

November 21, 2023

USITC Inv. Nos. 701-TA-699–702 and 731-TA-1659–1660 (Preliminary)

PUBLIC VERSION

Business proprietary information deleted from brackets on pages 10, 12, 13, 15-18, and 21-23 of the Brief, pages 11-12, 16-18, 20, 22, 25-26, 38, and 40-43 of the Answers to Staff Questions, and Exhibit 1.

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Secretary Lisa R. Barton
U.S. International Trade Commission
500 E St. SW, Room 112
Washington, DC 20436

Re: *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam*, Inv. Nos. 701-TA-699–702 and 731-TA-1659–1660 (Preliminary): Submission of Petitioner’s Post-Conference Brief

Dear Secretary Barton:


On behalf of the American Shrimp Processors Association (“ASPA” or “Petitioner”), we hereby submit our post-conference brief in the above-referenced investigation. This brief is timely filed pursuant to 19 C.F.R. § 207.15 and the *Federal Register* notice setting forth the schedule for this proceeding.¹

A public version of this submission is being prepared and will be filed on the next business day after this submission.

¹ *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam: Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 88 Fed. Reg. 74,511, 74,512 (Int’l Trade Comm’n Oct. 31, 2023).

Please contact the undersigned with any questions regarding this submission.

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CERTIFICATION OF COUNSEL

In accordance with section 207.3(a) of the Commission's rules, I, Elizabeth J. Drake of Schagrin Associates, counsel to the American Shrimp Processors Association, certify that (1) I have read the attached submission, and (2) the information contained in this submission is accurate and complete to the best of my knowledge.

This certification is made in accordance with 28 U.S.C. § 1746. I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.



Elizabeth J. Drake

Dated: November 20, 2023

CERTIFICATE OF SERVICE

Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam Inv. Nos. 701-TA-699-702 and 731-TA-1659-1660 (Preliminary)

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**BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION**

**FROZEN WARMWATER SHRIMP FROM ECUADOR, INDIA,
INDONESIA, AND THE SOCIALIST REPUBLIC OF VIETNAM**

**POST-CONFERENCE BRIEF OF THE AMERICAN SHRIMP PROCESSORS
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ANSWERS TO STAFF QUESTIONS

EXHIBITS

This post-conference brief is filed on behalf of the American Shrimp Processors Association (“ASPA” or “petitioner”). This brief is timely filed in accordance with the schedule set out in the notice of institution published by the U.S. International Trade Commission (the “Commission”).¹ For the reasons below, the Commission should find that there is a reasonable indication that the domestic industry is materially injured, and threatened with further material injury, by reason of subject imports of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam.

The domestic shrimp industry is in crisis. ASPA’s petition shows that production and landings are falling, prices are at rock bottom, and margins have disappeared. The volume of dumped and subsidized imports from Ecuador, India, Indonesia, and Vietnam increased by 15.6 percent from 2020 to 2022, gaining market share at the expense of domestic producers. High inventories of imports continued to weigh down the U.S. market in 2023 due to importers overbuying shrimp in volumes that could not be absorbed by demand. As Mr. Pizzutti of Publix stated at the Commission’s staff conference, these high import inventories and softening demand created a “perfect storm” in the U.S. market.

Importers used underselling to take market share from domestic producers, and imports have also suppressed and depressed domestic prices. Relentless underselling deprived processors of the revenue they needed to be able to pay fishermen prices that can sustain their fishing effort. As a result, dockside prices cratered by 40 percent or more from June of last year to June of this year. ASPA’s petition shows that landings, production, shipments, and sales revenue are all down, ending inventories have shot up, and margins have evaporated.

¹ *Frozen Warmwater Shrimp From Ecuador, India, Indonesia, and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 88 Fed. Reg. 74,511 (USITC Oct. 31, 2023).

Witnesses at the Commission's staff conference testified to the devastating impact that dumped and subsidized imports are having on the domestic industry. Small, family-owned processors have had to make difficult decisions, including idling or selling equipment, curtailing production, and putting off planned investments. Boat owners and fishermen are also hurting. After weeks out at sea, the pay they get for their catch may barely cover their costs. As a result, many boat owners can no longer justify going out to harvest shrimp, and their boats are tied up at the docks all across the Gulf and South Atlantic.

The only way to prevent the collapse of the domestic shrimp industry is to obtain relief from dumped and subsidized imports from Ecuador, India, Indonesia, and Vietnam. For all of these reasons, ASPA respectfully requests that the Commission render an affirmative preliminary determination.

I. THE DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

As explained in the Petition and in response to Staff Question 1, the Commission should find that there is a single domestic like product that includes frozen warmwater shrimp that is coextensive with the scope of these investigations, as well as fresh warmwater shrimp. The Commission, pursuant to its semi-finished like product analysis, has determined that both fresh and frozen warmwater shrimp are part of the domestic like product in its prior investigations on frozen warmwater shrimp.² In the Commission's recently concluded sunset review of AD orders

² See U.S. International Trade Commission, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Prelim), USITC Pub. 3672 (Feb. 2004) (hereinafter "*Shrimp 2004 ITC Prelim*") at 13 – 14. See also U.S. International Trade Commission, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. 3748 (Jan. 2005) (hereinafter "*Shrimp 2005 ITC Final*") at 6; U.S. International Trade Commission, *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701-TA-491-497 (Preliminary), USITC Pub. 4380 (Feb. 2013) (hereinafter "*Shrimp 2013 ITC Prelim*") at 8 – 10; U.S. International Trade Commission, *Frozen*

on frozen warmwater shrimp from China, India, Thailand, and Vietnam, no party contested this definition of the domestic like product, and the record indicated no changes in the characteristics or uses of fresh and frozen warmwater shrimp.³ Thus, the Commission once again found that both fresh and frozen warmwater shrimp are included in the domestic like product.⁴ At the Commission’s staff hearing, counsel to respondents confirmed that they do not contest this definition of the domestic like product in these investigations.⁵

As reviewed in response to Staff Question 1, the record of these investigations supports including fresh shrimp in the domestic like product pursuant to the Commission’s semi-finished like product analysis. In addition, as explained in more detail in response to Staff Question 2, the Commission may also elect to include shrimp fishermen in the domestic industry pursuant to the grower / processor provisions of the statute at 19 U.S.C. § 1677(4)(E). Finally, as reviewed in response to Staff Question 2, ASPA is not aware of any related party issues that would justify excluding any party from the domestic industry.

II. THE DOMESTIC INDUSTRY HAS BEEN MATERIALLY INJURED BY SUBJECT IMPORTS, AND FURTHER INJURY IS IMMINENT ABSENT RELIEF

According to the Act, a domestic industry is entitled to antidumping or countervailing duty relief if it is experiencing material injury or the threat of material injury by reason of unfairly traded imports. 19 U.S.C. §§ 1671, 1673. As reviewed below, the domestic industry

Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam, Inv. Nos. 701-TA-491-493, 495, and 497 (Final), USITC Pub. 4429 (Oct. 2013) (hereinafter “*Shrimp 2013 ITC Final*”) at 9.

³ See U.S. International Trade Commission, *Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1064 and 1066-1068 (Third Review), USITC Pub. 5432 (June 2023) (hereinafter “*Shrimp 2023 ITC Sunset*”) at 14 – 15, excerpts attached at **Exhibit I-4**.

⁴ See *id.*

⁵ See Conf. Tr. at 158 (Mr. Connelly).

producing warmwater shrimp in the United States is both suffering from material injury and threatened with further material injury by reason of dumped and subsidized imports of frozen warmwater shrimp from the subject countries.

A. Subject imports are not negligible

Pursuant to 19 U.S.C. § 1677(24)(A)(i), imports are not considered to be negligible if they account for at least 3 percent of the volume of all such merchandise imported into the United States in the most recent twelve-month period for which data are available that precedes the filing of the petitions.⁶ In this case, the most recent twelve-month period for which data were available when the petitions were filed was September 2022 through August 2023. During that twelve-month period, imports from Ecuador accounted for 27.19 percent of total imports of frozen warmwater shrimp from the world, imports from India accounted for 40.72 percent, imports from Indonesia accounted for 17.66 percent, and imports from Vietnam accounted for 5.96 percent.⁷ Thus, imports from each subject country are not negligible.

B. Subject imports should be cumulated

For the purposes of evaluating volume and price effects for a determination of material injury, the statute directs the Commission to cumulate imports from all subject countries as to which petitions were filed on the same day if such imports compete with each other and the domestic like product in the U.S. market.⁸ In assessing whether subject imports compete with each other and the domestic like product, the Commission generally considers four factors: (1) the degree of fungibility between subject imports from each country and between subject imports

⁶ The higher negligibility threshold for CVD cases on certain developing countries only applies to Ecuador, which far exceeds that threshold. *See Designations of Developing and Least-Developed Countries Under the Countervailing Duty Law*, 85 Fed. Reg. 7613, 7615 (USTR Feb. 10, 2020).

⁷ *See* Petition, Volume I, at Exhibit I-14.

⁸ 19 U.S.C. § 1677(7)(G)(i).

and the domestic like product; (2) the presence of sales or offers to sell in the same geographic markets; (3) the existence of common or similar channels of distribution; and (4) whether the subject imports are simultaneously present in the U.S. market.⁹ Only a reasonable overlap of competition is required.¹⁰ In this case, the petitions were filed on the same day, and, as described in more detail below, each of the factors the Commission considers supports a finding that imports of frozen warmwater shrimp from each of the four subject countries compete with each other and with the domestic like product. The Commission should therefore cumulate subject imports in its determination of material injury, and the remainder of the injury analysis in these petitions is presented on a cumulated basis.

No party has argued that the Commission should not cumulate subject imports from Ecuador, India, and Indonesia. While arguments in favor of decumulating Vietnam were made during the Commission’s staff conference,¹¹ the staff correctly pointed out that the same arguments were rejected by the Commission in the recently completed sunset review of the antidumping duty orders on imports from Vietnam and other countries.¹² Counsel for Vietnamese respondents acknowledged that “the facts are substantially similar to prior reviews.”¹³ Thus, there is no factual basis to reach a different result here. The Commission should therefore cumulate subject imports from all four countries.

⁹ See, e.g., *Low Melt Polyester Staple Fiber from Korea and Taiwan*, Inv. Nos. 731-TA-1378-1379 (Final), USITC Pub. 4808 (Aug. 2018) at 7.

¹⁰ See *id.*

¹¹ See Conf. Tr. at 136 – 38 (Ms. Eppard).

¹² *Id.* at 148 (Mr. Chang); see also *Shrimp 2023 ITC Sunset* at 21 – 23 and 43 – 57.

¹³ See Conf. Tr. at 149 (Ms. Eppard).

1. Fungibility

Shrimp from all subject countries and the domestic like product are fungible. The Commission has previously determined that there was at least a moderate degree of substitutability between shrimp from Ecuador, India, Indonesia, Vietnam, and the United States, and there is no indication that conditions have changed to limit that degree of fungibility today.¹⁴

2. Channels of distribution

Shrimp from all subject countries and the domestic like product are present in the same channels of distribution. The Commission has previously found that domestic shrimp and shrimp from Ecuador, India, Indonesia, and Vietnam are sold to distributors, end users, and retail/institutional customers such as grocers and restaurants, and that continues to be the case today.¹⁵

3. Geographic overlap

The Commission has previously found that the market for frozen warmwater shrimp is nationwide and that domestic and imported shrimp are sold throughout the United States.¹⁶ During the period of investigation (“POI”), frozen warmwater shrimp from each of the subject countries entered at ports in all regions of the country.¹⁷

¹⁴ *Shrimp 2013 CVD Prelim* at 15.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Petition, Volume I, at Exhibit I-14.

4. Simultaneous presence in the market

Imports of frozen warmwater shrimp from each of the subject countries have been present in every month of the POI.¹⁸ Subject imports and the domestic like product are thus simultaneously present in the market.

5. Conclusion

Subject imports from each of the four countries and the domestic like product are fungible, are present in the same distribution channels, overlap geographically, and are simultaneously present in the U.S. market. Thus, each of the factors the Commission considers regarding cumulation supports cumulating subject imports from all four countries in these investigations.

C. Subject imports are causing material injury to the domestic industry

In determining whether a domestic industry is experiencing present material injury by reason of unfairly traded imports, the Commission must consider: (1) the volume of subject imports; (2) the effect of imports of subject merchandise on U.S. prices for the domestic like product; and (3) the impact of subject imports on domestic producers.¹⁹ In this case, each factor favors a finding of present material injury.

1. The volume of subject imports is significant

In assessing the volume of subject imports, the Commission must “consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”²⁰

¹⁸ See Petition, Volume I, at Exhibit I-14.

¹⁹ 19 U.S.C. § 1677(7)(B).

²⁰ 19 U.S.C. § 1677(7)(C)(i).

Cumulated imports of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam are significant. Imports from these four countries exceeded 1.5 billion pounds in 2022, and they were valued at nearly \$6.7 billion.

Subject Imports of Frozen Warmwater Shrimp²¹

	2020	2021	2022	H1 2022	H1 2023
Million Pounds	1,303	1,633	1,507	784	668
U.S. \$ Million	5,154	6,857	6,661	3,561	2,493

By volume, subject imports increased 15.6 percent from 2020 to 2022, and subject imports remained elevated in the first half of 2023.

Subject imports are also significant relative to domestic consumption, and they captured an increasing share of the U.S. market over the POI. In 2020, subject imports held 78.7 percent of the domestic market for frozen warmwater shrimp – by 2022, that share had increased to 83.5 percent. This increase in subject import market share came partly at the expense of the domestic industry, whose market share fell from 8.5 percent in 2020 to 7.4 percent in 2022.

²¹ See Petition, Volume I, at Exhibit I-14.

Market Shares of Frozen Warmwater Shrimp²²
Thousand Pounds

	2020	2021	2022
Landings (head on)	221,801	229,266	214,963
Farmed (head on)	5,185	5,185	5,185
Production (head on)	226,986	234,451	220,148
Production (headless)	142,774	147,470	138,473
Exports	2,297	4,000	4,308
Domestic shipments	140,477	143,470	134,165
Subject imports	1,303,442	1,633,174	1,507,391
Nonsubject imports	211,597	182,066	164,092
Apparent consumption	1,655,516	1,958,710	1,805,648
Domestic %	8.5%	7.3%	7.4%
Subject %	78.7%	83.4%	83.5%
Nonsubject %	12.8%	9.3%	9.1%

While subject imports fell by 14.7 percent from the first half of 2022 to the first half of 2023,²³ preliminary landings data for the Gulf and South Atlantic from NOAA indicate that domestic landings fell almost twice as fast during the same period, plummeting by 28.6 percent from the first half of 2022 to the first half of 2023.²⁴ Thus, even if imports declined absolutely, they continued to gain market share from domestic producers.

Moreover, the absolute decline in subject imports during the interim period understates that actual presence of subject imports in the market, because it is only based on imports currently entering the United States and does not include shipments of imports from inventory. As noted in the Petition, inventories were extremely high at the end of 2022 and in 2023, and thus the shipments of imports into the U.S. market in the more recent period are likely higher

²² See *id.* U.S. domestic shipments are estimated based on landings plus farmed production, minus exports. Landings are attached to the Petition, Volume I, at Exhibit I-8. Exports are attached to the Petition, Volume I, at Exhibit I-14. Head on pounds are converted to headless using the conversion factor of 0.629. Apparent consumption is domestic shipments plus imports.

²³ See Petition, Volume I, at Exhibit I-14.

²⁴ Petition, Volume I, at Exhibit I-8.

than the volume of new imports arriving.²⁵ The Commission’s questionnaire responses show that responding importers’ ending inventories []²⁶ At the Commission’s staff conference, witnesses for respondents repeatedly confirmed that they brought in far more imports in 2021 than were demanded in the market, leading to a massive increase in inventories.

Mr. Pizzutti of Publix explained as follows:

The problem that Publix and other retailers and other food services had is we ran into this commitment of inventory and the commitment of these loads with nine months’ lead time. Then they hit the U.S. and the business was gone. So that’s the backup that you’re seeing was that backlog of inventory that we had every intention of pushing through. So that was something that caught everybody off guard because of the lead time.²⁷

Mr. Seidel of Performance Food Group confirmed that large import inventories had to be “liquidated” into a declining market:

So we’re ordering months and months in advance, and then the product gets here, and then, again, where Guy talked earlier about there was a really high demand in, what, ’21 and that product kept being ordered and coming to the United States, as you had seen the excitement and the increase, and then all of a sudden the economy, people had concerns about the economy, then all of a sudden that just slowed down, but you still had this product coming. And that’s why there’s so much product in cold storage here, in the United States. And it just to be a point where you have to perhaps find new ways to liquidate that product into distribution or lose profitability.²⁸

Mr. Pizzutti concluded:

We’re beginning to move through some of that product that we may have been stuck with, for lack of a better word. So that’s starting to clear itself out, but I think that was all a function of massive volume increases that we were seeing across the industry in ’21, extended lead times that we were working with beyond

²⁵ See, e.g., “With wholesalers ‘still full of inventory,’ US shrimp import volumes continue to tumble,” *Undercurrent News* (Dec. 12, 2022), attached to the Petition, Volume I, at Exhibit I-18.

²⁶ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

²⁷ See Conf. Tr. at 152 – 153 (Mr. Pizzutti).

²⁸ *Id.* at 176 – 177 (Mr. Seidel).

the 8 to 12 weeks that Mike just mentioned, and then the shutdown of what was happening with the growth in seafood, and it was a perfect storm that left everybody with significant inventory on hand.²⁹

These excess import inventories continued to have adverse volume effects on the domestic industry in 2022 and 2023 even as new imports began to decline. At the Commission’s staff conference, domestic industry witnesses confirmed that large import inventories were filling cold storage spaces that domestic producers needed for their own product, leading to a scramble for freezer space and an increase in rental rates for cold storage facilities.³⁰

For all of these reasons, the Commission should find that the volume of subject imports is significant, both absolutely and relative to consumption, and that the increase in subject import volume and market share over the period is also significant.

2. Subject imports have had significant adverse price effects

In evaluating the effect of subject imports on prices, the Commission must consider whether “there has been significant price underselling by the imported merchandise,” and whether the effect of imports “otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.”³¹ Subject imports of frozen warmwater shrimp have undersold the domestic like product, and these imports also suppressed and depressed prices to a significant degree.

As reviewed in response to Staff Question 5, public information from the Commission’s recent sunset review demonstrates that imports from India and Vietnam pervasively undersell the domestic like product, and similar unit values for imports from Ecuador and Indonesia suggest

²⁹ *Id.* at 178 (Mr Pizzutti).

³⁰ *Id.* at 101 – 102 (Mr. Pearson), 103 (Mr. Gollott), and 103 – 104 (Mr. Antley).

³¹ 19 U.S.C. § 1677(7)(c)(ii).

they are also underselling domestic producers. The Commission’s questionnaire responses show that that imports from the four countries [

].³² The margins of underselling [

].³³

As explained in response to Staff Question 5, this underselling does not merely reflect an alleged premium for wild-caught shrimp, but rather demonstrates the severe adverse price effects of low-priced imports. Price is a very important factor in purchasing decisions for shrimp, and price was the most frequently cited top purchasing factor in the Commission’s recent sunset review.³⁴ Indeed, in that review, thirteen out of fourteen purchasers reported that they usually or sometimes purchase the lowest priced product.³⁵ In addition, as reviewed in greater detail in response to Staff Questions 3 and 4, both imports and the domestic like product are available in all forms and freezing types, and they compete head-to-head across the market nationwide for sales to the same customers. Industry witnesses testified at the Commission’s staff conference that their customers use import prices to drive down domestic prices, and that they will lose sales if they cannot come close enough to import prices.³⁶

These market dynamics have allowed importers to use underselling to take market share from domestic producers during the POI. As demonstrated in the Petition, subject imports gained 4.8 percentage points of market share from 2020 to 2022, while the domestic industry lost 1.1

³² See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

³³ See *id.*

³⁴ *Shrimp 2023 ITC Sunset* at Table II-8.

³⁵ *Id.* at II-17.

³⁶ Conf. Tr. at 20 – 21 (Mr. Avery), 23 (Mr. Antley), and 28 – 30 (Mr. Gollott).

percentage points of market share.³⁷ The domestic industry continued to lose market share in 2023, as landings plummeted almost twice as quickly as imports in a market saturated with excess import inventories.³⁸ Imports' gain in market share at the expense of the domestic industry was due to widespread underselling, and that underselling is thus significant.

Underselling is also significant because it suppressed and depressed domestic prices, as reviewed in more detail in response to Staff Question 6. From 2020 to 2021, processors' unit raw material costs [

].³⁹ The ratio of COGS to sales [] in 2022.⁴⁰ This [

] was due to the inability of domestic processors to raise their prices in the face of overwhelming volumes of low-priced subject imports.

These imports also caused price depression towards the end of the POI. In 2022, as import inventories burdened the market, the average unit value of processors' commercial shipments [].⁴¹ In the first half of 2023, subject import unit values fell by 17.9 percent.⁴² This drove a [] from the first half of 2022 to the first half of 2023.⁴³ These trends confirm witnesses' testimony at the Commission's staff conference that domestic producers must lower their own prices in response

³⁷ Petition, Volume I, at 19.

³⁸ *Id.* See also response to Staff Question 7.

³⁹ See Petitioner's Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁴⁰ *See id.*

⁴¹ *See id.*

⁴² Petition, Volume I, at Exhibit I-14.

⁴³ See Petitioner's Questionnaire Response Aggregations, attached at **Exhibit 1**.

to import competition in order to make sales.⁴⁴ Fishermen also suffered as dockside prices plummeted by 40 percent or more from June of 2022 to June of 2023.⁴⁵

In short, pervasive underselling by subject imports allowed imports to seize market share from domestic producers, prevented domestic producers from passing along rising costs, and drove down prices for both processors and fishermen to unsustainably low levels. For all of these reasons, the Commission should find that subject imports have had significant adverse price effects.

3. Subject imports have had a significant adverse impact on the domestic industry

In examining the impact of subject imports on the domestic industry, the Commission is instructed to “evaluate all relevant economic factors which have a bearing on the state of the industry, in the United States.”⁴⁶ These factors include, but are not limited to:

- Actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity;
- Factors affecting domestic prices;
- Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment;
- Actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product; and
- The magnitude of the margin of dumping.⁴⁷

As explained in more detail below, these factors support a determination that the domestic industry has been materially injured by subject imports.

⁴⁴ See Conf. Tr. at 20 – 21 (Mr. Avery), 23 (Mr. Antley), and 28 (Mr. Gollott).

⁴⁵ Petition, Volume I, at 22 – 23 and Exhibit I-8.

⁴⁶ 19 U.S.C. § 1677(7)(c)(iii).

⁴⁷ *Id.*

Subject imports increased significantly and gained market share from 2020 to 2022.

Subject import market share increased from 78.7 percent in 2020 to 83.5 percent in 2022.⁴⁸ This increase came at the expense of the domestic industry, whose market share declined from 8.5 percent in 2020 to 7.4 percent in 2022.⁴⁹ In addition, while subject imports fell absolutely in interim 2023, preliminary data from NOAA indicates that domestic landings fell almost twice as fast during the period.⁵⁰ As reviewed in response to Staff Question 7, the record also shows that importers had significant inventories in 2022 and 2023 due to excessive imports in 2021 that could not be justified by demand.

The increase in subject imports prevented the domestic industry from participating in the growth in demand over the period. From 2020 to 2022, apparent domestic consumption of frozen warmwater shrimp rose by 9.1 percent, but subject imports rose by a more rapid 15.6 percent.⁵¹ As a result, landings actually fell from 2020 to 2022, denying domestic producers the opportunity to enjoy any of the increase in demand.⁵² The Commission's questionnaire responses show that domestic processors' [] rising demand.⁵³ Domestic processors' capacity utilization rate []⁵⁴ Due to the loss of market share to subject imports, domestic processors were []

⁴⁸ See Section II.C.1, above.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² See *id.*

⁵³ See Petitioner's Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁵⁴ *Id.*

]. The domestic industry’s ending inventories [] from 2020 to 2022.⁵⁵

These trends only worsened in interim 2023 due to a large inventory overhang and still significant import levels. According to preliminary data from NOAA, shrimp landings plummeted by 28.6 percent from the first half of 2022 to the first half of 2023.⁵⁶ Processors’ production [].⁵⁷ Processors’ capacity utilization rate [].⁵⁸ Despite [].⁵⁹

As imports took market share and suppressed and depressed prices, the domestic industry’s financial performance suffered. Processors’ sales revenue [].⁶⁰ The industry’s operating income [].⁶¹ As a result, processors’ operating income margin [

].⁶² At these operating levels, processors have had to put off planned capital investments and faced concerns with their access to credit.⁶³ The Commission’s U.S. producer

⁵⁵ *Id.*

⁵⁶ Petition, Volume I, at Exhibit I-8.

⁵⁷ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Conf. Tr. at 25 – 26 (Mr. Antley) and 31 – 32 (Mr. Gollott).

questionnaire responses [

].⁶⁴

The fact that the domestic industry saw landings decline despite increased demand and suffered [

] is attributable to the rapid increase in low-priced imports from the four subject countries. As reviewed in more detail in response to Staff Question 8, the injury the domestic industry has endured is not due to other factors such as declining demand, limits on the shrimp available to harvest, or non-subject imports. Demand grew by a healthy 9.1 percent from 2020 to 2022 – the only reason domestic producers were unable to participate in that growth was the loss of market share to subject imports. Trends in nonsubject imports also cannot explain the injury the industry suffered, as nonsubject imports also declined and lost market share to subject imports.⁶⁵ In addition, they entered at average unit values that were significantly higher than subject unit values.⁶⁶

There are also no limits on the shrimp available to harvest in the Gulf that would explain declining landings and [] during the POI. As industry witnesses testified at the Commission’s staff conference, the resource in the Gulf is plentiful, and there have been no severe weather events that have disrupted fishing and processing activity during the POI.⁶⁷ The only reason that an unprecedented number of boats have stopped fishing in 2023 is the extremely

⁶⁴ See, e.g., [

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⁶⁵ See Petition, Volume 1, at Exhibit I-14.

⁶⁶ See *id.*

⁶⁷ Conf. Tr. at 35 – 36 (Mr. Garcia), 61 – 62 (Mr. Pearson), 62 – 63 (Mr. Garcia), 63 (Mr. Antley), 63 – 64 (Mr. Gollott), and 64 – 65 (Mr. Trahan).

low dockside prices resulting from a surge of low-priced imports that continue to burden the market. Mr. Trahan explained the impact on fishermen in Louisiana as follows:

These low prices simply do not cover expenses and have forced owners to tie up their boats all over the Gulf. These are expensive assets {,} and they are still paying for insurance and maintenance. They are idle. It is heartbreaking to tie up your boat at peak season when the crop is plentiful. We see all kinds of shrimp boats, big and small, tie up at docks in Dulac and all along the bayou.⁶⁸

Mr. Garcia confirmed the shrimp fishing industry in Texas is also suffering: “I would estimate that at least half of the shrimp boats in Palacios are currently tied up at the dock or only making sporadic trips now and then. We have never seen so much of the fleet in our area idled by low prices.”⁶⁹

In short, the domestic shrimp industry is at a breaking point. During a period of rising demand, domestic harvesters and processors saw production decline as subject imports rose and took market share. In 2023, as the market was overloaded with inventory, landings plummeted and processors’ production and shipments []. Persistent underselling by subject imports drove down domestic prices, and []. As a result, domestic processors are [] and domestic fishermen are tying up their boats because prices are too low to justify their fishing effort. The survival of the domestic industry depends on securing relief from imported shrimp from the four subject countries.

For all of these reasons, the Commission should find that the domestic industry has been materially injured by imports of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam.

⁶⁸ *Id.* at 39 – 40 (Mr. Trahan).

⁶⁹ *Id.* at 35 (Mr. Garcia).

D. Subject imports threaten the domestic industry with additional material injury

In examining the threat of material injury by subject imports, the statute directs the Commission to consider a number of specific factors, including: (1) an increase in foreign producers' productive capacity or existing unused capacity; (2) a significant rate of increase of the volume or market penetration of the subject imports; and (3) the likelihood that imports of the subject merchandise are entering at prices that will have a significant depressing or suppressing effect on domestic prices.⁷⁰ As explained in more detail in response to Staff Question 9, there is ample evidence that subject imports of frozen warmwater present an imminent threat of additional material injury to the U.S. industry.

1. Cumulative assessment of threat

Under the statute, the Commission may “cumulatively assess the volume and price effects of imports of the subject merchandise” with respect to which petitions were filed on the same day, if such products compete with each other and with the domestic like product.⁷¹ As discussed above, subject merchandise from Ecuador, India, Indonesia, and Vietnam are fungible and compete directly with each other and the domestic like product. There is no indication that these conditions will change in the imminent future. The Commission should therefore assess the cumulative impact of such imports when determining whether imports threaten additional material injury.

⁷⁰ 19 U.S.C. § 1677(7)(F)(i).

⁷¹ 19 U.S.C. § 1677(7)(H).

2. Countervailable subsidies encourage production and export of shrimp from all four countries

As part of its threat analysis, the Commission must consider “if a countervailable subsidy is involved” and, in particular, “whether the countervailable subsidy is a subsidy described in Article 3 or 6.1” of the WTO Agreement on Subsidies and Countervailing Measures.⁷² Article 3 of the WTO Subsidies Agreement describes subsidies that are prohibited because they are contingent upon export performance or upon the use of domestic over imported goods.⁷³

As documented in Volumes IV, V, VI, and VII of these petitions, the governments of Ecuador, India, Indonesia, and Vietnam have in place numerous subsidy programs to encourage and finance both the production and the export of frozen warmwater shrimp, including loans, export credits, tax preferences, grants, the provision of land, electricity, and water, and numerous other programs. A list of prohibited subsidies in each subject country is provided in response to Staff Question 9.

3. Subject producers have large and growing capacity and exports

Subject producers have large and growing frozen warmwater shrimp production capacity and exports. According to the Commission, Ecuador, India, Indonesia, and Vietnam were the world’s four largest shrimp exporters in 2021, accounting for over 70 percent of global shrimp exports.⁷⁴ Together, the four countries exported over four billion pounds of frozen warmwater shrimp to the world in 2021.⁷⁵ While the four countries devoted a significant 1.6 billion pounds

⁷² 19 U.S.C. § 1677(7)(F)(i)(I).

⁷³ Agreement on Subsidies and Countervailing Measures (April 14, 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 14, at Art. 3.

⁷⁴ *Shrimp 2023 ITC Sunset* at IV-62 – IV-63, Table IV-39.

⁷⁵ *See id.*

of these exports to the U.S. market alone in 2021,⁷⁶ this level of global exports also means that the four countries had about 2.4 billion pounds of shrimp exported to third countries that could be diverted to the U.S. market if orders are not imposed.

Subject producers also have substantial unused capacity to increase production and exports in the absence of an order. As reviewed in more detail in its recent sunset review, the Commission found that responding Indian producers had 480 million pounds of unused capacity and responding Vietnamese producers had 64 million pounds of unused capacity – enough for the two countries to increase production by more than half a billion pounds on existing equipment alone.⁷⁷ In addition, as the response to Staff Question 9 shows, producers in [], and foreign producers will likely continue to grow in the imminent future given strong government support for the sector.

Growing capacity and rising production will fuel continued increases in exports by highly export-oriented foreign producers. If orders are not imposed, these export volumes will be increasingly targeted at the attractive U.S. market. According to media reports, the global shrimp market is already over-supplied, and other major importers such as China are experiencing softening demand and lower prices.⁷⁸ This will make the United States an even more attractive target for frozen shrimp exports in the imminent future.

⁷⁶ See Petition, Volume I, at Exhibit I-14.

⁷⁷ *Shrimp 2023 ITC Sunset* at IV-32, Table IV-13, and IV-53, Table IV-31.

⁷⁸ See, e.g., Jane Byrne, “RaboResearch: 2023 is year to forget for shrimp industry,” *Feednavigator.com* (Aug. 8, 2023), attached to the Petition, Volume I, at Exhibit I-18.

4. Subject producers have demonstrated their ability to rapidly penetrate the U.S. market

As documented above, imports of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam are significant and rose rapidly over the period of investigation. Subject imports also gained market share at the expense of the domestic industry over the POI. Absent relief, the domestic industry will continue to be forced to compete with large and rising volumes of low-priced subject imports. As noted above, global demand for shrimp is softening in 2023, which will only increase the incentive to target more exports to the United States. Indeed, after declining in the first half of 2023, subject imports increased in July and August of 2023,⁷⁹ foreshadowing the further increases that will result if orders are not imposed. In short, subject producers will continue to rapidly increase exports to the attractive U.S. market in the absence of offsetting antidumping and countervailing duties.

5. Subject imports will likely enter at prices that will further undersell and suppress and/or depress U.S. prices

Producers of subject merchandise are likely to use aggressive underselling to gain market share if orders are not imposed. As demonstrated above, importers of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam are engaged in [] of the domestic product. Low-priced imports have also suppressed and/or depressed U.S. prices. Indeed, given the global glut in supply and slowing demand, Ecuador's export prices for shrimp slumped to the lowest level in over a decade this past August.⁸⁰ If relief is not imposed, these trends will worsen as importers continue to use underselling to gain market share and further suppress or depress domestic prices.

⁷⁹ See Petition, Volume I, at Exhibit I-14.

⁸⁰ See Louis Harkell, "Trade insights: Ecuador's shrimp export price slumps to lowest level in over a decade," *Undercurrent News* (Sept. 25, 2023), attached to the Petition, Volume I, at Exhibit I-18.

6. Rising volumes of low-priced imports will further injure the domestic industry

If orders are not imposed, the volume of frozen warmwater shrimp imports from Ecuador, India, Indonesia, and Vietnam will continue to grow, both absolutely and relative to domestic consumption. Importers will use aggressive underselling to seize more market share. Domestic producers will be forced to choose between foregoing shipments and lowering prices in order to compete. As demonstrated above, the domestic industry was already denied the opportunity to participate in the growth in demand that occurred over the POI. In 2023, as subject import prices fell, domestic prices also fell for [] fishermen. As a result, the domestic industry has seen []. Further increases in unfairly traded imports will only worsen these trends if orders are not imposed, threatening the future of the entire American warmwater shrimp industry.

7. Conclusion

In sum, the statutory factors the Commission must consider in deciding threat of injury indicate that there is an imminent threat of further material injury from subject imports. Existing trends in import market share, underselling, and price suppression or depression would lead to further injury if they continue without relief. The industries in Ecuador, India, Indonesia, and Vietnam have ample and growing capacity to export in ever more injurious quantities, and they have every incentive to do so given the glut in global supply, softening demand in China and elsewhere, and the attractiveness of the U.S. market. The governments of Ecuador, India, Indonesia, and Vietnam are encouraging more production and exports in the sector, including through prohibited export subsidies. Under these circumstances, there exists a serious threat of further material injury to the domestic industry.

III. CONCLUSION

Petitioner respectfully requests that the Commission find that the domestic industry is materially injured or threatened with injury by subject imports from Ecuador, India, Indonesia, and Vietnam.

Respectfully submitted,



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**Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam
Investigation Nos. 701-TA-669–702 and 731-TA-1659–1660**

Answers to Staff Questions

1. Domestic Like Product

Mr. Soopramanien: And with respect to the semi-finish product analysis that you set out in the petition, grateful if you could obviously update this analysis with the record data collected in these investigations.

Conf. Tr. at 70.

Response: As explained in the Petition, the U.S. International Trade Commission (“Commission”) conducted its semifinished like product analysis in prior investigations on frozen warmwater shrimp and determined that both fresh and frozen warmwater shrimp are part of the domestic like product.¹ We also noted in the Petition that no party contested this definition of the domestic like product in the recently completed sunset review of the antidumping duty orders on frozen warmwater shrimp from China, India, Thailand, and Vietnam.² Accordingly, we referenced the Commission’s prior determinations to demonstrate that the Commission should adopt the same definition of the domestic like product in this case, *i.e.*, inclusive of frozen

¹ See Petition Volume I at 2-3 (citing U.S. International Trade Commission, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Preliminary), USITC Pub. 3672 (Feb. 2004) (hereinafter “*Shrimp 2004 ITC Prelim*”) at 13-14; U.S. International Trade Commission, *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. 3748 (Jan. 2005) at 6; U.S. International Trade Commission, *Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701-TA-491-497 (Preliminary), USITC Pub. 4380 (Feb. 2013) (hereinafter “*Shrimp 2013 ITC Prelim*”) at 8-10; *Frozen Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam*, Inv. Nos. 701-TA-491-493, 495, and 497 (Final), USITC Pub. 4429 (Oct. 2013) at 9).

² *Id.* at 3 (citing *Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam*, Inv. Nos. 731-TA-1064 and 1066-1068 (Third Review), USITC Pub. 5432 (June 2023) (hereinafter “*Shrimp 2023 ITC Sunset*”) at 14-15).

warmwater shrimp that is coextensive with the scope of the investigations, as well as fresh warmwater shrimp.³

Below we address each of the semifinished like product analysis factors, and we have supplemented the analysis with more current data on the record of these investigations, where such information is available.

Dedication for Use. In the 2004 investigations, the Commission found that the vast majority of fresh warmwater shrimp – as much as 95 percent – undergoes further processing.⁴ Nearly ten years later, in the 2013 investigations, the Commission again found that “the vast majority of fresh warmwater shrimp undergoes further processing” based on an estimate that 95 percent of fresh warmwater shrimp is dedicated for processing.⁵ Earlier this year in the sunset review of the existing orders, the Commission found that there have been no changes in the uses of fresh warmwater shrimp since the 2004 investigations and no party disputed a definition of the domestic like product that encompasses the frozen warmwater shrimp described by the scope and fresh warmwater shrimp.⁶

Separate Markets. As the Commission has consistently found since the 2004 investigations, while there are separate markets for harvested shrimp (dock house or processor) and processed shrimp (end user or distributor), both fresh and frozen warmwater shrimp are sold at the dock.⁷ Petitioner has reviewed the data on the record of the instant investigations, which

³ *Id.* at 3-5.

⁴ *See Shrimp 2004 ITC Prelim* at 13.

⁵ *See Shrimp 2013 ITC Prelim* at 10.

⁶ *See Shrimp 2023 ITC Sunset* at 14-15.

⁷ *See Shrimp 2013 ITC Prelim* at 10; *Shrimp 2004 ITC Prelim* at 13-14.

continue to show that both fresh and frozen warmwater shrimp are sold at the dock.⁸ However, as the Commission noted in the 2004 investigations, fresh warmwater shrimp “is commonly frozen and deheaded on the vessel” and “the product a vessel sells at the dock is not necessarily ‘fresh’ shrimp.”⁹ This fact is confirmed by data on the record of these investigations, *i.e.*, testimony by Mr. Garcia that freezer boats in his fleet land headed frozen shrimp at the dock.¹⁰

Differences in Physical Characteristics and Functions of the Upstream and Downstream Articles. In the 2004 investigations and 2013 investigations, the Commission found that the processing of fresh warmwater shrimp into frozen warmwater shrimp does not change the essential character or functions of the upstream article.¹¹ The initial stages of processing (*i.e.*, cleaning, freezing, and deheading) do not significantly change the physical characteristics of fresh warmwater shrimp. The upstream article is shrimp, and the downstream article is shrimp. Nothing on the record of these investigations indicates otherwise.

Differences in Value. In the 2004 investigations and 2013 investigations, the Commission found that processing adds at most moderate value to fresh warmwater shrimp.¹² In the recently completed sunset review of the existing orders, the Commission found that raw material costs represent the largest component of the price of frozen shrimp, with the ratio of raw material costs to net sales ranging from 74.1 to 79.3 percent.¹³ These percentages are in line with the cost of production data on the record of these investigations.¹⁴ According to the record of the sunset

⁸ See Petition, Volume I, at Exhibit I-8.

⁹ See *Shrimp 2004 ITC Prelim* at 13-14.

¹⁰ See Conf. Tr. at 33-34 (Mr. Garcia).

¹¹ See *Shrimp 2013 ITC Prelim* at 10; *Shrimp 2004 ITC Prelim* at 14.

¹² See *Shrimp 2013 ITC Prelim* at 10; *Shrimp 2004 ITC Prelim* at 14.

¹³ See *Shrimp 2023 ITC Sunset* at III-19 (Table III-12).

¹⁴ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

review, raw shrimp accounted for 96.5 percent of these raw material costs, and thus the cost of the raw shrimp input alone accounted for anywhere from 71.5 to 76.5 percent of the final sales value of the frozen product.¹⁵ There is nothing on the record of these investigations that indicates any material difference to the proportion of costs that are attributable to raw shrimp. Thus, additional raw materials, processing costs, selling, general, and administrative expenses, and profit together accounted for less than 30 percent of the value of the final frozen processed product.

Extent of Processes Used to Transform Downstream Product into Upstream Product. As the Commission found in the 2004 investigations and 2013 investigations, the most basic processing needed to transform fresh shrimp to processed shrimp – freezing and deheading – can be performed on the vessel and is not extensive.¹⁶ The various other process forms – *e.g.*, tail-on or tail-off, shell-on or peeled, and deveined or not deveined – involve additional steps that are not extensive and can be performed manually or mechanically.¹⁷ Nothing on the record of these investigations demonstrates that the process of transforming fresh warmwater shrimp to processed frozen warmwater shrimp is extensive.

Conclusion. Based on the semifinished like product analysis factors, the Commission should define the domestic like product to include frozen warmwater shrimp that is coextensive with the scope of the investigations, as well as fresh warmwater shrimp. Petitioner notes that none of the respondents requested an alternative definition for the domestic like product during the Commission’s staff conference. In fact, when asked about Petitioner’s definition of the

¹⁵ See *Shrimp 2023 ITC Sunset* at III-30 (Table III-15) ($0.741 \times 0.965 = 0.715$ and $0.793 \times 0.965 = 0.765$).

¹⁶ See *Shrimp 2013 ITC Prelim* at 10; *Shrimp 2004 ITC Prelim* at 14.

¹⁷ See *Shrimp 2023 ITC Sunset* at I-26–I-27.

domestic like product, counsel for Industrial Pesquera Santa Priscila S.A. and Sociedad Nacional de Galapagos C.A. stated that they do not take issue with including both fresh and frozen warmwater shrimp.¹⁸

2. Domestic Industry

Mr. Soopramanien: Please address any related party issues in which you might be aware in your post-conference brief.

Conf. Tr. at 73.

Response: No producer of the domestic like product has reported that they are an importer of the subject merchandise or that they are related to an exporter or importer of the subject merchandise within the meaning of “related parties” as defined in 19 U.S.C.

§ 1677(4)(B)(ii). Accordingly, there are no related party issues with respect to producers of the domestic like product.

Mr. Soopramanien: Please address whether the Commission should examine whether to include fishermen in the industry as growers of a process {ed} agricultural products under Section 7714(e) of the Tariff Act instead of or in addition to producers of a semi-finished like product.

Conf. Tr. at 71.

Response: The Commission does not need to rely on the application of 19 U.S.C. § 1677(4)(E) to include fishermen as part of the domestic industry. In the 2004 investigations and 2013 investigations, the Commission included fishermen as part of the domestic industry due to the inclusion of fresh shrimp in the domestic like product pursuant to its semifinished like product analysis.¹⁹ The Commission adopted the same definition of the domestic like product, inclusive of both fresh shrimp and frozen shrimp, in the recently completed sunset review of the

¹⁸ See Conf. Tr. at 158 (Mr. Connelly).

¹⁹ See *Shrimp 2013 ITC Prelim* at 8-11; *Shrimp 2004 ITC Prelim* at 13-14.

existing orders.²⁰ And, as demonstrated above, the salient facts that the Commission relied on in its semifinished like product analysis have not changed such that a different conclusion should be reached in these investigations. Thus, as the Commission stated in the 2004 investigations, in light of a domestic like product that includes fresh and frozen warmwater shrimp, it is “unnecessary to determine whether fishermen should be included in the domestic industry pursuant to the statutory grower/processor provision codified at section 771(4)(E) of the Act.”²¹

Regardless, fishermen could also be included as part of the domestic industry through the application of 19 U.S.C. § 1677(4)(E).²² The statutory text of the provision reads as follows:

(E) Industry producing processed agricultural products

(i) In general

Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

- (I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and
- (II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) Processing

For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

- (I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

²⁰ See *Shrimp 2023 ITC Sunset* at 18.

²¹ See *Shrimp 2004 ITC Prelim* at 15.

²² See Conf. Tr. at 71-73 (Ms. Drake).

- (II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) Relevant economic factors

For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

- (I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and
- (II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) Raw agricultural product

For purposes of this subparagraph, the term “raw agricultural product” means any farm or fishery product.

The two prongs set forth in 19 U.S.C. § 1677(4)(E)(i) “provide the framework for analyzing whether growers and processors comprise a single industry producing the processed product, that is, whether the production of growers is so devoted to the processed good and the economic interests of the growers are so enmeshed with that of the processors that growers should be considered producers of the processed like product.”²³ Half of the Commissioners in the 2004 investigations stated that if the issue had not been rendered moot by the inclusion of fresh warmwater shrimp in the domestic like product, they would have concluded that “fishermen should be included in the domestic industry pursuant to the statutory grower/processor provision {.”²⁴

²³ *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1090 (Ct. Int’l Trade 1988).

²⁴ See *Shrimp 2004 ITC Prelim* at 15 n.84. The other three Commissioners did not express a view on the applicability of 19 U.S.C. § 1677(4)(E) because the semi-finished like product analysis rendered the issue moot. *Id.* at 16 n.85.

The three Commissioners that expressed a view on the applicability of 19 U.S.C. § 1677(4)(E) stated that, for purposes of 19 U.S.C. § 1677(4)(E)(i)(I), processed shrimp are produced from raw shrimp through a continuous line of production:

Specifically, the record indicates that processed freshwater shrimp is produced from raw freshwater shrimp in a “continuous line of production” because over 90 percent of fresh shrimp are processed into frozen or canned shrimp, warmwater shrimp is the only raw material used through all processing steps through cooking, and warmwater shrimp constitutes at least 80 percent of the weight of all shrimp products within the scope definition.²⁵

The three Commissioners also stated that the requirements of 19 U.S.C. § 1677(4)(E)(i)(II) would be met:

{T}here is a “substantial coincidence” of economic interest between fishermen and processors because of the very high correlation between the price fishermen receive for a specific size of shrimp and the wholesale price for that size of shrimp, and because fresh shrimp accounted for over 70 percent of processors’ cost of goods sold during the period examined.²⁶

The facts that supported the Commissioners’ analysis regarding the applicability of 19 U.S.C. § 1677(4)(E) are the same today.

The processing of raw shrimp, which, as a fishery product, falls within the statute’s definition of a “raw agricultural product,”²⁷ meets the requirements of the first prong of the analysis under 19 U.S.C. § 1677(4)(E)(i)(I). There is a single continuous line of production from fresh warmwater shrimp to processed frozen warmwater shrimp. The Court of International Trade has recognized that “percentages {of the raw product devoted to the processing} between 69 and 100 percent satisfy this factor.”²⁸ In the 2004 investigations and the 2013 investigations,

²⁵ *Shrimp 2004 ITC Prelim* at 15-16 n.84.

²⁶ *Id.* at 16 n.84.

²⁷ *See* 19 U.S.C. § 1677(4)(E)(iv).

²⁸ *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1089 (Ct. Int’l Trade 1988); *see also Dried Tart Cherries from Turkey*, Inv. Nos. 701-TA-622 and 731-TA-1448 (Preliminary), USITC

the Commission found that an estimated 95 percent of fresh warmwater shrimp is devoted to processing.²⁹ In addition, processed frozen warmwater shrimp are produced substantially or completely from fresh warmwater shrimp because raw shrimp represents almost all raw material costs, and raw material costs account for approximately three-quarters of the value of the processed product.³⁰ As nearly all fresh warmwater shrimp undergo processing in the United States, and because processed frozen warmwater shrimp is produced substantially or completely from raw shrimp, there exists a single continuous line of production and the first prong of the analysis under 19 U.S.C. § 1677(4)(E)(i)(I) has been met.

Under the second prong of the analysis under 19 U.S.C. § 1677(4)(E)(i)(II), there is a substantial coincidence of economic interest between fishermen and processors in the domestic industry. Economic factors such as prices, added value, or interrelationships are relevant in the analysis for this prong.³¹ The coincidence of economic interests of fishermen and processors, particularly in regards to who will benefit from the relief requested in these investigations, is clear through the support for the imposition of duties that has been expressed by over 850 shrimp boats (accounting for the majority of domestic landings). The interests of the processors are further intertwined with the interests of the fishermen because of the very high percentage of the processors' costs that the raw shrimp represents. Fresh warmwater shrimp are not a minor input into processed shrimp – they are critical to the production process.

Pub. 4902 (June 2019) at 9 (explaining that “approximately 25 to 35 percent of raw tart cherries are processed into dried tart cherries” was insufficient to satisfy the first prong of the analysis).

²⁹ See *Shrimp 2013 ITC Prelim* at 10; *Shrimp 2004 ITC Prelim* at 13.

³⁰ See *Shrimp 2023 ITC Sunset* at III-19 (Table III-12) and III-30 (Table III-15); see also Petitioner's Questionnaire Response Aggregations, attached as **Exhibit 1**.

³¹ See 19 U.S.C. § 1677(4)(E)(iii).

When market prices for processed shrimp are depressed by dumped and subsidized imports, the pricing pressure not only impacts the sales prices for processors but also their costs for the critical fresh shrimp input that is supplied by the fishermen. If the processors cannot purchase fresh shrimp at prices that allow them to produce processed shrimp at a cost they can cover given the market prices they face, the processors will fail.³² Conversely, if the processors cannot pay the fishermen prices that create an economic incentive to maintain boats and harvest shrimp, shrimping will decline and the supply available to processors will decline. The testimony offered during the Commission’s staff conference provides first-hand accounts from fishermen and processors that the relationship between them involves inextricably intertwined economic interests.³³ The Commission heard similar testimony during the sunset review completed earlier this year.³⁴

As processed shrimp are produced through a single continuous line of production from fresh shrimp and there is a substantial coincidence of economic interests between the producers of fresh shrimp and the producers of processed shrimp, both prongs of 19 U.S.C. § 1677(4)(E)(i) are met. Thus, through the application of this statutory provision, the Commission may include

³² See *Shrimp 2023 ITC Sunset* at II-11 (“Processors reported that the main constraint was the low price of frozen warmwater shrimp, which prevented firms from being able to profitably purchase and process shrimp.”).

³³ See, e.g., Conf. Tr. at 16-17 (Mr. Pearson) (“If our processors cannot make a reasonable return, they cannot support our fisherman with sustainable dock prices. Conversely, if our fishermen cannot sell their catch at prices that cover their costs and allow them to fund insurance and maintenance, they will have to simply stop fishing.”), 35 (Mr. Garcia) (“Far too many owners in our area have had to tie up their boats this year. With prices this low, it often costs them more to go out than to stay home. You can only keep bleeding money for so long before you have to make the painful decision to stop shrimping.”); 64 (“{W}e have had an exceptional year as far as crop-wise. And we’re unable to fish them because of the price -- the low prices. Fisherman just didn’t want to go out because it didn’t -- with expenses and being able to dump off our catch, the docks and processors, they just tie up.”).

³⁴ See U.S. International Trade Commission, Inv. Nos. 731-TA-1064 and 1066–1068 (Third Review), *Hearing Transcript* (Apr. 11, 2023) at 42-43 (Mr. Bosarge) and 77 (Mr. Baumer), excerpt attached at **Exhibit 2**.

the fishermen that produce fresh warmwater shrimp as part of the domestic industry in these investigations.

3. Product Forms

Mr. Chang: I think in your testimony, Ms. Drake, you talked about, you know, feeling free to ask questions about what forms of shrimp that your clients process, so I might as well just start there, take that offer, and I know that a bunch of you all mentioned some of the types of shrimp that you all process, but I was wondering if you could go into a little bit more detail on the different types of shrimp. You know, I guess is there – you know, do consumers have different, you know, perceptions of these different types of shrimp, are there different costs, are the processing for the shrimps different? I was wondering if you could just shed a little bit more light on that. It'd be really helpful.

Conf. Tr. at 48.

Response: As mentioned by the witnesses during the Commission's staff conference, there are several species of shrimp produced and available in the U.S. market.³⁵ Specifically, there are brown, white, and pink shrimp harvested, and processors handle "basically all species of shrimp that are caught in {their} waters."³⁶ When processed, this shrimp can be in forms that include head-on, headless, peeled, deveined, EZ peeled, raw and/or cooked.³⁷ These different forms of shrimp are frozen either as individually quick frozen ("IQF") shrimp or through block freezing, with more domestic processors moving and investing towards IQF.³⁸ Some processors, such as Mr. Pearson, have already transitioned 95 percent of their production to IQF, while others such as Wood's Fisheries only produce IQF.³⁹ Indeed, the Commission's questionnaire responses show that a [] of domestic shipments are in IQF form.⁴⁰ Thus, respondents'

³⁵ See Conf. Tr. at 56.

³⁶ *Id.* at 48 (Mr. Avery and Mr. Pearson).

³⁷ *Id.* at 48-49 (Mr. Avery and Mr. Gollott).

³⁸ *Id.* (Mr. Avery and Mr. Pearson).

³⁹ *Id.* at 49 and 50 (Mr. Antley).

⁴⁰ See Petitioner's Questionnaire Response Aggregations, attached at **Exhibit 1**.

statement that domestic processors “rarely, if ever” produce IQF shrimp is simply not supported by the facts.⁴¹

The domestic industry has continuously demonstrated its ability to produce both IQF and block frozen shrimp depending on the changing demands in the market.⁴² Historically, block-frozen shrimp was more popular as it is a bit cheaper per pound, but the domestic industry has been adapting to the “new norm” of IQF.⁴³ To adapt to this change in demand, processors such as Mr. Gollott have made significant investments, including installing new equipment to expand his company’s IQF line.⁴⁴ In the recent sunset review, the Commission found that 44.4 percent of domestic shrimp shipments were IQF, while the remainder were block frozen.⁴⁵ The data collected in these investigations indicates that the share of domestic shipments that are in IQF form has []⁴⁶

As explained in more detail below, contrary to respondents’ contentions, the U.S. shrimp industry also currently produces cooked shrimp, as well as both head-on and headless shrimp, peeled shrimp, and EZ peel shrimp.⁴⁷ The wide array of product forms produced by domestic producers is illustrated in the chart in **Exhibit 3**. Finally, as the Commission found in the recent sunset review, the domestic shrimp industry sells its product nationwide to every region of the

⁴¹ Conf. Tr. at 123 (Mr. Seidel).

⁴² See Conf. Tr. at 51-52. For example, as explained by Ms. Drake in the hearing, block frozen shrimp may be preferred by the restaurant industry because they can choose to thaw the entire five-pound bag to prepare for a meal, while a family may want IQF shrimp because they don’t need the same type of quantity all at once.

⁴³ *Id.* at 51.

⁴⁴ *Id.* at 53.

⁴⁵ See *Shrimp 2023 ITC Sunset* at Table IV-3.

⁴⁶ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁴⁷ See Conf. Tr. at 50 (Mr. Pearson and Mr. Antley).

country.⁴⁸ At the Commission’s staff conference, processors testified that they continue to ship their product nationwide, including to the Gulf as well as the Pacific Northwest and New England and other regions.⁴⁹

Mr. Soopramanien: And with respect to substitutability issues, grateful if you could address in your post-conference brief claims in testimony filed by certain respondents that domestic processors cannot supply enough in a “value-added products” by which they’re referred to peeled shrimp in various sizes and cooked shrimp.

Conf. Tr. at 74.

Response: As discussed briefly above, respondents’ claims regarding the inability of domestic producers to supply “value-added products” are completely meritless. The domestic industry has continued to supply shrimp in all forms, including head-on, headless, shell-on, peeled, EZ peel, and cooked shrimp, as well as many other variations. As illustrated in the chart attached in **Exhibit 3**, Bayou Shrimp Processors, Inc., Best SeaPak, Biloxi Freezing and Processing, Inc., and many other domestic producers provide peeled shrimp. Mr. Antley of Wood’s Fisheries testified that his company produces EZ peel shrimp,⁵⁰ as do other domestic producers such as Paul Piazza, a product which respondents carelessly claimed is not available from the domestic industry. Mr. Avery also testified that his company, Gulf Island Shrimp & Seafood, LLC produces cooked shrimp.⁵¹

Further, processors like Mr. Avery have made significant investments to produce value-added shrimp. His company invested to “install and expand a cutting-edge cooking line” in recent years, and the company invested further funds into rebuilding the cooking line in 2021

⁴⁸ See *Shrimp 2023 ITC Sunset* at Table II-3.

⁴⁹ See Conf. Tr. at 22 and 50 (Mr. Pearson and Mr. Antley).

⁵⁰ See Conf. Tr. at 50 (Mr. Antley).

⁵¹ See Conf. Tr. at 20 (Mr. Avery).

after it was damaged by a hurricane.⁵² Unfortunately, despite these many significant investments, the domestic shrimp industry cannot compete when low-priced imports overwhelm the market. The domestic industry's continued investments, and reinvestments, in value-added production are now being met with historically low returns and the loss of long-time customers that no marketing efforts can fix, due to unfair import competition.⁵³

4. Product Differentiation and Competition

Chairman Corkran: I've heard several times that to consumer farm raised versus wild-caught shrimp are not particularly distinguishable. And this is me paraphrasing what's been said. But before it actually gets to the end consumer. Your direct purchasers for this product, do they have a distinction which they make between farm raised and wild-caught shrimp?

Conf. Tr. at 107.

Response: Purchasers in the market do not distinguish between farm raised and wild caught shrimp. Farm raised and wild-caught shrimp directly compete with one another, despite efforts by the domestic industry to distinguish their product as domestic wild-caught shrimp through means such as sustainability certifications, traceability, and packaging.⁵⁴ As Mr. Avery explained in his testimony at the Commission's staff conference, "these efforts haven't insulated us from imports at all" and purchasers "always compare our prices to import prices, and if the

⁵² See Conf. Tr. at 20 (Mr. Avery).

⁵³ *Id.* at 20, 23 (Mr. Avery and Mr. Antley).

⁵⁴ See Conf. Tr. at 23 (Mr. Antley) ("I have worked hard to help our industry focus on sustainability and traceability to try to distinguish our domestic product from imports."), 21 (Mr. Avery) ("We spent 14 years and hundreds of millions of dollars to get sustainability certified, in our hopes that it would give us a leg up."), 24 (Mr. Antley) ("ASPA has led the way in officially seeking a fishery-wide certifications from two organizations: the Marine Stewardship Council and the Certified Seafood Collaborative's Responsible Fisheries Management program."), and 88 (Mr. Antley) ("This last year has taken a lot of resources from ASPA. It's taken a lot of resources from us as individual companies to work together pretty competitively to get this done as an industry that's very fragmented with small businesses, small family-owned businesses. It's been a difficult task, but it's one that we're proud to say we've been able to hopefully complete here in February to March.").

difference between our prices gets too high, our sales suffer.”⁵⁵ Without relief from low-priced imports, the domestic industry’s efforts spanning over a decade and costing hundreds of millions of dollars will have been all for naught.

At the Commission’s staff conference, Mr. Pizzuti testified that the retail supermarket chain Publix treats domestic wild-caught shrimp and imported farm-raised shrimp as distinct products.⁵⁶ Similarly, Mr. Seidel testified that Performance Food Group, a distributor and supplier of shrimp to restaurant chains in the United States, views farm-raised shrimp and wild-caught shrimp as two different products that are not in direct competition with each other.⁵⁷ The testimony on this point is simply not credible and not supported by the record. Domestic wild-caught shrimp and imported farm-raised shrimp compete head-to-head on the basis of price. In the recently completed sunset review of the existing orders, the Commission looked at the importance of different purchasing factors, and price was the most frequently cited top three purchasing factor reported by purchasers.⁵⁸ In addition, twelve out of fourteen purchasers reported price is a very important factor, with thirteen out of fourteen purchasers reporting that they usually or sometimes purchased the lowest-priced product.⁵⁹ Whether the product is wild-caught or farm-raised was not among the top three purchasing factors. The Commission noted that while most purchasers reported that their purchasers distinguish between wild-caught and

⁵⁵ See Conf. Tr. at 21 (Mr. Avery).

⁵⁶ See, e.g., Conf. Tr. at 117-19 (Mr. Pizzuti).

⁵⁷ See Conf. Tr. at 123-24 (Mr. Seidel).

⁵⁸ See *Shrimp 2023 ITC Sunset* at II-17 (Table II-8). The Commission noted that a catch-all category of other factors included factors such as meeting customer’s requirements, meeting standards, U.S. origin, consistency and inventories.

⁵⁹ *Id.* at II-17 and II-18 (Table II-9).

farm-raised shrimp, most purchasers reported purchasing both wild-caught and farm-raised shrimp.⁶⁰ The distinction is not a true difference in the minds of purchasers.

The evidence of lost sales and lost revenue on the record of these investigations shows that price is the main consideration for purchasers, and that they will quickly switch from domestic wild-caught shrimp to imported farm-raised shrimp on the basis of price. Allegations of lost sales and lost revenue were included as part of the Petition.⁶¹ The purchaser questionnaire responses corroborate the alleged lost sales and lost revenue. For example, [

].⁶² The purchaser has [

].⁶³ As another example, while [

].⁶⁴ [

].⁶⁵

⁶⁰ *Id.* at 74-75.

⁶¹ *See* Petition, Volume I, at Exhibit I-17.

⁶² *See* [].

⁶³ *Id.*

⁶⁴ *See* [].

⁶⁵ *Id.*

In the restaurant sector, there are no uniform country-of-origin labeling requirements at all, and purchasers rely on price as a distinguishing factor in their buying decisions. Restaurant consumers are thus unable to distinguish domestic wild-caught shrimp from imported farm-raised shrimp. At the Commission’s staff conference, Mr. Gollott testified that many restaurants in coastal communities have pictures of the Gulf shrimp and/or references to Southern or Cajun-style shrimp on their menus, which allows the imports to piggyback off of the domestic industry to sell their product.⁶⁶ Mr. Gollott explained that restaurants “use our culture and cooking style to tap into the emotional appeal of the Gulf shrimp industry, but then source imports for their lower prices.”⁶⁷ This is not mere conjecture. Mr. Gollott noted in his testimony that one of his customers was a restaurant, [], that started in Louisiana and sourced all of its shrimp from his company for years.⁶⁸ This restaurant switched to lower-priced imports for some of their supply, and, at the end of last year, switched entirely to imports based on price.⁶⁹ This restaurant was proudly and vocally committed to Gulf shrimp.⁷⁰ Mr. Gollott recalled during the Commission’s staff conference that several people have told him they are proud to eat at this restaurant because, in their minds, the restaurant serves only Gulf shrimp, only to be “shocked and angered” when they learn the truth that the restaurant serves imported farm-raised

⁶⁶ See Conf. Tr. at 29 (Mr. Gollott) (“Import competition is especially fierce in the restaurant segment, where there are no uniform labeling requirements. We see restaurants that may list their shrimp as ‘Cajun style’ or feature pictures of Gulf shrimp trawlers on their menus, but they are actually using imports.”).

⁶⁷ *Id.*

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *See id.*

shrimp.⁷¹ The questionnaire response of []].

While country-of-origin labeling does apply in the retail segment, the ultimate consumer may not discern the origin of the shrimp that they are purchasing due to the fact that domestic and imported shrimp are advertised and displayed side-by-side, farm-raised shrimp may be marketed with predominant, misleading trade names or images that suggest it is wild-caught, and the actual country of origin is often much less predominantly displayed. This lack of consumer information is due in large part to inadequate U.S. country-of-origin labeling regulations. While the domestic industry tries to differentiate its product, these efforts are greatly undermined when their product sits on the same shelf as an imported product with pictures of waves or boats, with the only distinction being the fine print indicating it is an imported farm-raised product of “country x” and not actually a domestic wild-caught product. In a sphere where the consumer may think they are choosing for themselves, they are only given an illusion of choice.

Pictures of such misleading packaging are provided in **Exhibit 4** and show various imported farm-raised shrimp products with deceptive packaging and marketing ploys (*e.g.*, boxes with the American flag, pictures of waves and boats) that suggest to an everyday consumer that the product that they are buying is domestic wild-caught shrimp. Only by zooming in to a picture on the back of the packaging or smaller font size is it apparent that the shrimp is actually imported and farm-raised. With this misleading packaging coupled with the smaller indicator of country-of-origin, it should come as no surprise that the average consumer would not be able to distinguish domestic wild-caught shrimp and would gravitate towards the lower-priced imported product. Further, in a world that is increasingly being overtaken by grocery-delivery services,

⁷¹ *Id.*

many of the images of the product that consumers view when filling their virtual cart do not include the back of the package and the country of origin can only be found by the most discerning consumer willing to read through a paragraph of information that may be hidden behind a tab that must be opened. In short, at the retail level, consumers are largely uninformed despite labeling requirements. Customers can be misled by packaging suggesting a wild-caught product, struggling to read most packages without a magnifying glass, and making decisions based on price when the products are displayed side-by-side in the grocery stores. The reality that end consumers are hardly able to distinguish between domestic wild-caught shrimp and imported farm-raised shrimp undermines any claim that sellers in the middle of the distribution chain (*i.e.*, grocery stores like Publix) view the two as distinct products that do not compete with one another, as the end consumer provides no incentive for retail establishments to employ such a distinction in their purchasing decisions.

The bottom line is that “shrimp is shrimp” to purchasers.⁷² This reality is supported by information collected during the recently completed sunset review, witness testimony during the Commission’s staff conference, and the information collected on the record of this case.

5. Underselling

Mr. Soopramanien: Also grateful if you could address in your post-conference briefs claims in testimony filed by certain Respondents that any underselling found in these investigations may reflect that domestic wild-caught shrimp sells at a premium to imports of largely farm-raised shrimp.

Conf. Tr. at 77.

Response: Underselling by subject imports imposes adverse price effects on the domestic industry; it does not merely represent a premium for domestic wild-caught shrimp over imported

⁷² See Conf. Tr. at 106 (Mr. Avery).

shrimp. The Commission has previously found that there is a correlation between import competition and prices for the domestic like product, confirming that low import prices have a direct adverse impact on domestic producers.⁷³ As noted in the Petition, the Commission found in the recent sunset review that shrimp from India undersold the domestic like product in every single comparison, while shrimp from Vietnam undersold the domestic like product in 68.8 percent of available comparisons.⁷⁴ Imports from Indonesia enter at unit values between those for imports from Vietnam and India, while imports from Ecuador are priced even lower, indicating that imports from all four countries are underselling the domestic like product.⁷⁵ The Commission’s questionnaire responses show that imports from the four countries []⁷⁶ The margins of underselling []⁷⁷

Underselling by subject imports is significant, as it permitted subject imports to gain market share at the expense of the domestic industry over the POI. As demonstrated in the Petition, subject imports gained 4.8 percentage points of market share from 2020 to 2022, while the domestic industry lost 1.1 percentage points of market share.⁷⁸ The domestic industry continued to lose market share in 2023, as landings plummeted almost twice as quickly as

⁷³ See *Shrimp 2005 ITC Final* at 28 (“... changes in the price of the subject merchandise will affect the prices of domestically processed shrimp to a significant degree”); see also *Shrimp 2023 ITC Sunset* at 83 (“... the record shows that there was a correlation between subject import competition and prices for the domestic like product.”).

⁷⁴ *Shrimp 2023 ITC Sunset* at V-17, Table V-10.

⁷⁵ Petition, Volume I, at 21 and Exhibit I-4.

⁷⁶ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁷⁷ See *id.*

⁷⁸ Petition, Volume I, at 19.

imports in a market saturated with excess import inventories.⁷⁹ If underselling reflected nothing more than a premium for domestic product, domestic producers would not have lost market share to lower priced imports. The fact that they did so confirms that underselling caused significant adverse price effects for the domestic industry.

Underselling is also significant because it suppressed and depressed domestic prices, as reviewed in more detail in response to Staff Question 6, below. If domestic shrimp was protected from price competition due to an alleged premium for wild-caught product, there would be no reason for domestic producers to pass along anything less than their full increase in costs from 2020 to 2022 as demand rose. Yet the growing presence of subject imports that pervasively undersold the domestic like product prevented domestic producers from doing so.⁸⁰ Towards the end of the period, domestic producers were forced to lower their prices to compete with subject imports, resulting in price depression.⁸¹ These trends confirm witnesses' testimony at the Commission's staff conference that domestic producers must lower their own prices in response to import competition in order to make sales.⁸²

In short, pervasive underselling by subject imports does not merely reflect a premium for domestic shrimp – instead, it reflects aggressive pricing behavior that allowed imports to seize market share from domestic producers, prevent producers from passing along rising costs, and drive down prices for both processors and fishermen to unsustainably low levels. For all of these reasons, the Commission should find that underselling has been significant.

⁷⁹ *Id.*; see also response to Staff Question 7.

⁸⁰ Petition, Volume I, at 22 and Exhibit I-9.

⁸¹ *Id.*

⁸² See Conf. Tr. at 20 – 21 (Mr. Avery), 23 (Mr. Antley), and 28 (Mr. Gollott).

6. Price Suppression and Depression

Mr. Soopramanien: {E}ither here or in your post-conference brief can you discuss raw material costs and how this may have affected pricing?

Conf. Tr. at 74.

Mr. Soopramanien: {P}lease address claims in testimony filed by certain Respondents that prices for shrimp have fallen in recent months due to, and I quote, “interest rates, consumer awareness about a recession, and inflation.”

Conf. Tr. at 78.

Response: Processors’ unit raw material costs [

].⁸³ Fresh shrimp is far and away the largest component of processors’ raw material costs, accounting for 96.5 percent of raw material costs according to the record of the recent sunset review.⁸⁴ Thus, the [

], as processors struggled to make a return in a market inundated by imports. Indeed, even though processors’ unit raw material costs [].⁸⁵

In interim 2023, as import average unit values fell, the average unit value of processors’ commercial shipments [].⁸⁶ Dockside prices for shrimp fishermen plummeted in the interim period, crashing by 40 percent or more from June of 2022 to June of 2023.⁸⁷ The record therefore shows that subject imports both suppressed and depressed domestic prices over the POI, resulting in significant adverse price effects.

⁸³ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁸⁴ See *Shrimp 2023 ITC Sunset* at III-30 (Table III-15).

⁸⁵ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁸⁶ See *id.*; see also Petition, Volume I, at Exhibit I-14.

⁸⁷ Petition, Volume I, at 22-23 and Exhibit I-8.

Respondents' claims that the decline in domestic prices at the end of the period was due to interest rates, recession fears, and inflation are illogical and unsupported by the record. If inflation and rising interest rates were causing costs to increase for domestic processors, one would expect processors to also increase their own prices. Their inability to do so was due to the overwhelming presence of low-priced imports that drove down prices. To the extent that respondents are arguing that these factors were driving down demand for shrimp, and thus shrimp prices, that argument is also without merit. Falling prices in 2022 and 2023 were not due just to softening demand – the huge burden of excess import inventories also drove prices down.

Indeed, respondents' own testimony confirmed that the build-up in import inventories beyond any levels justified by demand caused prices to crater in 2022 and 2023. Mr. Pizzutti of Publix explained as follows:

The problem that Publix and other retailers and other food services had is we ran into this commitment of inventory and the commitment of these loads with nine months' lead time. Then they hit the U.S. and the business was gone. So that's the backup that you're seeing was that backlog of inventory that we had every intention of pushing through. So that was something that caught everybody off guard because of the lead time.⁸⁸

Mr. Seidel of Performance Food Group confirmed that large import inventories had to be “liquidated” into a declining market:

So we're ordering months and months in advance, and then the product gets here, and then, again, where Guy talked earlier about there was a really high demand in, what, '21 and that product kept being ordered and coming to the United States, as you had seen the excitement and the increase, and then all of a sudden the economy, people had concerns about the economy, then all of a sudden that just slowed down, but you still had this product coming. And that's why there's so much product in cold storage here, in the United States. And it just to be a point where you have to perhaps find new ways to liquidate that product into distribution or lose profitability.⁸⁹

⁸⁸ Conf. Tr. at 152-153 (Mr. Pizzutti).

⁸⁹ *Id.* at 176-177 (Mr. Seidel).

Mr. Pizzutti concluded:

We're beginning to move through some of that product that we may have been stuck with, for lack of a better word. So that's starting to clear itself out, but I think that was all a function of massive volume increases that we were seeing across the industry in '21, extended lead times that we were working with beyond the 8 to 12 weeks that Mike just mentioned, and then the shutdown of what was happening with the growth in seafood, and it was a perfect storm that left everybody with significant inventory on hand.⁹⁰

It was this “perfect storm” caused by excess import inventories that caused domestic prices to crash in 2022 and 2023, resulting in historically low prices for processors and fishermen alike.

The Commission should therefore reject respondents’ claims that domestic prices declined due solely to softening demand, and instead find that the large volumes of low-priced subject imports burdening the market were responsible for falling domestic prices in 2022 and 2023, resulting in significant price depression.

7. Inventories

Chairman Corkran: I was very interested in the discussion about an inventory overhang and characterizations that the freezers were full. Can you talk to me a little bit about how cold storage works in this particular industry? That is, who maintains storage capability? Is it to a certain extent the farmer, the aquaculturist, him or herself? Is it the processor? Or are there public facilities where you can store shrimp, and does that differ between whether we’re talking about block freezing or IQF?

Conf. Tr. at 101.

Chairman Corkran: The testimony we heard this morning was that there appeared to be a great deal of volume in storage in terms of shrimp, and I was wondering from today’s witnesses, is that a characterization of the market that you would agree with, that there is a large volume that’s in cold storage? And, also, stepping back from that, just a little bit more generally, where in the chain of distribution does storage usually take place in the market?

Conf. Tr. at 175-76.

⁹⁰ *Id.* at 178 (Mr. Pizzutti).

Response: Processors generally are the ones in the chain of distribution that are responsible for holding shrimp in cold storage. In the recently completed sunset review of the existing orders, the Commission stated the following in its description of the processing stage in the manufacturing process:

After unloading, shrimp are transferred to processing facilities, which are often located dockside. The shrimp may be held frozen in storage for later processing or may immediately undergo initial processing such as separating shrimp from ice, weighing, washing, sizing, and grading. At this stage, shrimp may either be frozen in whole form (head-on, shell-on) or may undergo a number of further steps such as deheading, peeling, deveining, and cooking. Resulting from these steps are shrimp in a variety of forms (e.g., head-on, shell-on; headless, shell-on; raw, peeled; and cooked, peeled). Regardless of their specific processed form, shrimp then are typically frozen with the exception that cooked, peeled shrimp may be canned rather than frozen. Shrimp may be frozen either in block form or individually quick frozen (“IQF”).⁹¹

Mr. Pearson stated in his testimony at the Commission’s staff conference that “every processor has a holding freezer of some sort,” which is “not the size of total volume,” and processors store additional volume in public cold storage facilities.⁹²

The influx of imported shrimp in 2021 and 2022 exceeded the increase in demand and sent domestic shrimp prices to record lows, resulting in an inventory overhang and a shortage of cold storage for domestic shrimp processors.⁹³ While demand softened and subject imports declined in the first half of 2023, U.S. importers have [

⁹¹ *Shrimp 2023 ITC Sunset* at I-26.

⁹² *See* Conf. Tr. at 101-02 (Mr. Pearson).

⁹³ *See, e.g.*, Carolina Coast Online, “Valuable N.C. shrimp fishery suffering, group wants financial aid for shrimpers across Southeastern and Gulf Coasts” (Sept. 12, 2023) (“If the historic low prices were not bad enough, the sheer volume of the imported shrimp has also caused issues with buyers not having enough cold storage space for domestic caught shrimp.”), attached as **Exhibit 5**; National Fisherman, “Shrimp Imports threaten U.S. Gulf fleet” (June 21, 2023) (“Adding to the Louisiana shrimpers’ trouble is the loss of infrastructure to the imports. ‘Foreign companies with all the profits from selling their shrimp here, then come back and buy up the cold storage facilities here and fill them with their shrimp,’ says Cooper. ‘So, what do we do with ours?’”), attached as **Exhibit 6**.

].⁹⁴ Mr. Pearson stated

in his testimony that inventory was carried over from 2022 into 2023 and there simply is not enough cold storage space to hold any excess inventory of processed shrimp.⁹⁵ The increased monthly rates for cold storage have also chipped away at the domestic industry's slim or non-existent margins.⁹⁶ Mr. Gollott added that because of the cold storage shortage, it has become increasingly difficult to work with outside cold storage facilities as they now impose more onerous requirements.⁹⁷ Mr. Antley pointed out that historically ten percent of inventory in cold storage is considered to be high, but as of this month his business is holding 62.4 percent of its inventory in cold storage with 100 percent of the business's cold-storage facility being used.⁹⁸ The lack of cold storage has created issues for boats as well. As Mr. Garcia explained, boats have had to wait dockside for weeks until there is enough cold storage space to offload shrimp.⁹⁹ The inventory overhang and cold storage space shortage is being experienced by all.

The testimonies of Mr. Pizzuti and Mr. Seidel at the Commission's staff conference confirm the domestic industry members' characterization of the import inventories that have saturated the domestic market. Mr. Seidel stated that the shrimp industry grew by under five percent in 2018, grew by six percent in 2019, declined by 20 percent in 2020 during the COVID-19 pandemic, grew by 22 percent in 2021, and then "flattened out" with 1.5 percent growth in

⁹⁴ See Petitioner's Questionnaire Response Aggregations, attached at **Exhibit 1**.

⁹⁵ See Conf. Tr. at 101-02 (Mr. Pearson).

⁹⁶ See *id.* at 102 (Mr. Pearson) ("Those rates have gone from a penny and an eighth up to about around five cents a pound per month.").

⁹⁷ See *id.* at 103 (Mr. Gollott).

⁹⁸ See *id.* at 103-04 (Mr. Antley).

⁹⁹ See *id.* at 104 (Mr. Garcia).

2022.¹⁰⁰ The inventory overhang is a direct result of the substantial excess import volumes that outstripped demand. As Mr. Pizzuti said, following “massive volume increases” in 2021, the domestic market collapsed and “it just fell off the rails” in 2022.¹⁰¹ Mr. Pizzuti explained that with the production delays caused by COVID-19 and a 40 percent increase in Publix’s sales, it made purchasing commitments as much as ten months in advance and the imported shrimp was not sold when it finally arrived in the United States because of the sheer volume of imported shrimp present in the domestic market.¹⁰² With imported shrimp saturating the market, prices are at rock bottom and the entire industry is struggling to store and sell current inventories of domestic shrimp.

8. Non-Attribution

Mr. Soopramanien: In your brief, please address how the Commission can ensure that it’s not attributing any injury from any declines in demand, raw material price fluctuations, including diesel fuel costs, adverse weather conditions, or any other biological or ecological factors that may or may not have limited the volume of shrimp caught in U.S. territorial waters during the POI.

Conf. Tr. at 79.

Response: As discussed during the hearing, demand increased from 2020 to 2022 and any potential decrease in demand in 2023 can be attributed to the burden of low-cost imports.¹⁰³

Demand trends thus cannot explain the material injury the domestic industry is suffering.

Further, while the domestic industry faced an increase in raw material costs over the POI, the

¹⁰⁰ See *id.* at 150-51 (Mr. Seidel).

¹⁰¹ See *id.* at 154, 178 (Mr. Pizzuti).

¹⁰² See *id.* at 151-53 (Mr. Pizzuti).

¹⁰³ See *id.* at 79 (Ms. Drake).

only reason it was not allowed to pass along these costs was due to the price suppressing effect of the overwhelming volume of low-priced imports.¹⁰⁴

With regards to weather, there have been no major weather events that have disrupted production during the POI. The domestic shrimp industry is incredibly resilient and has met many of its challenges, including weather events such as hurricanes. As noted by Mr. Pearson during the Commission's staff conference, most hurricanes during the POI have been smaller in the scope of area that they hit.¹⁰⁵ Even hurricanes that did directly impact shrimp operations, such as Hurricane Ida, were quickly recovered from. For example, following Hurricane Ida, Mr. Trahan testified that boats were unloading shrimp at his facility in Dulac, Louisiana, about two weeks after the hurricane hit.¹⁰⁶ Additionally, even in cases of catastrophic hurricanes like Katrina, the domestic industry is equipped with generators to ensure that the variety of shrimp already available in their freezers is kept frozen and ready for sale.¹⁰⁷ Further, once any temporary disruptions from a hurricane subside, the hurricane generally has a positive impact on production in shrimp industry, because it makes more shrimp more readily available for shrimp boats to harvest.¹⁰⁸

In addition to hurricanes, climate change and the resulting warmer waters have actually benefitted the shrimp industry overall. According to Mr. Pearson's testimony, approximately a couple million acres of shrimp harvesting area have been added due to warmer weather and salt

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 61 (Mr. Pearson).

¹⁰⁶ *Id.* at 65 (Mr. Trahan).

¹⁰⁷ *Id.* at 65-66 (Mr. Gollott).

¹⁰⁸ *Id.* at 62-63 (Mr. Pearson and Mr. Garcia).

water intrusion.¹⁰⁹ Additionally the warmer water temperatures have encouraged the shrimp crop to grow at a faster rate and have lengthened the harvesting seasons, sustaining more varieties of shrimp year-round.¹¹⁰ Ultimately, the domestic shrimp industry is resilient, and weather events such as hurricanes and climate change have not imposed any limits on the annual shrimp crop. The only limits to the business are due to the pressure created by low-priced imports driving down processor and dockside prices and erasing the economic incentive to harvest shrimp. As a result, fishermen cannot justify their fishing effort despite a plentiful crop, a situation that leaves them “broken-hearted.”¹¹¹

Mr. Soopramanien: Can you tell us about non-subject imports in the U.S. market? Are they all interchangeable with the domestic like product and other imports? Were they lower priced during the POI, and did they capture market share from the domestic industry during this period?

Conf. Tr. at 80.

Response: While non-subject imports are interchangeable with the domestic like product and other imports, they are an extremely small part of the market, and the injury the domestic industry has suffered is not attributable to non-subject imports. As shown in the table below, non-subject imports have steadily decreased over the POI and have a very small share of the U.S. market.

¹⁰⁹ *Id.*; *see also id.* at 63 (Mr. Garcia).

¹¹⁰ *See id.* at 63 (Mr. Antley).

¹¹¹ *Id.* at 64 (Mr. Antley).

Market Shares of Frozen Warmwater Shrimp¹¹²
Thousand Pounds

	2020	2021	2022
Landings (head on)	221,801	229,266	214,963
Farmed (head on)	5,185	5,185	5,185
Production (head on)	226,986	234,451	220,148
Production (headless)	142,774	147,470	138,473
Exports	2,297	4,000	4,308
Domestic shipments	140,477	143,470	134,165
Subject imports	1,303,442	1,633,174	1,507,391
Nonsubject imports	211,597	182,066	164,092
Apparent consumption	1,655,516	1,958,710	1,805,648
Domestic %	8.5%	7.3%	7.4%
Subject %	78.7%	83.4%	83.5%
Nonsubject %	12.8%	9.3%	9.1%

The import data also show that non-subject imports entered at significantly higher average unit values than subject imports,¹¹³ further confirming that the material injury that occurred over the POI is not attributable to non-subject imports.

9. Threat

Mr. Soopramanien: And the last couple of questions just on threat are really just data asks or just, again, more requests to address certain issues. Those include whether the Commission should exercise its discretion to cumulate imports from each subject source in any threat analysis discussing the statutory factors that the Commission considers in determining threat. And in terms of data requests, we'd be grateful for any information on the warmwater shrimp industries in the subject countries to the extent that you haven't already provided that to us, particularly as regards consumption, production, and capacity.

Conf. Tr. at 80-81.

¹¹² *Id.* U.S. domestic shipments are estimated based on landings plus farmed production, minus exports. Landings are attached at Petition Exhibit I-8. Exports are attached at Petition Exhibit I-14. Head on pounds are converted to headless using the conversion factor of 0.629. Apparent consumption is domestic shipments plus imports.

¹¹³ *See* Import Statistics, attached at Petition Exhibit I-14.

Response: Not only has the domestic industry already suffered material injury by reason of subject imports, it will also suffer additional material injury in the imminent future if it does not receive relief. The Petition included a threat analysis and demonstrated that subject imports present an imminent threat of additional material injury.¹¹⁴ In addition to the ample evidence already included in the Petition, below we supplement the threat analysis with additional supporting evidence.

1. Legal Standard for Threat Analysis

The statute, at 19 U.S.C. § 1677(7)(F)(i), provides that in determining whether there is a reasonable indication that subject imports threaten material injury to the domestic industry:

...the Commission shall consider, among other relevant economic factors —

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the {WTO Agreement on Subsidies and Countervailing Measures}), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports ... taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise ...,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect ... and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting ...,

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

¹¹⁴ See Petition, Volume I, at 26-31.

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports ... of the subject merchandise.

The law further provides that the Commission shall consider the above factors as a whole. The presence or absence of any particular factor shall not necessarily give decisive guidance with respect to the determination.¹¹⁵

2. Cumulative Assessment of Threat (Saad)

For purposes of the threat analysis, the Commission may “cumulatively assess the volume and price effects of imports of the subject merchandise” with respect to which petitions were filed on the same day, if such products compete with each other and with the domestic like product.¹¹⁶ Subject merchandise from Ecuador, India, Indonesia, and Vietnam are fungible and compete directly with each other and the domestic like product. The Commission has previously determined that: there was at least “a moderate degree of substitutability” between shrimp from each of the subject countries and the United States;¹¹⁷ the domestic like product and shrimp from each of the subject countries are sold in the same channels “to distributors, end users, and retail/institutional customers such as grocers and restaurants”;¹¹⁸ and the domestic like product and subject imports are sold throughout the United States.¹¹⁹ Imports of frozen warmwater shrimp from each of the subject countries have also been present in every month of the POI.¹²⁰

¹¹⁵ 19 U.S.C. § 1677(7)(F)(ii).

¹¹⁶ 19 U.S.C. § 1677(7)(H).

¹¹⁷ *Shrimp 2013 CVD Prelim* at 15.

¹¹⁸ *Id.*

¹¹⁹ *See id.*

¹²⁰ *See* Petition, Volume I, at Exhibit I-14; *see also* Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

These conditions are present today and there is no indication that there will be a change in the imminent future.

No party has argued that the Commission should not cumulate subject imports from Ecuador, India, and Indonesia. While arguments in favor of decumulating Vietnam were made during the Commission’s staff conference,¹²¹ the staff correctly pointed out that the same arguments were rejected by the Commission in the recently completed sunset review of the antidumping duty orders on imports from Vietnam and other countries.¹²² Counsel for Vietnamese respondents acknowledged that “the facts are substantially similar to prior reviews.”¹²³ Thus, there is no factual basis to reach a different result here. The Commission should therefore cumulate subject imports from all four countries for the purposes of its threat analysis.

3. Countervailable subsidies encourage production and exports of shrimp from all four of the subject countries

As part of its threat analysis, the Commission must consider whether “a countervailable subsidy is involved” and, in particular, whether the subsidy is a “countervailable subsidy described in Article 3 or 6.1” of the WTO Agreement on Subsidies and Countervailing Measures.¹²⁴ Article 3 of the WTO Subsidies Agreement describes subsidies that are prohibited because they are contingent upon export performance or upon the use of domestic over imported goods.¹²⁵ As documented in the countervailing duty volumes of the petitions (Volumes IV, V,

¹²¹ See Conf. Tr. at 136-38 (Ms. Eppard).

¹²² *Id.* at 148 (Mr. Chang); see also *Shrimp 2023 ITC Sunset* at 21-23 and 43-57.

¹²³ See Conf. Tr. at 149 (Ms. Eppard).

¹²⁴ 19 U.S.C. § 1677(7)(F)(i)(I).

¹²⁵ Agreement on Subsidies and Countervailing Measures (April 14, 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 14, at Art. 3.

VI, and VII) and below, the governments of Ecuador, India, Indonesia, and Vietnam have in place numerous subsidy programs that encourage and finance both the production and the export of frozen warmwater shrimp:

Ecuador

- Export tax incentive: provides “incentives with 10 percentage points less in the income tax for exporting companies.”¹²⁶
- Export tax incentives for sustained/increased employment: provides a 4% tax reduction to exporters who maintain or increase their employment in the corresponding fiscal year.¹²⁷
- Exports lowered to promote agricultural exports: provides a tax reduction based on freight-on-board declared export values and a reduction in paperwork required to export goods.¹²⁸
- Refund on currency outflow tax (ISD) on purchase of inputs for exports: refund of 5% ISD on the purchase of inputs that will be used to produce goods for export.¹²⁹
- Tax incentives for special economic development zones: exemption from indirect taxes on imports.¹³⁰
- Export credits from CFN: the GOE-owned CFN provides export credits at concessional rates that finances up to 100% of export-related costs with competitive interest rates.¹³¹
- International factoring: CFN provides exporters with early settlement of future invoices with international clients in order to obtain working capital.¹³²

India

- Export Promotion of Capital Goods Scheme: provides for a reduction on exemption of customs duties and excise taxes on imports of capital goods used in the pre-production, production, and post-production of exported products.¹³³

¹²⁶ Petition, Volume IV, at 21.

¹²⁷ *Id.* at 22.

¹²⁸ *Id.* at 22-23.

¹²⁹ *Id.* at 12.

¹³⁰ *Id.* at 20.

¹³¹ *Id.* at 36.

¹³² *Id.* at 37-38.

¹³³ Petition, Volume V, at V-9.

- Duty Drawback Program: provides rebates for duty or tax chargeable on any imported or excisable materials used in the manufacture of exported goods.¹³⁴
- Duty Free Import Authorization: the government provides “duty free import of inputs,” including inputs that are consumed or otherwise utilized in the production of exports.¹³⁵
- Advance Authorization Program: gives exporters the opportunity to import, duty free, specified quantities of materials required to manufacture products that are subsequently exported.¹³⁶
- Vishesh Krishi and Gram Udyog Yojana: offers duty remissions aimed at offsetting relatively high transport costs and other disadvantages in India to exporting certain agricultural and forestry products.¹³⁷
- Remission of Duties and Taxes on Export Products: a rebate program for eligible exporters at a notified rate as a percentage of FOB value of the exported product in the form of a transferable duty credit/electronic scrip.¹³⁸
- Merchandise Exports from India Scheme: exports of eligible goods to listed markets rewarded with a duty scrip benefit to offset infrastructural inefficiencies and associated costs involved in the export of goods that are produced in India, especially goods that enhance India’s export competitiveness.¹³⁹
- Service on exports from India Scheme: eligible service providers are entitled to receive duty credit scrips from the GOI at notified rates on the net foreign exchange earned during the fiscal year.¹⁴⁰
- Incremental Exports Incentive Scheme: gives exporting companies a “duty credit scrip” redeemable against certain tax or duty payments equal to two percent of the year-over-year growth in that company’s exports to selected countries, including the United States.¹⁴¹
- Subsidies to Export-Oriented Units: entire production of goods and services entitled to various advantages, including exemption and reimbursements for certain duties and taxes.¹⁴² This program includes Duty-Free Importation of Capital Goods and Raw Materials; Reimbursements of Central Sales Tax (CST) Paid on Capital Goods and Raw Materials; Duty Drawback on Fuel Procured from Domestic Oil Companies; and

¹³⁴ *Id.* at V-10.

¹³⁵ *Id.* at V-13.

¹³⁶ *Id.* at V-15.

¹³⁷ *Id.* at V-14.

¹³⁸ *Id.* at V-17-18.

¹³⁹ *Id.* at V-18.

¹⁴⁰ *Id.* at V-19.

¹⁴¹ *Id.* at V-21.

¹⁴² *Id.* at V-22.

Purchase of Materials and Other Inputs Free of Central Excise Duty (subsequently replaced by a Goods & Services Tax).¹⁴³

- Productivity Linked Incentive Scheme: provides grants to incentivize manufacturing, promote innovative/organic products of SMEs and supporting branding and marketing abroad for Indian brands.¹⁴⁴
- Sea Freight Assistance: provides financial assistance to entrepreneurs intending to import raw materials for processing and re-export value-added products.¹⁴⁵
- Export Credit Insurance Scheme: helps the industry achieve higher export credit disbursement.¹⁴⁶
- Interest Equalization Scheme: provides pre- and post-shipment export credit to exporters.¹⁴⁷

Indonesia

- Export financing from the Export-Import Bank of Indonesia: provides financing in the form of export working capital and export investment facilities designed to help Indonesian territory expand on their businesses and produce export goods and services.¹⁴⁸
- Export Credit Insurance: may reimburse up to 85% of exporters' losses.¹⁴⁹
- Export Credit Guarantees: guarantees for Indonesian exporters on payments received from the overseas buyer of goods/services.¹⁵⁰
- Tax and Duty Exemptions for Exporters: exemptions on import duties, value-added tax, and luxury-goods sales tax for raw materials imported for the production of goods to be fully exported.¹⁵¹
- Tax and Duty Exemptions for Bonded Zones: these zones benefit from tax and duty exemptions on imports and domestic purchases of materials and capital goods used to produce goods within the bonded zone.¹⁵²

¹⁴³ *Id.* at V-23.

¹⁴⁴ *Id.* at V-26-27.

¹⁴⁵ *Id.* at V-29.

¹⁴⁶ *Id.* at V-31.

¹⁴⁷ *Id.* at V-32.

¹⁴⁸ Petition, Volume VI, at VI-28-29.

¹⁴⁹ *Id.* at VI-12.

¹⁵⁰ *Id.* at VA-13-14.

¹⁵¹ *Id.* at VI-21.

¹⁵² *Id.* at VI-22.

Vietnam

- Export financing by SOCBs: allows banks to offer trade financing by making loans against trade receivables.¹⁵³
- Preferential Lending to Exporters by SOCBs: lending to exporters at preferential rates.¹⁵⁴
- Export Credits from the Vietnam Development Bank: export credits provided at preferential interest rates.¹⁵⁵
- Agribank Support for Organic Agriculture: policy loans to encourage the development of organic and ecological farming models.¹⁵⁶
- Income Tax Credit for Exporters: companies engaged in exporting goods are eligible for additional income tax preferences.¹⁵⁷
- Import Duty Exemptions for Imports Used to Produce Exported Goods: provides import duty exemptions from imports used to produce exported goods.¹⁵⁸
- Refund for Import Duties on Raw Materials Used to Produce Exports: companies that have already paid import duties on goods imported for use in the manufacture of exports are eligible to receive refunds on those duties.¹⁵⁹
- Import Duty Exemptions on Imported Raw Materials for Export Processing Enterprises and Export Processing Zones: goods imported from foreign countries to non-tariff zones and used within the non-tariff zones do not incur import duties.¹⁶⁰
- Fishery Infrastructure Investment and Upgradation Project: investments in upgrading infrastructure and improving fishery logistic services to meet the requirements of the seafood supply chain.¹⁶¹

Numerous foreign producers of frozen warmwater shrimp benefit from these and other subsidies, and, as discussed below, are highly focused on increasing production and targeting attractive export markets (primarily the United States) as a result.

¹⁵³ *Id.* at 23-24.

¹⁵⁴ *Id.* at 29.

¹⁵⁵ *Id.* at 30-31.

¹⁵⁶ *Id.* at 33.

¹⁵⁷ *Id.* at 37.

¹⁵⁸ *Id.* at 47.

¹⁵⁹ *Id.* at 49.

¹⁶⁰ *Id.* at 53.

¹⁶¹ *Id.* at 71.

4. Subject producers have a large and growing capacity and exports

The Commission found in the recently completed sunset review that the four subject countries were the world's four largest shrimp exporters in 2021.¹⁶² The four subject countries exported over four billion pounds of frozen warmwater shrimp to the world, with 1.6 billion pounds exported to the U.S. market.¹⁶³ Exports from the four subject countries thus dominated the U.S. market in 2021, when apparent U.S. consumption was 1.9 billion pounds.¹⁶⁴ The import levels from the subject countries remained steady in 2022 according to import data submitted as part of the Petition.¹⁶⁵ In fact, [

].¹⁶⁶ [

],¹⁶⁷ but [

].¹⁶⁸

Meanwhile, domestic landings plummeted by 28.6 percent from the first half of 2022 to the first half of 2023.¹⁶⁹

If orders are not imposed, the volume of U.S. imports of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam will continue to grow, both absolutely and relative to domestic consumption. If no action is taken, the domestic shrimp industry will be forced to

¹⁶² See *Shrimp 2023 ITC Sunset* at IV-62–IV-63 (Table IV-39).

¹⁶³ See Petition, Volume I, at Exhibit I-14.

¹⁶⁴ See *Shrimp 2023 ITC Sunset* at I-43 (Table I-13).

¹⁶⁵ See Petition, Volume I, at 18 and Exhibit I-14.

¹⁶⁶ See Petitioner's Questionnaire Response Aggregations, attached at **Exhibit 1**.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See Petition, Volume I, at Exhibit I-8.

choose between tying up their boats, idling their processing facilities, or lowering their prices to unreasonable levels to compete against the massive volume of imports in the U.S. market. The domestic industry was already denied the opportunity to participate in the growth in demand that occurred over the period of investigation, and the domestic industry's market share decreased from 8.5 percent in 2020 to 7.4 percent in 2022.¹⁷⁰ These trends do not appear to have an expiration date if relief is not imposed.

There is significant evidence of the substantial and growing production and capacity in the four subject countries. Some examples of their expansions are highlighted below:

- The Asian Development Bank (“ADB”) has approved a \$93 million loan for the Indonesian shrimp farming sector.¹⁷¹
- An Indian company is developing a fish feed plant and processing facility with a fish feed production capacity of 300 MT per day in India.¹⁷²
- Cargill's joint venture with Skyvest will expand its shrimp-feed production capabilities and nearly double its shrimp feed production in Ecuador, which will help fuel 1.5 million metric tons of shrimp exports, which are “showing no signs of slowing down.”¹⁷³
- The government of India is offering subsidies to those interested in starting in shrimp farming.¹⁷⁴
- The Indonesian government plans to establish aquaculture villages with an area of 1,800 hectares per year.¹⁷⁵
- Hendrix Genetics opened an Indonesian broodstock facility with a production capacity of 100,00 SPF vannamei broodstock per year after having already run a genetic program for

¹⁷⁰ See Petition, Volume I, at 19.

¹⁷¹ See Petition, Volume I, at Exhibit I-18 (Asian Development Bank, “ADB Approves \$93 Million Loan for Indonesia Shrimp Farming Sector” (Dec. 15, 2022)).

¹⁷² *Id.* (“Ananda Enterprises” page on Ananda Group’s website).

¹⁷³ *Id.* (thefishsite, “Cargill to ‘nearly double’ its shrimp feed production in Ecuador” (Oct. 31, 2022)).

¹⁷⁴ *Id.* (Meri Kheti, “Earn bumper profits by farming shrimp, you get subsidy, know how” (Dec. 7, 2022)).

¹⁷⁵ *Id.* (Hatchery Feed Management, “Indonesia to establish aquaculture villages” (Jan. 17, 2022)).

Ecuador’s shrimp farm industry with the capacity for 400 million post-larvae per month.¹⁷⁶

- The Indonesian shrimp producer PMMP made plans to build a fifth processing facility to process shrimp from its 11 shrimp ponds and is “especially keen on the U.S. market, especially as the Sino-U.S. trade war drags on.”¹⁷⁷
- Ecuador and Biogemar are investing in generating shrimp that has greater growth rates and disease resistance.¹⁷⁸
- The government of India has set a shrimp production target of 2 million metric tons for 2024.¹⁷⁹
- Vietnam hit its highest shrimp level in two years in August, and further investment could lead Vietnam to increase shrimp production by 2 to 3 million metric tons.¹⁸⁰

These efforts to increase production and capacity are further confirmed in the foreign producer questionnaire responses submitted in these investigations, as summarized below:

- []¹⁸¹
- []¹⁸²
- []¹⁸³

¹⁷⁶ See Intrafish, “Hendrix Genetics opens Indonesia broodstock facility, giving nation’s shrimp farmers direct access to SPF vannaemei” (Oct. 24, 2022), attached as **Exhibit 7**.

¹⁷⁷ See SeafoodSource, “Indonesian shrimp producer PMMP expands to accommodate shifting market” (May 31, 2019), attached as **Exhibit 8**.

¹⁷⁸ See Petition, Volume I, at Exhibit I-18 (Undercurrentnews, “Investment, genetics and technology, keys to the growth of the Ecuadorian aquaculture industry” (Mar. 25, 2022)).

¹⁷⁹ *Id.* (Antara News, “Ministry working to boost shrimp production to 2 mln tons” (Sept. 12, 2022)).

¹⁸⁰ See thefishsite, “How to increase Vietnam’s shrimp production by 2-3 million tonnes” (Sept. 16, 2022), attached as **Exhibit 9**.

¹⁸¹ See []¹⁸¹

¹⁸² See []¹⁸²

¹⁸³ See []¹⁸³

- []¹⁸⁴
- []¹⁸⁵
- []¹⁸⁶
- []¹⁸⁷
- []¹⁸⁸
- []¹⁸⁹
- []¹⁹⁰
- []¹⁹¹
- []¹⁹²
- []¹⁹³
- []¹⁹⁴

¹⁸⁴ See []
¹⁸⁵ See []
¹⁸⁶ See []
¹⁸⁷ See []
¹⁸⁸ See []
¹⁸⁹ See []
¹⁹⁰ See []
¹⁹¹ See []
¹⁹² See []
¹⁹³ See []
¹⁹⁴ See []

- [].¹⁹⁵
- [].¹⁹⁶

Subject producers also have substantial unused capacity to increase production and exports in the absence of orders. In its recent sunset review, the Commission found that responding Indian producers had 480 million pounds of unused capacity and responding Vietnamese producers had 64 million pounds of unused capacity – enough for the two countries to increase production by more than half a billion pounds on existing equipment alone.¹⁹⁷ In addition to the four subject countries’ commitment and investment in increasing production and capacity, subject producers are highly export-oriented and attracted to the U.S. market. The four subject countries were the world’s four largest shrimp exporters in 2021,¹⁹⁸ and 1.6 billion of the total four billion pounds of exports worldwide were exported to the United States.¹⁹⁹ This means that in 2021 the four subject countries had about 2.4 billion pounds of shrimp exported to third countries that could be diverted to the U.S. market if orders are not imposed. The exports to the United States from the four subject countries [

].²⁰⁰ There is already some indication that third-country barriers could cause an enormous amount of exports to pour into a U.S. market that is already saturated with imports. Specifically, China, which is one of the biggest global markets for shrimp imports

¹⁹⁵ See [].

¹⁹⁶ See [].

¹⁹⁷ See *Shrimp 2023 ITC Sunset* at IV-32 (Table IV-13) and IV-53 (Table IV-31).

¹⁹⁸ See *id.* at IV-62–IV-63 (Table IV-39).

¹⁹⁹ See Petition, Volume I, at Exhibit I-14.

²⁰⁰ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

besides the United States, has been experiencing a surplus of shrimp, which has affected its major export market partner, Ecuador.²⁰¹ A decline in China’s market for shrimp imports will drive Ecuador and other subject countries to divert their enormous capacity, production, and excess capacity to other attractive markets like the United States

5. Subject producers have demonstrated their ability to rapidly penetrate the U.S. market

Imports of frozen warmwater shrimp from all four subject countries are significant and rose rapidly over the period of investigation.²⁰² Subject imports also gained market share at the expense of the domestic industry over the period of investigation.²⁰³ Testimony offered during the Commission’s staff conference explained import trends during each year of the period of investigation, and these trends demonstrate that subject producers have the ability to export high volumes of shrimp to the United States at any given time.²⁰⁴ [

],²⁰⁵ but [

].²⁰⁶ U.S. importers have [

].²⁰⁷ When

²⁰¹ See Undercurrentnews, “Slowdown in Chinese demand worries Ecuador shrimp sector despite exports hitting records” (Aug. 2, 2023), attached as **Exhibit 10**.

²⁰² See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

²⁰³ See Petition, Volume I, at 19.

²⁰⁴ See Conf. Tr. at 150-54 and 178 (Mr. Seidel and Mr. Pizzuti)

²⁰⁵ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**.

²⁰⁶ *Id.*

²⁰⁷ See Petitioner’s Questionnaire Response Aggregations, attached at **Exhibit 1**; see also National Fisherman, “Shrimp Imports threaten U.S. Gulf fleet” (June 21, 2023) (“Adding to the Louisiana shrimpers’ trouble is the loss of infrastructure to the imports. ‘Foreign companies with all the profits from selling their shrimp here, then come back and buy up the cold storage facilities here and fill them with their shrimp,’ says Cooper. ‘So, what do we do with ours?’”), attached as **Exhibit 6**.

inventories run low, it is likely that imports from the four subject countries will resume their barrage and continually increase their presence in the U.S. market, taking market share at the expense of the domestic industry. These facts demonstrate how subject imports have rapidly surged into and penetrated the U.S. market and will likely continue to do so unless the Commission reaches an affirmative determination. This dramatic surge in imports from the four subject countries, therefore, indicates “the likelihood of substantially increased imports” and supports a finding that in the absence of trade relief, the likely volume of subject imports will be significant.

6. Subject imports will likely enter at prices that will further undersell and suppress and/or depress U.S. prices

Producers of subject merchandise are likely to use aggressive underselling to gain market share if orders are not imposed. Importers of frozen warmwater shrimp from all four countries have already engaged in pervasive underselling of the product to gain market share over the POI as demonstrated in Section II.E.2 of the Petition and reviewed in response to Staff Question 5, above. This underselling has also suppressed and/or depressed U.S. prices, as reviewed in response to Staff Question 6, above. If relief is not imposed, these trends will worsen as foreign producers/importers continue to use underselling to gain market share and further suppress or depress domestic prices.

7. Rising volumes of low-priced imports will further injure the domestic industry

If orders are not imposed, the volume of frozen warmwater shrimp imports from Ecuador, India, Indonesia, and Vietnam will continue to grow, both absolutely and relative to domestic consumption. In 2023, as subject import prices fell, domestic prices also fell for both processors and fishermen. The previous sunset review and the petition have shown the grave effects of these low-priced imports on the domestic processing industry. As demonstrated in

testimony at the Commission’s staff conference and in the petition, shrimp fishermen have suffered greatly as well. According to news reports, low-priced imports have forced half of the shrimp boats in the Gulf to tie up because they cannot make ends meet in a “dying industry.”²⁰⁸ Ida River, a bookkeeper for a shrimp company in the Gulf for over 40 years, notes that when she started her job decades ago, there were around 500 boats in her area, but less than a hundred remain by the shores today as they welcome the “worst year” they’ve ever seen.²⁰⁹ Domestic shrimp fishermen have also tried to rally support from their elected officials for the industry due to increasingly low dockside prices, sometimes falling under one dollar a pound.²¹⁰ These record low prices force the shrimp fishermen to choose between losing money on the trip or not being able to sell their catch at all.²¹¹ These sentiments are echoed by shrimp fishermen that testified in the Commission’s staff conference.²¹² Dockside prices for major count sizes have crashed by 40 percent or more from June of last year to June of this year, with both processors and fishermen forced to lower their own prices, despite their adjustments and investments.²¹³ The domestic industry cannot endure much longer without relief. As Mr. Antley noted in his testimony, the

²⁰⁸ See NPR, “Americans love shrimp. But U.S. shrimpers are barely making ends meet” (Aug. 4, 2023), attached as **Exhibit 11**.

²⁰⁹ *Id.*

²¹⁰ See National Fisherman, “U.S. shrimping communities seek disaster declaration over low prices” (Sept. 4, 2023), attached as **Exhibit 12**.

²¹¹ *Id.*

²¹² See, e.g., Conf. Tr. at 64 (Mr. Trahan).

²¹³ See Conf. Tr. at 17 and 20 (Ms. Drake and Mr. Avery). Mr. Avery’s testimony during the hearing noted that “Again and again they use the lower prices of imports to push our prices down. We spent 14 years and hundreds of million of dollars to get sustainably certified, in our hopes that it would give us a leg up” while Mr. Antley highlighted the importance of price in all negotiations. He stated that “Price is a key factor in all of our sales negotiations, and import prices are the main driver. When import prices fall, we have two choices: follow them down or lose volume. It’s that simple.”. See also Petition, Volume I, at Exhibit I-8 (monthly landings data).

industry will not be able to survive “the next few years” if orders are not imposed.²¹⁴ Without relief, the worst years for the domestic shrimp industry will just turn into a distant memory represented by idled processing facilities, tied up boats, and deserted docks.

8. Conclusion

In sum, the statutory factors the Commission must consider in deciding threat of injury show a reasonable indication of an imminent threat of further material injury from subject imports. Existing trends in import market share, underselling, and price suppression or depression would lead to further injury if they continue without relief. The frozen warmwater shrimp industries in the subject countries have ample and growing capacity to export in ever more injurious quantities, and they have every incentive to do so given the glut in global supply, softening demand in China and elsewhere, and the attractiveness of the U.S. market. Under these circumstances, there exists a serious threat of further material injury to the domestic industry.

²¹⁴ See Conf. Tr. at 87 (Mr. Antley).

TABLE OF EXHIBITS

Exhibit	Description	BPI / Public?
1	Petitioner’s Questionnaire Response Aggregations	BPI
2	Excerpt of U.S. International Trade Commission, Inv. Nos. 731-TA-1064 and 1066–1068 (Third Review), <i>Hearing Transcript</i>	Public
3	Table detailing product offerings of U.S. shrimp producers	Public
4	Examples of misleading packaging	Public
5	Carolina Coast Online, “Valuable N.C. shrimp fishery suffering, group wants financial aid for shrimpers across Southeastern and Gulf Coasts” (Sept. 12, 2023)	Public
6	National Fisherman, “Shrimp Imports threaten U.S. Gulf fleet” (June 21, 2023)	Public
7	Intrafish, “Hendrix Genetics opens Indonesia broodstock facility, giving nation’s shrimp farmers direct access to SPF vannaemei” (Oct. 24, 2022)	Public
8	SeafoodSource, “Indonesian shrimp producer PMMP expands to accommodate shifting market” (May 31, 2019)	Public
9	thefishsite, “How to increase Vietnam’s shrimp production by 2-3 million tonnes” (Sept. 16, 2022)	Public
10	<i>See Undercurrentnews</i> , “Slowdown in Chinese demand worries Ecuador shrimp sector despite exports hitting records” (Aug. 2, 2023)	Public
11	NPR, “Americans love shrimp. But U.S. shrimpers are barely making ends meet” (Aug. 4, 2023)	Public
12	National Fisherman, “U.S. shrimping communities seek disaster declaration over low prices” (Sept. 4, 2023)	Public