Singapore, 67 FR 61591 (Oct. 1, 2002) and accompanying Initiation Checklist at page 19 (“PVA”). The ultimate goal of the Department’s margin calculations is to achieve the greatest accuracy possible. The Department has found no evidence on the record showing that non-depreciation overhead is not included in the overhead figures of the Indian surrogate company financial statements. Therefore, to be conservative, the Department has determined that the U.S. producer costs for non-depreciation overhead should not be included in the normal value calculation. See the Initiation Checklist.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain frozen and canned warmwater shrimp from the PRC range from 112.81 percent to 263.68 percent.

#### Thailand

##### Export Price

The anticipated POI for Thailand is October 1, 2002, through September 30, 2003.

The petitioner based EP on AUVs of frozen, cooked and peeled shrimp for the POI from official U.S. import statistics. Although the AUVs used were net of international freight, insurance and import charges, the petitioner made a deduction for import charges, as well as foreign inland freight, to derive U.S. prices. We adjusted the petitioner’s EP calculation by not deducting amounts for foreign inland freight and U.S. import expenses because the petitioner either provided inadequate support for these expenses in the petition, or the starting price did not include them. See the Initiation Checklist.

##### Normal Value

In the petition, the petitioner placed on the record information which indicated that there is no viable home market for certain frozen and canned warmwater shrimp from Thailand because the Thai market purchases only fresh (i.e., live, unchilled or else chilled, unprocessed) or traditional household industry-produced dried shrimp. We confirmed this information based on our conversation with the market researcher. See the January 16, 2004, Memorandum to the File from Elizabeth Eastwood and Jim Nunno entitled “Telephone Conversation with Foreign Market Researcher.”

In selecting the third-country market, the petitioner chose Japan because: 1) it is the largest third-country market for scope merchandise outside of the United States during the POI; 2) the aggregate quantity of scope merchandise sold by Thai exporters to Japan accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and 3) the product sold to the Japanese market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioner’s selection of Japan as the comparison market to be reasonable.

The petitioner based NV on AUVs of Thai exports of frozen, cooked shrimp to Japan during the POI. We revised the petitioner’s calculation of the average yen/U.S. dollar exchange rate by calculating a simple average of the daily rates as posted on the Department’s website rather than monthly averages as posted on the Federal Reserve’s website. In addition, as noted in the EP section above, we adjusted the petitioner’s calculation by not deducting an amount for foreign inland freight expenses. Because the proposed foreign inland freight adjustment to NV is based on the identical information as the proposed adjustment to EP, we similarly find that the petitioner provided inadequate

support to substantiate this adjustment. Therefore, we have also not deducted foreign inland freight expenses from NV. See the Initiation Checklist.

Based on the changes noted above, the recalculated dumping margin for certain frozen and canned warmwater shrimp from Thailand is 57.64 percent.

### Vietnam

#### Export Price

The anticipated POI for the PRC is April 1, 2003, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions for these expenses were made to derive U.S. prices. See the Initiation Checklist.

#### Normal Value

Vietnam is an NME country and no determination to the contrary has yet been made by the Department. In accordance with section 771(18) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. See the Initiation Checklist. See, e.g., Saccharin, 68 FR at 27531.<sup>5</sup> Accordingly, the petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C).

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<sup>5</sup> The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation and this investigation. Therefore, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with 773(c) of the Act.

The petitioner based NV on factors of production. The petitioner asserted that it did not have specific, reliable information on the factors of production incurred for subject merchandise in Vietnam. Therefore, the petitioner relied upon an average of factors of production ratios used in the United States for the NV calculation. Specifically, the petition used production factors provided by several U.S. warmwater shrimp processors. The petitioner argues that, because these companies are significant producers of the domestic like product, their experience is an appropriate model for estimating the costs of Vietnamese manufacturers. The model accounts for the amount of each manufacturing input required to produce one pound of frozen warmwater shrimp. The main factor is raw warmwater shrimp, however, other factors of production included in the NV calculation are: tripolyphosphate, labor, electricity, water, overhead and packing materials. See the Initiation Checklist.

The petitioner selected India as the surrogate country. The petitioner argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to Vietnam and is a significant producer of comparable merchandise.<sup>6</sup> Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

See the Initiation Checklist.

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<sup>6</sup> As noted in the India section of this notice, the Indian home market for warmwater shrimp is not viable. However, this situation does not lessen India's ability to be properly designated as the appropriate primary surrogate country for the PRC and Vietnam. Pursuant to section 773(c) of the Act, an appropriate surrogate country is a market economy country that is (A) at a level of comparable economic development to the NME country, and (B) a significant producer of comparable merchandise. India is economically comparable to both the PRC and Vietnam, and India is the second largest producer of shrimp in the world after the PRC. See Petition at Volume I, page 8. It follows that India is an appropriate surrogate for purposes of this initiation and these investigations.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the petitioner used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, Korea and Thailand, in light of the prevalence of export subsidies in those countries. See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People's Republic of China, 67 FR 71137, 71139 (Nov. 29, 2002). For inputs valued in Indian rupees and not contemporaneous with the POI (i.e., April 2003 - September 2003), the petitioner used information from the WPI in India as published in the International Financial Statistics by the International Monetary Fund to determine the appropriate adjustments for inflation. In addition, the petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI.

To value raw warmwater shrimp, the major input, the petitioner used a market researcher to determine the cost of shrimp in India. The research was conducted in Mumbai, India and completed in December 2003. See the January 16, 2004, Memorandum to the File from Paul Walker and Jim Nunno entitled "Telephone Conversation with Foreign Market Researcher." Sodium tripolyphosphate and packing materials were valued by the petitioner using Indian import statistics, as reported in the Monthly Statistics of Foreign Trade of India. The price information from the Monthly Statistics of Foreign Trade of India represents cumulative import values for the period April 2002 to March 2003. To value ~~water~~, ~~the petitioner calculated a surrogate value based on price data in India as reported by the Second Water Utilities Data Book, Asian and Pacific Region, published by the Asian Development Bank.~~ Electricity in India was valued by the petitioner using the OECD Energy Prices and Taxes data.

**In accordance with 19 CFR 351.408(a)(3), the Department calculates and publishes the surrogate values for labor to be used in NME cases. Therefore, to value labor, the petitioner relied on published wage rates and a labor rate of \$0.63 per hour.**

The petitioner calculated surrogate financial ratios (depreciation, SG&A and profit) using the 2001 financial statements of two Indian seafood processors that process marine products. To calculate a single surrogate ratio for overhead, depreciation, SG&A, and profit, the petitioner calculated a simple average for the two Indian seafood processors. In its calculation of the surrogate profit and financial expenses, the petitioner included a zero value expense when averaging the experiences of the two Indian seafood processors.

However, it is the Department's practice not to average a zero expense into the calculation of the surrogate financial ratios. See EMD. Therefore, the Department has recalculated the surrogate financial ratios. See the Initiation Checklist at Attachment II. In addition, the petitioner included U.S. producer costs in the normal value calculation of non-depreciation overhead because they were unable to identify those unique costs in the Indian surrogate company financial statements. However, section 773(c)(4) of the Act states that "{t}he administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economies that are – (A) at a level of economic development comparable to that of the non market economy, and (B) significant producers of comparable merchandise." Therefore, U.S. prices or costs are not appropriate for use as surrogate values. See, e.g., PVA. The ultimate goal of the Department's margin calculations is to achieve the greatest accuracy possible. The Department has found no evidence on the record showing that non-depreciation overhead is not included in the

overhead **figures of the Indian surrogate company financial statements. Therefore, to be conservative, the Department has determined that the U.S. producer costs for non-depreciation overhead should not be included in the normal value calculation. See the Initiation Checklist.**

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain frozen and canned warmwater shrimp from Vietnam range from 25.76 percent to 93.13 percent.

#### Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC and Vietnam are being, or are likely to be, sold at less than fair value.

#### Allegations and Evidence of Material Injury and Causation

With regard to Brazil, Ecuador, India, Thailand, the PRC, and Vietnam, the petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the declining trends in market share, net operating profits, net sales volumes and revenues, and production employment. These factors apply to both the firms that produce frozen and canned warmwater shrimp, and the harvesters and growers of the raw agricultural product, wild-caught and farm-raised warmwater shrimp. The allegations of injury and causation are supported by relevant evidence including information from U.S. import statistics, the National Marine Fisheries Service, a commodity news

reporting agency, industry surveys, and press reports from a variety of sources. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the Initiation Checklists. [Initiation of Antidumping Investigations](#)

Based upon our examination of the petitions on certain frozen and canned warmwater shrimp, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC, and Vietnam are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Brazil, Ecuador, India, Thailand, the PRC, and Vietnam. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

#### Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than February 17, 2004, whether there is a reasonable indication that imports of certain frozen and canned warmwater shrimp from Brazil,

Ecuador, India, Thailand, the PRC and Vietnam are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

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

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James Jochum  
Assistant Secretary for  
Import Administration

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(Date)