

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Intent To Rescind New Shipper Review

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

SUMMARY: On February 1, 2005, the Department of Commerce ("the Department") published in the **Federal Register** the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("VN Shrimp Order"). The Department is conducting a new shipper review ("NSR") of the VN Shrimp Order, covering the period of review ("POR") of February 1, 2008, through January 31, 2009. Because the sale made by Nhat Duc was not *bona fide*, we have preliminarily determined to rescind this new shipper review.

DATES: *Effective Date:* January 21, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0413 or (202) 482-1655, respectively.

SUPPLEMENTARY INFORMATION:**General Background**

On February 26, 2009, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(c), the Department received a NSR request from Nhat Duc Co., Ltd. ("Nhat Duc"). On March 20, 2009, the Department initiated a new shipper review of Nhat Duc. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 74 FR 13416 (March 27, 2009).

On April 7, 2009, the Department issued its non-market economy ("NME") questionnaire to Nhat Duc. Nhat Duc responded to the Department's NME questionnaire and subsequent supplemental questionnaires between May and October 2009.

Extension of Time Limits

On September 8, 2009, the Department extended the time limits for these preliminary results. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 47190 (September 15, 2009).

Surrogate Country and Surrogate Values

On August 7, 2009, Nhat Duc submitted surrogate country comments, and on September 4, 2009, Nhat Duc submitted surrogate value data. No other party submitted surrogate country or surrogate value data.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production ("FOP") for Nhat Duc between November 16-18, 2009. See Memorandum to the File from Paul Walker, Senior Case Analyst and Toni Dach, Case Analyst through Scot T. Fullerton, Program Manager, Verification of the Sales and Factors of Production Response of Nhat Duc Co., Ltd. in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated January 12, 2010.

Scope of the Order

The scope of this order 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,¹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, 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 this order. 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 this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS 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 (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS 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 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.

The products covered by this order 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

¹ "Tails" in this context means the tail fan, which includes the telson and the uropods.

the written description of the scope of this order is dispositive.

Preliminary Intent To Rescind

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Nhat Duc for this new shipper review. In evaluating whether or not a sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis. See *Tianjin Yiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) ("TTPC"). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of the subject merchandise." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) ("New Donghua") (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.). Also, in *TTPC*, the court affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (See *TTPC*, 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." See *TTPC* 366 F. Supp. 2d at 1263. Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale so that a respondent does not unfairly benefit from an atypical sale, and obtain a lower dumping margin than the producers usual commercial practice would dictate. Where a review is based on a single sale, exclusion of that sale as non-*bona fide* necessarily must end the review. See *TTPC*, 366 F. Supp. 2d at 1249.

In analyzing Nhat Duc's single POR sale to the United States, the Department preliminarily determines that this sale is not *bona fide*, as it is not typical of Nhat Duc's usual commercial practices or is it commercially reasonable. Further, the Department is unable to analyze

whether the sale was conducted on an arm's-length basis. The Department reached this conclusion based on the totality of the circumstances, namely: (a) The atypical nature of Nhat Duc's POR pricing; (b) the timing and extent of payment receipt for Nhat Duc's single POR sale; (c) the existence of undisclosed sales subsequent to Nhat Duc's single POR sale; (d) the atypical nature of Nhat Duc's production timeline for its POR U.S. sale; (e) irregularities in Nhat Duc's sales negotiation correspondence and the unverifiable nature of this correspondence; and (f) the unverifiable nature of Nhat Duc's founding capital sources. Since much of our analysis regarding the evidence of the *bona fide* of the transaction involves business proprietary information, a full discussion of the bases for our decision to find Nhat Duc's single POR sale not *bona fide* is set forth in the Memorandum to the File from Toni Dach, Case Analyst, through Scot T. Fullerton, Program Manager, Regarding Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Nhat Duc Co., Ltd.

Therefore, the Department is preliminarily rescinding the new shipper review for Nhat Duc, as Nhat Duc's single sale during the POR is not *bona fide* and, consequently, not subject to review.

Comments

In accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.²

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting

the case briefs. See 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of this new shipper review, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Nhat Duc entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Nhat Duc, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 25.76 percent; (2) for subject merchandise exported by Nhat Duc but not manufactured by Nhat Duc, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 25.76 percent); and (3) for subject merchandise manufactured by Nhat Duc, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

² See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Military Leadership Diversity Commission

AGENCY: Department of Defense (DoD).

ACTION: Charter modification.

SUMMARY: Under the provisions of section 596 of Public Law 110-417, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102-3.65, the Department of Defense established the Military Leadership Diversity Commission (hereafter referred to as the Commission) on January 15, 2009. The requirement for the Commission remains; however, section 594 of Public Law 111-84 modified the Commission's membership by adding six additional members.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703-601-6128.

SUPPLEMENTARY INFORMATION: The six additional members include—(a) An active commissioned officer from the National Guard, and an active commissioned officer from the Reserves, each of whom serves or has served in a leadership position with either a Military Department command or combatant command; (b) a retired general or flag officer from the National Guard, and a retired general or flag officer from the Reserves; and (c) a retired noncommissioned officer from the National Guard, and a retired noncommissioned officer from the Reserves.

The additional members, as with the original members, shall be appointed for the life of the Commission. Any vacancy in the commission shall be filled in the same manner as the original appointment.

With the exception of the representatives of the U.S. Coast Guard,

the Secretary of Defense shall appoint the commission members. Commission members appointed by the Secretary of Defense, who are not full-time or permanent part-time employees of the federal government, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and these individuals shall serve as special government employees.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations are reminded that they may submit written statements to the Military Leadership Diversity Commission membership about the commission's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Military Leadership Diversity Commission's Designated Federal Officer, once appointed, may be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Military Leadership Diversity Commission. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: January 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Notice Extending the Deadline Date for Transmittal of Applications for the Excellence in Economic Education Program Fiscal Year (FY) 2010 Competition

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215B.

SUMMARY: On December 21, 2009, we published in the **Federal Register** (74 FR 67862) a notice inviting applications for the Excellence in Economic

Education program's FY 2010 competition. The original notice established a February 16, 2010, deadline date for eligible applicants to apply for funding under this program. For this competition, applicants are required to submit their applications electronically through the Department's Electronic Grant Application System (e-Application). However, e-Application will not be available to users beginning Wednesday, February 10, 2010 at 3:00 p.m. until 6:00 a.m. Tuesday, February 16, 2010. During this time the Department will transition the e-application process from the current system (GAPS) to a new system. Because e-Application will be unavailable for several days prior to the original deadline date, we are extending the deadline date for transmittal of applications for the Excellence in Economic Education program FY 2010 competition.

DATES: Deadline for Transmittal of Applications: February 22, 2010. (Applications must be received by e-Application no later than 4:30:00 p.m., Washington, DC time.)

Note: Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. You may not e-mail an electronic copy of a grant application to us. For information about how to submit your application electronically, please refer to section IV. 6. *Other Submission Requirements* in the December 21, 2009 notice (74 FR 67863). We have not extended the deadline for submitting a statement that an applicant qualifies for an exception to the electronic submission requirement.

Deadline for Intergovernmental Review: The deadline date for Intergovernmental Review under Executive Order 12732 is extended to April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Carolyn Warren, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W209, Washington, DC 20202-5900. Telephone: (202) 205-5443 or by e-mail: carolyn.warren@ed.gov.

If you use a telecommunications device, you may call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of the notice.

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