

November 20, 2023

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

VIA ELECTRONIC FILING

The Honorable Lisa R. Barton
Acting Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

**Re: Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam:
Postconference Brief**

Dear Secretary Barton:

On behalf of the Ad Hoc Shrimp Trade Action Committee (“AHSTAC”) and in accordance with 19 C.F.R. §§ 201.8(d)(2) and 207.15 (2023), we hereby file AHSTAC’s Postconference Brief in the above-captioned proceeding. Consistent with the Federal Register Notice setting forth the schedule for this proceeding published by U.S. International Trade Commission (“ITC” or “Commission”)¹ and 19 C.F.R. § 207.15, this submission is timely filed.

The submission is being filed electronically in conformity with 19 C.F.R. § 201.8(d)(1) and the Commission’s Handbook on Electronic Filing Procedures. AHSTAC has appended the

¹ See U.S. International Trade Commission, 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 (Oct. 31, 2023).

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certification required by 19 C.F.R. § 207.3(a) to this submission. Further, in accordance with 19 C.F.R. §§ 201.16(c) and 207.3(b), this submission has been served on all other parties to the investigation as indicated on the attached certificate of service.

Please contact the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,



Nathaniel Maandig Rickard

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Counsel to Ad Hoc Shrimp Trade Action Committee

Enclosure

**PUBLIC CERTIFICATE OF SERVICE
FROZEN WARMWATER SHRIMP FROM ECUADOR, INDIA,
INDONESIA, AND VIETNAM
701-TA-699-702 and 731-TA-1659-1660 (PRELIMINARY)**

I, Nathaniel M. Rickard, hereby certify that a copy of the foregoing submission was served on this 20th day of November 2023, by electronic mail on the following parties:

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In accordance with section 207.3(a) of the U.S. International Trade Commission's rules, I 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.

Dated: November 20, 2023



Nathaniel Maandig Rickard

Number of Pages (including Exhibits): 246

PUBLIC DOCUMENT

**BEFORE THE UNITED STATES
INTERNATIONAL TRADE COMMISSION**

Inv. Nos. 701-TA-699-702 and 731-TA-1659-1660 (Prelim)

**CERTAIN FROZEN WARMWATER SHRIMP FROM ECUADOR, INDIA,
INDONESIA, AND VIETNAM**

**POSTCONFERENCE BRIEF
SUBMITTED ON BEHALF OF THE
AD HOC SHRIMP TRADE ACTION COMMITTEE**

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November 20, 2023

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I. INTRODUCTION

The Ad Hoc Shrimp Trade Action Committee (“AHSTAC”) submit these comments to the U.S. International Trade Commission (“ITC” or “Commission”) in support of the petitions for trade relief filed by the American Shrimp Processors Association (“ASPA” or “Petitioner”).

II. THERE IS ONE DOMESTIC LIKE PRODUCT THAT INCLUDES FRESH AND FROZEN WARMWATER SHRIMP

“In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise, the Commission first determines the ‘domestic like product’ and the ‘industry.’”¹ Section 771(10) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”²

“The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of ‘like’ or ‘most similar in characteristics and uses’ on a case-by-case basis.”³ In establishing a definition of the “domestic like product,” “{t}he Commission must base its domestic like product determination on the record in these investigations.”⁴ “The Commission is not bound by prior determinations,

¹ Gas Powered Pressure Washers from Vietnam, Inv. No. 731-TA-1598 (Final), USITC Pub. 5465 (Oct. 2023), at 3-4 (citing 19 U.S.C. § 1677(7)(G)(iii)).

² 19 U.S.C. § 1677(10).

³ Certain Freight Rail Couplers and Parts Thereof from China, Inv. Nos. 701-TA-682 and 731-TA-1592 (Final), USITC Pub. 5438 (July 2023), at 6 (footnotes omitted).

⁴ Certain Potassium Phosphate Salts from China, Inv. Nos. 701-TA-473 and 731-TA-1173 (Final), USITC Pub. 4171 (July 2010), at 5.

even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent domestic like product issues.”⁵

In this investigation, the Commission addresses claims related to a scope of imported products that are effectively the same as those confronted by the agency in multiple previous antidumping duty proceedings and prior countervailing duty investigations. As discussed below, in each of those instances, the Commission has consistently found a single domestic like product comprised of fresh warmwater shrimp and frozen warmwater shrimp as defined in the U.S. Department of Commerce’s (“Commerce”) scope definition. Although the Commission is not bound by these prior determinations, nothing on the record of this proceeding warrants a different outcome.

A. The Commission Has Repeatedly Found a Single Domestic Like Product Encompassing Both Fresh and Frozen Warmwater Shrimp

In the antidumping duty investigations conducted in 2004, the Commission defined the domestic like product as consisting of “fresh warmwater shrimp and prawns and those frozen warmwater shrimp and prawn products defined in Commerce’s scope definition.”⁶ In the changed circumstances reviews conducted shortly after the imposition of the antidumping duty orders, the Commission observed that “{t}he record in these reviews contains no information indicating that the characteristics of fresh or frozen shrimp have changed since the time of the

⁵ Id.

⁶ 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 11 (“Final AD Injury Determination”).

original investigations.”⁷ As a result, the Commission again defined the domestic like product to be “fresh warmwater shrimp and prawns and those frozen warmwater shrimp and prawns described in Commerce’s scope definition.”⁸

In the first sunset review of the antidumping duty orders, the Commission observed that the “Domestic Parties argue that the Commission should define the domestic like product to encompass both fresh warmwater shrimp and those frozen articles described by the scope definition.”⁹ The Commission agreed, finding that “{t}he record in these reviews does not indicate that there have been any changes in the product characteristics of either fresh or frozen warmwater shrimp since the original investigations.”¹⁰ In result, the Commission again defined “a single domestic like product encompassing fresh warmwater shrimp and the frozen warmwater shrimp described by the scope definition.”¹¹

In the second sunset review of the antidumping duty orders, the Commission once again observed that “{t}he record in these reviews does not indicate that there have been any changes in the product characteristics of either fresh or frozen warmwater shrimp since the original

⁷ Certain Frozen Warmwater Shrimp and Prawns from India and Thailand, Inv. Nos. 751-TA-28-29 (Review), USITC Pub. 3813 (Nov. 2005), at 7 (“Changed Circumstances Determination”).

⁸ Id.

⁹ Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Pub. 4221 (Mar. 2011), at 6 (“First Sunset Review”).

¹⁰ Id. at 6 (footnote omitted).

¹¹ Id.

investigations and first five-year reviews.”¹² Thus, the Commission, again, defined “a single domestic like product encompassing fresh warmwater shrimp and the frozen warmwater shrimp described by the scope definition.”¹³

Similarly, in the recently completed third sunset reviews of the antidumping duty orders, the Commission observed that “{t}he record in these reviews does not indicate that there have been any changes in the characteristics or uses of either fresh or frozen warmwater shrimp since the prior proceedings.”¹⁴ “Given this, and the lack of any contrary argument, we again define a single domestic like product encompassing fresh warmwater shrimp and the frozen warmwater shrimp described by the scope definition.”¹⁵

The Commission reached the same conclusion in the countervailing duty investigations conducted in 2013. In the final determination issued by the agency in that proceeding, the Commission explained:

In the preliminary determinations, the Commission also considered whether to include fresh warmwater shrimp in the definition of the domestic like product, as it did in prior Commission proceedings concerning this product. Because fresh and processed frozen shrimp are products at different stages of the same production process, the Commission concluded that use of the “semifinished product” like product analysis was appropriate. The Commission found that the vast majority of fresh warmwater shrimp is dedicated for further processing into frozen shrimp; the initial stages of processing do not significantly change the physical characteristics and uses of the product and appear to add at most moderate value to the product; the basic processing needed to transform fresh

¹² Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Second Review), USITC Pub. 4688 (May 2017), at 9 (footnote omitted) (“Second Sunset Review”).

¹³ Id.

¹⁴ Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1064 and 1066-1068 (Third Review), USITC Pub. 5432 (June 2023), at 15 (footnote omitted) (“Third Sunset Review”).

¹⁵ Id.

shrimp to processed shrimp – freezing and deheading – can be and is performed directly on the vessel; and there are separate markets for harvested (whether fresh or brine-frozen) shrimp and processed warmwater shrimp in the sense that vessels sell their catch to a dock house or processor, while processors sell shrimp to end users and distributors. However, fresh shrimp and shrimp frozen on the vessel are both sold at the dock.

The record in the final phase of these investigations does not indicate that there have been any changes in the product characteristics of either fresh or frozen warmwater shrimp since the preliminary phase of the investigations to warrant defining the domestic like product differently. Therefore, for the same reasons discussed in the preliminary determinations, we include fresh shrimp in the definition of the domestic like product, whether frozen on board a vessel or further processed suitable for commercial use or sale. In light of these factors, we define a single domestic like product encompassing both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope definition.¹⁶

Thus, the Commission has now conducted *six* different proceedings in which the agency has defined the domestic like product in the context of unfairly-traded frozen warmwater shrimp. In each of those proceedings, the Commission has consistently concluded that the domestic like product encompasses both fresh warmwater shrimp and the frozen warmwater shrimp described in the scope definition.

B. The Record in this Proceeding Supports Finding a Single Domestic Like Product Inclusive of Fresh Shrimp

In the 2004 antidumping duty investigations of frozen warmwater shrimp and the 2013 countervailing duty investigations of frozen warmwater shrimp, the Commission “used the ‘semifinished products’ like product analysis, because fresh shrimp is overwhelmingly used as an input in the production of the frozen product.”¹⁷ Under the semifinished product analysis, the

¹⁶ 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 (footnotes omitted) (“Final CVD Injury Determination”)

¹⁷ Final AD Injury Determination at 6; see also Final CVD Injury Determination at 9.

Commission determines whether to treat the semifinished and finished products as one like product or two after considering:

- (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses;
- (2) whether there are perceived to be separate markets for the upstream and downstream articles;
- (3) differences in the physical characteristics and functions of the upstream and downstream articles;
- (4) differences in the cost or value of the vertically differentiated articles; and
- (5) the significance and extent of the process used to transform the upstream into the downstream articles.¹⁸

As fully explained by the American Shrimp Processors Association (“ASPA” or “Petitioner”) in its petitions for trade relief, the factors considered in the semifinished like product analysis continue to support the inclusion of fresh warmwater shrimp in the domestic like product.¹⁹ In Attachment II to the Initiation Checklist, Commerce summarized ASPA’s contentions as follows:

1) Whether the upstream article is dedicated to the production of the downstream article or has independent uses

The petitioner states that the vast majority of fresh warmwater shrimp – as much as 95 percent –undergoes further processing. The petitioner notes that in *Shrimp 2023 Sunset*, the ITC concluded that fresh shrimp is “overwhelmingly used as an input in the production of frozen product” and is “overwhelmingly sold in processed form.”

2) Whether there are perceived to be separate markets for the upstream and downstream articles

¹⁸ Certain Stilbenic Optical Brightening Agents from China and Taiwan, Inv. Nos. 731-TA-1186-87 (Preliminary), USITC Pub. 4236 (May 2011), at 10-11.

¹⁹ See Letter from Schagrin Associations to the U.S. Department of Commerce and U.S. International Trade Commission, Inv. Nos. 701-TA-699-702 and 731-TA-1659-1660 (Oct. 25, 2023), at Volume I, pp. 2-5.

The petitioner states that there are separate markets for fresh warmwater shrimp and frozen warmwater shrimp in the sense that vessels sell their catch to a dock house or processor, while processors sell shrimp to end users and distributors. The petitioner notes that fresh shrimp and shrimp frozen on the vessel are both sold at the dock.

3) Differences in the physical characteristics and functions of the upstream and downstream articles

The petitioner contends that processing of fresh warmwater shrimp into frozen warmwater shrimp does not change the essential character or functions of the upstream article. The petitioner states that the ITC has previously noted that the “initial stages of processing did not significantly change the physical characteristics and use of the product and appeared to add at most moderate value to the product.”

4) Differences in the costs or value of the vertically differentiated articles

The petitioner states that the ITC has previously found that processing adds at most moderate value to frozen warmwater shrimp. The petitioner also notes that in *Shrimp 2023 Sunset*, the ITC found that raw material costs represent the largest component of the price of frozen warmwater shrimp, with the ratio of raw material costs to net sales ranging from 74.1 to 79.3 percent. The petitioner states that the ITC also found in *Shrimp 2023 Sunset* that 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 of the final sales value of the frozen product. The petitioner contends that 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.

5) The significance and extent of the processes used to transform the upstream into the downstream articles

The petitioner contends that the most basic processing needed to transform fresh warmwater shrimp to processed shrimp – freezing and deheading – is not extensive. The petitioner states that processors use a variety of cleaning, weighing, and sorting equipment, as well as blast freezers, to further process frozen, shell-on shrimp, and may also peel and devein the shrimp.²⁰

²⁰ U.S. Department of Commerce, *Countervailing Duty Investigation Initiation Checklist*, Case No. C-533-921 (Nov. 14, 2023), at Attachment II, pp. 3-4 (footnotes omitted), attached as **Exhibit 1**.

Evaluating the record before it, Commerce “determined that the domestic like product consists of frozen warmwater shrimp, as defined in the scope of the Petitions, as well as fresh warmwater shrimp.”²¹

In light of the record in this proceeding and consistent with Commerce’s determination, the Commission should once again conclude that fresh warmwater shrimp, as a semifinished product, is part of the same domestic like product as the processed warmwater shrimp products within the scope definition.

III. THERE IS ONE DOMESTIC INDUSTRY

Section 771(4)(A) of the Tariff Act defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²² “In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.”²³

In this investigation, the Commission addresses claims related to a scope of imported products that are effectively the same as those confronted in multiple antidumping duty proceedings and a prior countervailing duty proceeding. As discussed above, in each of those proceedings, the Commission consistently found a single domestic like product comprised of fresh warmwater shrimp and frozen warmwater shrimp as defined in Commerce’s scope

²¹ Id. at 5 (footnote omitted).

²² 19 U.S.C. § 1677(4)(A).

²³ Certain Preserved Mushrooms from France, Inv. No. 731-TA-1587 (Final), USITC Pub. 5393 (Jan. 2023), at 10.

definition. For the reasons set forth above, the Commission should make the same finding in the instant proceeding. Further, consistent with a domestic like product definition encompassing both fresh and frozen warmwater shrimp, the Commission should find a single domestic industry comprised of shrimp harvesters (i.e., shrimp fishermen and farmers) and shrimp processors. Such a definition is fully consistent with the Commission’s findings in the prior antidumping duty proceedings and the previous countervailing duty investigations. Moreover, as explained below, an application of the “Agricultural Provision” to determine the contours of the domestic industry should also lead the Commission to conclude that the domestic industry is comprised of both shrimp harvesters and shrimp processors.

A. The Commission Has Consistently Employed the Same Definition of the Domestic Shrimp Industry

The Commission in the antidumping duty investigations found that the domestic industry producing the like product was a single domestic industry, comprised “of: (1) all entities that harvest freshwater shrimp (i.e., fishermen and shrimp farmers) and (2) all producers of frozen shrimp products within the scope definition except for” certain processors excluded pursuant to the statutory provision regarding related parties (19 U.S.C. § 1677(4)(B)) and/or for want of sufficient production related activities.²⁴ In the changed circumstances review, the Commission again defined the domestic industry as consisting of: “(1) all entities that harvest fresh warmwater shrimp (i.e., fishermen and shrimp farmers); and (2) all processors of frozen shrimp products within the scope definition except for” certain processors excluded based on related party status or a lack of sufficient production related activities.²⁵

²⁴ Final AD Injury Determination at 18.

²⁵ Changed Circumstances Determination at 7. As explained by the Commission, the definition of the domestic industry in the changed circumstances reviews differed “slightly” from that in the original investigations in that a processor previously excluded

In the first sunset review of the antidumping duty orders, the Commission defined “a single domestic industry encompassing all shrimp fishermen and processors of warmwater shrimp except” certain processors excluded from the industry that were either related to an exporter/importer or did not perform sufficient production-related activity to be considered domestic producers.²⁶ In the second sunset review of the antidumping duty orders, the Commission determined that “in light of the definition of the domestic like product and the above analysis, we define a single domestic industry encompassing all fishermen and processors of warmwater shrimp.”²⁷ And in the third sunset review of the antidumping duty orders, the Commission explained that there were no related party issues implicated by the record, that all processors had shown sufficient production related activities, and, as such, “{i}n light of this and our definition of the domestic like product, we define a single domestic industry consisting of all fishermen and processors of frozen warmwater shrimp.”²⁸

Similarly, in the countervailing duty investigations, the Commission employed the same, consistent definition of the domestic industry, omitting a single domestic producer due to its activities as a related party: “Accordingly, in light of the definition of the domestic like product

from the industry as a related party in the original investigations was included in the reviews because the company “did not import subject merchandise from India or Thailand during the period examined” Id. at 7 n.29.

²⁶ First Sunset Review at 8-10.

²⁷ Second Sunset Review at 11.

²⁸ Third Sunset Review at 18 (footnote omitted). In the footnote, the Commission observed that “the definition of the domestic industry also includes U.S. shrimp farm producers” Id. at 18 n.54.

and the foregoing analysis, we define a single domestic industry encompassing all warmwater shrimp fishermen and processors of warmwater shrimp, except for Tampa Bay Fisheries.”²⁹

Here, because the domestic like product encompasses both fresh warmwater shrimp as a semifinished product and frozen warmwater shrimp as a finished product, the Commission should once again define a single domestic industry encompassing all warmwater shrimp fishermen/farmers and processors of warmwater shrimp.

B. A Definition of the Domestic Industry Encompassing Harvesters Would Also Be Consistent with the Agricultural Provision

In addition to establishing that fresh warmwater shrimp should be included in the domestic like product as a semifinished product, ASPA has also demonstrated that it would be appropriate to define a single domestic industry as encompassing harvesters pursuant to Section 771(4)(E) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(E)).³⁰ In Attachment II to the Initiation Checklist, Commerce summarized ASPA’s analysis as follows:

According to the petitioner, fresh warmwater shrimp are substantially devoted to the production of frozen warmwater shrimp. The petitioner states that in *Shrimp 2004 Preliminary*, three ITC Commissioners noted that over 90 percent of fresh warmwater shrimp is dedicated to processing into frozen warmwater shrimp. Further, the petitioner notes that in *Shrimp 2013 Preliminary*, the ITC stated that 95 percent, the “vast majority of fresh warmwater shrimp,” is dedicated to processing. The petitioner states that likewise, processed frozen warmwater shrimp are produced substantially or completely from fresh warmwater shrimp. The petitioner states that in *Shrimp 2023 Sunset*, the ITC determined that the processing of raw shrimp includes steps such as washing, grading, peeling, deveining, and cooking. The petitioner states that in *Shrimp 2023 Sunset*, the ITC determined that fresh warmwater shrimp accounted for 96.5 percent of the value

²⁹ Final CVD Injury Determination at 12 (footnote omitted). In the footnote, the Commission noted that no shrimp farming operation had responded to the agency’s questionnaire but that “U.S. shrimp farm producers would also be included in the domestic industry.” *Id.* at 12 n.45.

³⁰ See Letter from Schagrin Associations to the U.S. Department of Commerce and U.S. International Trade Commission, Inv. Nos. 701-TA-699-702 and 731-TA-1659-1660 (Nov. 13, 2023), at 4-10.

of all raw materials used in processing frozen warmwater shrimp in 2021. The petitioner contends that frozen warmwater shrimp are thus fundamentally fresh warmwater shrimp that have gone through uncomplicated processing with only minimal, if any, addition of other material inputs. The petitioner further notes that the data collected by the ITC in *Shrimp 2023 Sunset* also showed that raw material costs accounted for between 83.8 percent and 86.9 percent of the domestic processors' total cost of goods sold, and from 76 percent to over 79 percent of the net sales value of the processed frozen warmwater shrimp for domestic frozen warmwater shrimp processors between 2019 and 2021. The petitioner contends that fresh warmwater shrimp thus would have accounted for between 73.3 percent and 76.5 percent of the total net sales value of processed frozen warmwater shrimp, and therefore, there exists a single continuous line of production from fresh warmwater shrimp through frozen warmwater shrimp, pursuant to section 771(4)(E)(I) of the Act.

Second, we considered the coincidence of economic interest between harvesters of fresh warmwater shrimp and the processors of frozen warmwater shrimp. The petitioner contends that the coincidence of economic interests of the fresh warmwater shrimp boats (*i.e.*, harvesters) and frozen warmwater shrimp processors is clear through the support for the Petitions that has been expressed by over 850 shrimp harvesters (accounting for the majority of domestic landings). The petitioner states that the coincidence of economic interest is further demonstrated by the high correlation of prices from the wholesale (processors') level to the price the harvesters will receive for their catch, as noted by three ITC Commissioners in *Shrimp 2004 Preliminary*. The petitioner contends that the interests of frozen warmwater shrimp processors and fresh warmwater shrimp harvesters are further intertwined due to the high percentage of the processors' cost that the fresh warmwater shrimp represent. The petitioner further contends that if market prices for frozen warmwater shrimp are depressed by dumped and subsidized imports, the pricing pressure not only impacts processors, but also the prices they are able to pay for their largest input: fresh warmwater shrimp from the harvesters. The petitioner states that if the frozen warmwater shrimp processors cannot purchase fresh shrimp at prices that allow them to produce processed shrimp for a cost they can cover given the market prices, the processors will fail. The petitioner further states that conversely, if the processors cannot pay the harvesters prices that create an economic incentive to harvest shrimp, the fresh warmwater shrimping effort will decline, and so will the supply available to frozen warmwater shrimp processors. The petitioner states that the frozen warmwater shrimp processors' economic outcome is therefore intertwined with the economic outcome of the harvesters. The petitioner states that fresh warmwater shrimp harvesters typically harvest only fresh warmwater shrimp, so the harvesters cannot switch to another product to harvest, and must rely on the price they are able to receive from the frozen warmwater shrimp processors or the docks that sell to the processors. For support, the petitioner states that in *Shrimp 2023 Sunset*, the ITC described how intertwined the outcomes for processors and harvesters are, to the point that both are reliant on the same seasonal price trends "to make money (through higher offseason prices) and make needed repairs and

upgrades.” The petitioner provides examples from industry witnesses in *Shrimp 2023 Sunset*, where a shrimp boat operator explained that if the prices for fresh warmwater shrimp are too low, the boat owner can end up owing money to its customer for the cost of its trip. The petitioner notes that processors also testified that they are very aware that their interests are intertwined with the harvesters’ interests, leading processors to struggle to ensure that they are maintaining sufficient prices for the harvesters. The petitioner states that if the prices the processors pay are insufficient to cover the costs for a harvester to shrimp, the boats will not go out, and the processors will have no fresh warmwater shrimp to process and, in turn, no product to sell. The petitioner further states that processors have to watch costs that impact the harvesters, such as fuel prices, as those costs will impact the prices at which processors will be able to buy, further linking their costs and their interests.³¹

Evaluating the record before it, Commerce found “that there is a substantial coincidence of economic interest between fresh warmwater shrimp harvesters on one hand, and frozen warmwater shrimp processors, on the other.”³² In consequence, Commerce also found “that the agricultural provision of section 771(4)(E) of the Act is satisfied for purposes of analyzing industry support for the Petitions and included fresh warmwater shrimp harvesters along with frozen warmwater shrimp processors in the industry producing the domestic like product.”³³

In this investigation, as explained above, the domestic like product is appropriately defined as encompassing fresh warmwater shrimp as a semifinished product and frozen warmwater shrimp as the finished product. Accordingly, the domestic industry is appropriately defined as inclusive of both shrimp harvesters and shrimp processors. Nevertheless, in light of the record in this proceeding and consistent with Commerce’s findings, the Commission may also conclude that the domestic industry is comprised both of shrimp harvesters and shrimp

³¹ U.S. Department of Commerce, *Countervailing Duty Investigation Initiation Checklist*, Case No. C-533-921 (Nov. 14, 2023), at Attachment II, pp. 6-8 (footnotes omitted), attached as **Exhibit 1**.

³² Id. at 8.

³³ Id.

processors through the application of the “Agricultural Provision” of 19 U.S.C. § 1677(4)(E).

Pursuant to either approach – whether through the definition of the domestic like product under a semifinished product analysis or through the definition of the domestic industry through the application of the “Agricultural Provision” – shrimp harvesters and shrimp processors are the constituent members of the domestic industry.

IV. FROZEN WARMWATER SHRIMP MARKET DATA

In testimony to the Commission at the conference, counsel for Industrial Pesquera Santa Priscila S.A. (“Santa Priscila”) and Sociedad Nacional de Galapagos C.A. (“SONGA”) (collectively, “Ecuadorian Producers”), asserted both that the information collected by the Commission in previous proceedings related to frozen warmwater shrimp is insufficient for the purposes of these investigations (“{w}e regard the standard domestic producers’ questionnaire as no longer sufficient to obtain evidence relevant to the statutory injury criteria”) and that the domestic industry’s claims should be subjected to a heightened standard in this proceeding (“{a}fter 20 years of repeatedly seeking relief from alleged unfair trade, alleged underselling, and alleged price depression, the domestic industry should be required to shoulder a much heavier burden than it has in the past in describing its operations and the nature of the competition that it faces”).³⁴

These assertions are unsupported by law, by agency practice, and by the evidence. To the contrary, the failure of shrimp importers and foreign shrimp industries to demonstrate that subject imports and the domestic like product do not compete directly with one another in the U.S. market in five proceedings conducted by the Commission over the last two decades

³⁴ Letter from to the U.S. International Trade Commission, Inv. Nos. 701-TA-699-702 and 731-TA-1659-1660 (Nov. 14, 2023), at *Staff Conference Testimony of Warren Connelly*, p.1.

indicates that importers shoulder a heavy burden in attempting to establish that changes to the agency's analysis are warranted.

While counsel claims that the importing community has substantially improved its comprehension of the U.S. market over the last two decades (“{t}he respondents have acquired a far more detailed and sophisticated knowledge and understanding over the last twenty years concerning the domestic processing and shrimping sectors”),³⁵ the arguments presented thus far simply parrot claims that have been repeatedly rejected by the Commission in *every* proceeding in which the agency has analyzed the U.S. frozen warmwater shrimp market. At base, in commentary regarding pricing products, geographic markets, channels of distribution, and the financial experience of domestic producers,³⁶ counsel appears to contend that if the Commission would just ask even more questions in a new and different manner, then, at long last, shrimp importer claims of attenuated competition and domestic industry self-harm would finally have some evidentiary support.

In fact, in sharp contrast to the approach of shrimp importers, over the last several years, outside of trade litigation, the domestic shrimp industry has actively worked with federal agencies to improve the information collected and reported relevant to the U.S. shrimp market. From monthly reporting of domestic warmwater shrimp landings in the South Atlantic and Gulf of Mexico, to capturing volumes and value of wild-caught shrimp distinct from farm-raised shrimp imported into the United States, to public disclosure of duties collected on shrimp imports, to manifest information regarding shipments of shrimp by any means other than ocean-going vessels, the domestic shrimp industry has identified gaps in publicly-available information

³⁵ Id.

³⁶ Id. at 2-7.

and endeavored to close them. In this way, the domestic shrimp industry has “acquired a far more detailed and sophisticated knowledge over the last twenty years concerning the” U.S. shrimp market. The domestic shrimp industry is aware of no similar achievements that can be claimed by shrimp importers, as this industry group has long valued opacity over transparency in the U.S. shrimp market.

Because they reflect data issues relevant to competition between subject imports and the domestic like product, two of the U.S. shrimp industry’s initiatives regarding federal government information collection and reporting are described in detail below.

A. NOAA’s Revisions to Monthly Landings

Historically, National Oceanic and Atmospheric Administration (NOAA) Fisheries publishes annual data regarding commercial fishing landings, including warmwater shrimp landings, as part of the agency’s yearly report, *Fisheries of the United States*,³⁷ and also makes annual landings data available through the agency’s online database called *Fisheries One Stop Shop (FOSS)*.³⁸ The annual reporting from NOAA Fisheries covers all fish species landed by U.S. commercial fishermen.

³⁷ See, e.g., NOAA Fisheries, *Fisheries of the United States*, <https://www.fisheries.noaa.gov/national/sustainable-fisheries/fisheries-united-states>.

³⁸ See NOAA Fisheries, *Fisheries One Stop Shop (FOSS)*, <https://www.fisheries.noaa.gov/foss/f?p=215:200:8294899105828:Mail::::>.

Separately, NOAA Fisheries also reports monthly data regarding shrimp landed and menhaden landed in purse-seines in the Southeast region.³⁹ The monthly landings volume data also includes reporting of ex-vessel prices for shrimp landed during that month.⁴⁰

For the domestic shrimp industry, obtaining current information regarding landings of warmwater shrimp in the United States is dependent upon the release schedule adopted by NOAA Fisheries. In the past, there has been a significant delay in the agency's issuance of annual landings information. More recently, NOAA Fisheries has compiled and made available data through *FOSS* comparatively quickly. Nevertheless, due to prior delays, the domestic shrimp industry has consistently sought to reinforce and emphasize the importance of the monthly, interim landings data that NOAA Fisheries has historically reported for the states (or regions of a state) with coastline bordering the Gulf of Mexico (Alabama, the west coast of Florida, Louisiana, Mississippi, and Texas). On a routine basis, the Southern Shrimp Alliance publishes newly-released monthly shrimp landings data from the agency as an update to data previously issued by NOAA Fisheries going back to at least 2002.⁴¹ Over the last several years, the interim monthly data issued by NOAA Fisheries has been subject to substantial revisions when annual data were finally issued. These substantial revisions undermined the utility of the interim monthly data, as the divergence between the interim data and final, corrected data widened over time.

³⁹ See NOAA Fisheries, *Fishery Market News*, <https://www.fisheries.noaa.gov/national/sustainable-fisheries/fishery-market-news>.

⁴⁰ See *id.*

⁴¹ See, e.g., Southern Shrimp Alliance, "Louisiana Posts Weakest Shrimp Landings in Last Fifteen Years" (Apr. 23, 2015), <https://shrimpalliance.com/louisiana-posts-weakest-march-shrimp-landings-in-last-fifteen-years/>.

In response to requests from the Southern Shrimp Alliance, NOAA Fisheries has changed the agency's reporting approach for interim monthly data. These changes have resulted in a longer lag time for reporting monthly landings and, even when these data are eventually released, the reporting will, at times, not include landings from a Gulf state or states. However, the monthly data now released by NOAA Fisheries includes, for the first time, warmwater shrimp landings from states (or regions of a state) with coastline bordering the Atlantic Ocean (the east coast of Florida, Georgia, North Carolina, and South Carolina) and should better reflect actual landings during the subject month. In addition, in order to improve the comparability of newly compiled and released information with historical monthly data, NOAA Fisheries created a database of monthly landings by state with corrected, final data for each month going back to 2002. This revised database was provided to the Southern Shrimp Alliance and the organization, in turn, has been revising and updating its historical databases in order to report the corrected, final data. To date, the Southern Shrimp Alliance has completed and published revisions to its historical database for the month of May⁴² and is currently revising the organization's historical databases for the months of June and July.

In sum, the significant revisions made by NOAA Fisheries to its reporting of warmwater shrimp landings have been with regard to the monthly, interim reporting of volumes. Prior to the changes in approach made recently by the agency, any errors in the monthly, interim data would be corrected when NOAA Fisheries cumulated all monthly data to report a final volume number on an annual basis. While this practice meant that any errors would ultimately be corrected in

⁴² See Southern Shrimp Alliance, "Unprecedented Collapse in Dockside Prices Shown in May Landings Data; NOAA Issues Revised Historical Data" (Sept. 19, 2023), <https://shrimppalliance.com/unprecedented-collapse-in-dockside-prices-shown-in-may-landings-data-noaa-issues-revised-historical-data/>, attached as **Exhibit 2**.

final annual reporting, the errors contained in the monthly reporting were not identified and, as such, the public was unable to discern what portions of the interim reports were reliable in contrast to those portions that contained errors. In result, it was not possible for the domestic shrimp industry to evaluate the extent to which unique circumstances were (or were not) impacting landings. Thus, where a region experienced severe weather, an oil spill, freshwater diversion, or large changes in water temperature, the domestic shrimp industry was unable to assess, with any degree of confidence, the extent to which any such event was impacting shrimp landings.

The changes adopted by the agency and the effort dedicated to correcting historical monthly reporting data should, with time, greatly improve the public's ability to monitor developments with the U.S. commercial shrimp fishery. The domestic shrimp industry is grateful to NOAA Fisheries for the agency's commitment to producing and publishing reliable and timely data regarding warmwater shrimp landings in the United States and is optimistic that, with time, stable and consistent monthly data reporting will provide an important resource for those interested in the U.S. shrimp industry.

B. Amendments to the Harmonized Tariff Schedule of the United States

In comments made to the Commission during the conference, the agency was encouraged by counsel for the Ecuadorian Producers to obtain pricing information regarding certain nonsubject imports, i.e., shrimp imported into the United States from Argentina. However, imports of frozen warmwater from Argentina have remained extremely limited. Argentinian shrimp comprised just 2.01 percent of the volume of scope frozen warmwater shrimp imports into the United States in 2019 (12,972,637 kgs of 644,687,658 kgs), grew to 2.50 percent in 2020 (17,293,296 kgs of 690,807,559 kgs), then fell back to 2.00 percent of volume in 2021 (16,563,307 kgs of 828,151,061 kgs), and was 2.10 percent of scope frozen warmwater shrimp

import volume in 2022 (16,070,019 kgs of 763,533,065 kgs).⁴³ In line with all nonsubject imports, Argentine shrimp import volumes declined as subject imports flooded the United States market. Specifically, from 2020 to 2021, frozen warmwater shrimp imports from Ecuador, India, Indonesia, and Vietnam increased by 25.4 percent, from 593.1 million kilograms to 743.9 million kilograms. At the same time, frozen warmwater shrimp imports from all other sources fell by 13.8 percent, from 97.7 million kilograms in 2020 to 84.2 million kilograms in 2021, with Argentinian shrimp volumes declining by 4.2 percent, from 17.3 million kilograms in 2020 to 16.6 million kilograms in 2021. In other words, as subject imports aggressively targeted the U.S. market, all other sources of warmwater shrimp – including wild-caught Argentinian shrimp – lost volume and market share, in line with the experience of the U.S. shrimp industry and consistent with the Commission’s uninterrupted and repeated findings regarding the nature of competition between and amongst all sources of shrimp in the U.S. shrimp market.

As foreign exporters have continued to argue through conjecture that some shrimp does not compete directly with other shrimp in this market, the domestic shrimp industry, in contrast, has advocated for more precise reporting from the federal government that would permit fulsome evaluations of these claims. Unsurprisingly, the beneficiaries of unfairly-traded shrimp imports do not mention, let alone address, these new analytical tools. Specifically, in response to a request from the Southern Shrimp Alliance, the Harmonized Tariff Schedule of the United States (HTSUS) was revised in July 2021 to provide statistical breakouts between farm-raised and wild-caught warmwater shrimp with the addition of the following ten-digit HTSUS codes for imports of wild-caught warmwater shrimp: 0306.17.0017; 0306.17.0019; 0306.17.0020; 0306.17.0022;

⁴³ All import volume data discussed in this postconference brief was obtained through the Commission’s *Dataweb* online resource tool.

0306.17.0023; 0306.17.0025; 0306.17.0026; 0306.17.0028; 0306.17.0029; and 0306.17.0042.

There have now been twenty-seven (27) months of reporting under these new HTSUS numbers, spanning from July 2021 through September 2023.

This reporting indicates that three countries – Argentina, Mexico, and Ecuador – have accounted for over 83 percent of the volume of shrimp imported under these ten new HTSUS numbers. While misclassification has likely occurred as the new HTSUS subheadings have been implemented, these data nevertheless provide little indication of a separate market for wild-caught shrimp independent of subject imports. Instead, the volume data summarized below indicate that subject imports encompass wild-caught shrimp and underscore that the Ecuadorian industry’s demand that the Commission expand the scope of its inquiry to obtain detailed information regarding particular sources of nonsubject imports is unaccompanied by any analysis of its own exports to the United States.

Country	July- December 2021	Monthly Average (2021)	2022	Monthly Average (2022)	January- September 2023	Monthly Average (2023)
ALL	21,121,553	3,520,259	36,199,031	3,016,586	17,549,823	1,949,980
Argentina	6,480,574	1,080,096	13,550,134	1,129,178	8,452,248	939,139
Mexico	2,530,190	421,698	8,804,133	733,678	4,175,941	463,993
Ecuador	8,694,191	1,449,032	6,751,598	562,633	2,717,078	301,898

These data have, to date, played no part in importers’ requests to the Commission that agency staff increase burdens on industry respondents in the final phase of this investigation by seeking significant additional information. Nor have shrimp importers made any public effort to improve the accuracy of classifications of imported shrimp under these new HTSUS subheadings. Instead, it has been the domestic shrimp industry that has actively pursued more accurate and detailed reporting regarding something that should provide some objective basis to

evaluate importers' claims regarding the nature of competition between subject imports and the domestic like product.

V. THE SHRIMP HARVESTING SECTOR IS SUFFERING MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

For the preliminary phase of these investigations, the Commission elected to not issue questionnaires to the shrimp harvesting sector of the domestic industry. Nevertheless, substantial public information exists detailing and describing the impact that unfairly-traded shrimp imports have had on shrimp fishermen across the southern coast. In particular, demonstrating the significant volume impacts that subject imports have had on the domestic industry, boats throughout the Gulf and South Atlantic are reported to be tied up, not working, and, in consequence, not producing the domestic like product. To support the conclusion that there is a reasonable indication of the adverse *volume* impact that subject imports have had on the domestic like product, media reports regarding the state of the industry, along with the unprecedented declarations of disasters from coastal communities around the country, are included as exhibits to this postconference submission.

Specifically, **Exhibits 3 through 45** included with this postconference brief reflect a compilation of materials related to the shrimp industry's efforts to draw attention to the adverse impact of unfairly-traded imports on commercial shrimp fishing operations in the United States. In their entirety, these exhibits support the conclusion that there is a reasonable indication that a domestic industry is materially injured by reason of subject imports and, as such, constitute additional substantial evidence demonstrating that an affirmative determination is warranted in the preliminary phase of these investigations.

VI. CONCLUSION

As demonstrated above, the Commission should determine that there is a reasonable indication that a U.S. industry is materially injured by reason of imports of frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam.

Respectfully submitted,



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Attachments

EXHIBIT LIST

Exhibit Number	Exhibit Name
1	U.S. Department of Commerce, <i>Countervailing Duty Investigation Initiation Checklist</i> , Case No. C-533-921 (Nov. 14, 2023), at Attachment II
2	Southern Shrimp Alliance, <i>May 2023 Landings</i>
3	Letter from Governor John Bel Edwards (LA) to President Joseph R. Biden, Jr. (Aug. 30, 2023)
4	Terrebonne Parish Council Resolution
5	WDSU-6, “St. Bernard Leaders Look to Throw Life Line to Struggling Shrimp Industry with New Ordinance” (Sept. 5, 2023)
6	Jason Huffman, “Disintegrating Dock Prices Lead US State’s Shrimpers to Seek Disaster Declaration,” <i>Undercurrent News</i> (Sept. 6, 2023)
7	City of Bayou La Batre, Resolution No. 2023-003, “Resolution for Declaration of Disaster – Shrimp Dumping” (Aug. 17, 2023)
8	Letter from Mayor Henry D. Barnes, Sr. (Bayou La Batre) to Governor Kay Ivey (AL) (Aug. 17, 2023)
9	Letter from Rep. Chip Brown (AL, Dist. 105) to Governor Kay Ivey (AL) (Aug. 24, 2023)
10	Ahniaelyah Spraggs, “Bayou La Batre Disaster Declaration Signed Amid Influx of Imported Foreign Seafood,” Fox-10 TV (Aug. 23, 2023)

11	Matagorda County, “Declaration of Disaster – Shrimp Dumping” (Aug. 2023)
12	KRGV, “Cameron County Commissioners Approve Resolution to Support Valley Shrimpers” (Sept. 6, 2023)
13	Christian von Preysing, “Port Isabel Issues Disaster Declaration on Shrimping Industry,” <i>KRGV</i> (Sept. 2, 2023)
14	Lupita Villareal and Gloria Walker, “‘A Gulf and National Issue’ Southeast Texas Shrimpers Struggling to Survive Due to Influx of Imported Shrimp,” <i>12 News Now</i> (Sept. 4, 2023)
15	Brunswick News Editorial, “Buy Local, Especially When it Comes to Shrimp” (Sept. 6, 2023)
16	Brad Rich, “Valuable N.C. Shrimp Fishery Suffering, Group Wants Financial Aid for Shrimpers Across Southeastern and Gulf Coasts,” <i>Carolina Coast Online</i> (Sept. 12, 2023)
17	National Fisherman Staff, “U.S. Shrimping Communities Seek Disaster Declaration Over Low Prices,” <i>National Fisherman</i> (Sept. 4, 2023)
18	Michael Hall, “Shrimp Alliance Request Fisheries Disaster Declaration,” <i>Brunswick News</i> (Sept. 4, 2023)
19	Grand Isle, “Resolution No. 2851” (Aug. 23, 2023)
20	Paula Levihn-Coon, “Disaster Declared for Texas Shrimp,” <i>Texas Observer</i> (Nov. 15, 2023)
21	Letter from Rep. Vincente Gonzalez (D-TX-34 th District) to Hon. Gina M. Raimondo and Hon. Janet L. Coit (Sept. 29, 2023)

22	Karl Puckett, “Beaufort’s Shrimp Industry on the Brink. Local Boats Sit While Imported Catch Floods Market,” <i>The Beaufort Gazette</i> (Sept. 21, 2023)
23	Staff, “US Wild-Catch Shrimp Harvesters Ask Eight Governors to Seek Disaster Declaration Over Dock Prices,” <i>Undercurrent News</i> (Sept. 13, 2023)
24	Trisha Talton, “‘Catastrophic Crisis’: Imported Shrimp Flood US Market,” <i>Coastal Review</i> (Nov. 1, 2023)
25	Adam Van Brimmer, “Georgia Shrimpers Are in a Crisis: Full Nets – But a Dwindling Market,” <i>Atlanta Journal-Constitution</i> (Oct. 31, 2023)
26	Caramia Valentin, “County Lawmakers Request Fishery Resource Disaster Determination Amidst Nationwide Shrimp Disaster,” <i>The Sun Journal</i> (Oct. 30, 2023)
27	Hayley Boland, “McIntosh County Commissioners Pass Resolution to Support Local Shrimpers,” <i>WTOC</i> (Oct. 19, 2023)
28	Destiny Kennedy, “SC Shrimpers Association Ask Public’s Help in Fighting Imported Shrimp Crisis,” <i>WCSC</i> (Oct. 17, 2023)
29	Michael Carroll, “Louisiana Elected Officials Seek to Protect Local Fishermen from Imported Shrimp,” <i>Louisiana Record</i> (Oct. 10, 2023)
30	Anna Stansfield, “Coastal Empire Shrimpers Struggling to Stay Afloat Due to Shrimp Dumping,” <i>WTOC</i> (Oct. 3, 2023)
31	Caine O’Rear, “Born on the Bayou: Generational Shrimpers in Bayou La Batre, the Seafood Capital of Alabama, Say the Industry Is Facing an Existential Threat,” <i>Currents</i> (Fall 2023)

32	Victor Skinner, “Louisiana Lawmakers Hope to Fix Shrimp Industry Crisis,” <i>The Center Square</i> (Sept. 29, 2023)
33	Nathan Strout, “Georgia Pressured to Join Other US States in Making Disaster Declaration Related to Foreign Shrimp Imports,” <i>SeafoodSource</i> (Sept. 28, 2023)
34	Jerry Schill (Guest Editorial), “Foreign Pond-Raised Shrimp Imports May Devastate Local Seafood Industry,” <i>Compass News 360</i> (Sept. 24, 2023)
35	Andrea Gutierrez, “RH Declares ‘Shrimp Dumping’ Disaster,” <i>Bryant County News</i> (Sept. 21, 2023)
36	Gaige Davila, “Texas Shrimpers Look to Feds for Help as Imports Threaten the Gulf Shrimp Industry,” <i>Texas Public Radio</i> (Sept. 20, 2023)
37	Darlene McPherson, “Chambers Court Declares Shrimp Dumping Disaster,” <i>Baytown Sun</i> (Sept. 18, 2023)
38	Editorial, “State’s Shrimping Industry Needs Cooper’s Support,” <i>Carolina Coast Online</i> (Sept. 20, 2023)
39	Tyler Carmona, “Imported Shrimp Floods Market Putting Local Fisheries at Risk,” <i>WSAV</i> (Sept. 13, 2023)
40	Anna Sharpe, “The Fleet Fights Back: Fishermen United to Curb Shrimp Dumping,” <i>Moultrie News</i> (Nov. 13, 2023)
41	Steven Ardary, “Mt. Pleasant Declares Economic Disaster for Local Shrimpers,” <i>WCSC</i> (Nov. 9, 2023)
42	Trevor Hughes, “Busted Boats, Stronger Storms: Florida Fishers Face Warming Waters,” <i>USA Today</i> (Oct. 30, 2023)

43	Onslow County, Resolution 23-014 “Supporting Local Commercial Fishermen” (Oct. 17, 2023)
44	Hannah Powers, “Lowcountry Shrimpers Say Area Restaurants Buying Shrimp from Other Countries Is Putting a Strain on the Industry,” <i>WCBD</i> (Oct. 17, 2023)
45	Bilyana Garland, “Seafood Importing Hitting ENC Shrimpers Hard,” <i>WCTI-12</i> (Sept. 20, 2023)