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DEPARTMENT OF COMMERCE

International Trade Administration

[C-552-838]

Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of frozen warmwater shrimp (shrimp) from the Socialist Republic of Vietnam (Vietnam). The period of investigation (POI) is January 1, 2022, through December 31, 2022.

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

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6172.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2024, Commerce published its *Preliminary Determination* in the *Federal Register* and invited interested parties to comment.<sup>1</sup> On July 22, 2024, Commerce tolled certain

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<sup>1</sup> See *Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 89 FR 22374 (April 1, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

deadlines in this administrative proceeding by seven days.<sup>2</sup> The deadline for the final determination is now October 21, 2024. For a complete discussion of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.<sup>3</sup>

The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

#### Scope of the Investigation

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

#### Scope Comments

We received no comments from interested parties on the scope of the investigation as it appeared in the *Preliminary Determination*. Therefore, we made no changes to the scope of the investigation.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in May and June, 2024, Commerce conducted verification of the subsidy information reported by the Government of Vietnam (GOV), Soc Trang Seafood Joint Stock Company (STAPIMEX), and

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<sup>2</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

<sup>3</sup> See Memorandum, "Issues and Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

STAPIMEX's supplier Giang Hong Phuong for use in our final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by STAPIMEX, Giang Hong Phuong, and the GOV.<sup>4</sup>

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are discussed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II.

#### Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>5</sup> For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts otherwise available, including with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of adverse facts available (AFA), *see* the *Preliminary Determination*,<sup>6</sup> and the Issues and Decision Memorandum at the section entitled "Uses of Facts Available and Application of Adverse Inferences."

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<sup>4</sup> *See* Memoranda, "Verification of Soc Trang Seafood Joint Stock Company," dated August 14, 2024; "Verification of the Government of the Socialist Republic of Vietnam," dated August 29, 2024; and "Verification of Giang Hong Phuong," dated July 31, 2024.

<sup>5</sup> *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; *see also* section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>6</sup> *See Preliminary Determination* PDM at 6-15.

Changes Since the Preliminary Determination

Based on our review and analysis of the information at verification and comments received from interested parties, we made changes to the subsidy rate calculations for Thong Thuan Company Limited to include the subsidy programs included in the Post-Preliminary Analysis Memo.<sup>7</sup> For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Pursuant to section 705(c)(5)(A)(i) of the Act, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. We continue to assign a rate based entirely on facts available to Thong Thuan Company Limited. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for STAPIMEX. Consequently, we continue to assign the rate calculated for STAPIMEX as the rate for all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

<b>Company</b>	<b>Subsidy Rate (percent <i>ad valorem</i>)</b>
Soc Trang Seafood Joint Stock Company	2.84
Thong Thuan Company Limited	221.82*
All Others	2.84

\*Rate based on AFA.

<sup>7</sup> See Memorandum, "Post-Preliminary Analysis in the Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated May 23, 2024; *see also* Issues and Decision Memorandum at Appendix for the revised AFA rate calculation.

## Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

## Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to collect cash deposits and suspend liquidation of entries of subject merchandise from Vietnam that were entered, or withdrawn from warehouse, for consumption, on or after April 1, 2024, the date of the publication of the *Preliminary Determination* in the *Federal Register*.<sup>8</sup> In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse, on or after July 30, 2024, but to continue the suspension of liquidation of all entries of subject merchandise on or before July 29, 2024.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled.

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<sup>8</sup> See *Preliminary Determination*, 89 FR at 22374.

### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of shrimp from Vietnam. Because the final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of shrimp from Vietnam no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

### Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: October 21, 2024.

*/S/ Ryan Majerus*

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Ryan Majerus,  
Deputy Assistant Secretary  
for Policy and Negotiations,  
performing the non-exclusive functions and duties  
of the Assistant Secretary for Enforcement and Compliance.

## Appendix I

### Scope of the Investigation

The scope of this investigation includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. “Tails” in this context means the tail fan, which includes the telson and the uropods.

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

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

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

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.



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

## Appendix II

### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Subsidies Valuation
- IV. Use of Facts Available and Adverse Inferences
- V. Benchmarks
- VI. Analysis of Programs
- VII. Discussion of the Issues
  - Comment 1: Whether the Accelerated Depreciation and Increase of Deductible Expense Program is Specific
  - Comment 2: Whether to Countervail Lending Programs Deferred at the *Preliminary Determination*
  - Comment 3: Whether to Apply AFA to Water in the Provision of Utilities at Reduced Rates in Industrial and Export Processing Zones Program
  - Comment 4: Whether to Select an Alternative Land for Less Than Adequate Remuneration (LTAR) Benchmark
  - Comment 5: Whether to Reconsider the Countervailability of the Import Duty Exemptions for Imports Used to Produce Exported Goods Program
  - Comment 6: Whether to Continue to Find Certain Programs Not Countervailable
  - Comment 7: Whether Commerce Should Implement Section 771B of the Act
- VIII. Recommendation