

Beihai Zhengwu Industry Co., Ltd., Et Al., v. United States
Court No. 05-00182 (CIT August 13, 2013)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (“Department”) has prepared these final results of redetermination (“final remand results”) pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in Beihai Zhengwu Industry Co., Ltd., et al., v. United States, Court No. 05-00182, (CIT August 13, 2013) (“Remand Opinion and Order”). Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum (“PRC Shrimp LTFV Final”) and the subsequent Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People’s Republic of China, 70 FR 5149 (February 1, 2005) (“Amended Final 1 and Order”)¹ and Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Second Amended Final Determination of Sales at Less Than Fair Value, 71 FR 47484 (August 17, 2006) (“Amended Final 2”).

In its Remand Opinion and Order, the CIT determined that the Department must “redetermine the weighted-average Section A dumping margin for all plaintiffs using the revised dumping margins that were determined in the final court decisions in Allied Pacific Food

¹ On January 21, 2005, the International Trade Commission (“ITC”) notified the Department of its final determination that two domestic like products exist for the merchandise covered by the Department’s investigation: (i) Certain non-canned warmwater shrimp and prawns, as defined above, and (ii) canned warmwater shrimp and prawns. The ITC determined that there was no injury regarding imports of canned warmwater shrimp and prawns from the PRC, therefore, canned warmwater shrimp and prawns were not be covered by the antidumping order.

(Dalian) Co. Ltd., et al. v. United States, Consol. Court No. 05-00056 and Shantou Red Garden Foodstuff Co., Ltd., Court No. 05-00080, for the mandatory respondents in the Department's investigation that culminated in the Final Determination."² As set forth in detail below, in the draft results, pursuant to the Court's Remand Opinion and Order, we reconsidered our determination and recalculated the weighted-average margin for the non-individually examined companies that received a separate rate in the underlying investigation and the Amended Final 2, based on the revised investigation margins calculated for the mandatory respondents, Allied Pacific Food (Dalian) Co., Ltd. ("Allied"), Yelin Enterprise ("Yelin"), and Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden"). No party commented on the draft results of redetermination.

B. BACKGROUND

On January 27, 2004, the Department initiated the antidumping duty investigations of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China ("PRC") and the Socialist Republic of Vietnam.³ On July 16, 2004, the Department published the PRC Shrimp LTFV Prelim,⁴ wherein we assigned a separate rate margin of 49.09 percent to 21 non-selected companies eligible for a separate rate. Subsequently, we amended the PRC Shrimp LTFV Prelim to include two additional non-examined companies to which we granted separate rate status.⁵ On December 8, 2004, the Department published the PRC Shrimp LTFV Final and on February 1, 2005, the Department published the Amended Final

² See Remand Opinion and Order, at 1.

³ See Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam, 69 FR 3876 (January 27, 2004) ("Initiation").

⁴ See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 42654 (July 16, 2004) ("PRC Shrimp LTFV Prelim").

⁵ See Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 53409 (September 1, 2004).

1 and Order, assigning a final separate rate of 53.68 percent to 39 companies to which we granted separate rate status. On August 17, 2006, the Department published a second amended final determination, wherein we granted separate rate status to an additional 11 companies which were not granted a separate rate in the PRC Shrimp LTFV Final or the Amended Final 1 and Order.⁶ Of all the companies to which we granted separate rate status in Amended Final 1 and Order and Amended Final 2, 29 companies (the “SR companies”) are plaintiffs in this Remand Opinion and Order.⁷ After the issuance of the Amended Final 1 and Order, the Department’s PRC Shrimp LTFV Final was challenged at the CIT by the mandatory respondents and was subsequently remanded to the Department for redeterminations.⁸ The resulting recalculations of the mandatory respondents’ investigation dumping margins were reduced to 5.07 percent, 7.20 percent, and 8.45 percent.⁹ Consequently, per the SR companies’ litigation resulting in this Remand Opinion and Order, the Department recalculated the weighted-average margin assigned to the SR companies based on the revised mandatory respondents’ investigation dumping margins.

⁶ See Amended Final 2.

⁷ These companies are: Beihai Zhengwu Industry Co., Ltd.; Chaoyang Qiaofeng Group Co Ltd (Shantou City Qiaofeng Group Co Ltd); Hainan Fruit Vegetable Food Allocation Co., Ltd.; Pingyang Xinye Aquatic Products Co., Ltd.; Shantou Jinhang Aquatic Industry Co., Ltd.; Shantou Longfeng Foodstuffs Co., Ltd.; Shantou Ocean Freezing Industry And Trade General Corporation; Shantou Ruiyuan Industry Co., Ltd.; Shantou Sez Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.; Shantou Shengping Oceanstar Business Co., Ltd.; Shantou Wanya Food Factory Co., Ltd.; Shantou Yuexing Enterprise Company; Taizhou Zhonghuan Industrial Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhejiang Cereals, Oils, Foodstuffs Import Export Co., Ltd.; Zhejiang Daishan Baofa Aquatic Product Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhejiang Zhenglong Foodstuffs Co., Ltd.; Zhoushan Cereals Oils Foodstuffs Import Export Co., Ltd.; Zhoushan Diciaryuan Aquatic Products Co., Ltd.; Zhoushan Haichang Food Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; Zhoushan Industrial Co., Ltd.; Zhoushan Juntai Foods Co., Ltd.; Zhoushan Lizhou Fishery Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; Zhoushan Xifeng Aquatic Co., Ltd.; and Zhoushan Zhenyang Developing Co., Ltd.

⁸ See Allied Pacific Food (Dalian) Co. v. United States, 716 F. Supp. 2d 1339 (CIT 2010); Shantou Red Garden Foodstuff Co. v. United States, 880 F. Supp. 2d 1332 (CIT 2012); see also Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 76 FR 30100 (May 24, 2011) (“Allied and Yelin Remand”) and Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation, 77 FR 66434 (November 5, 2012) (“Red Garden Remand”).

⁹ See Allied and Yelin Remand and Red Garden Remand.

C. RECALCULATION OF THE INVESTIGATION SEPARATE RATE MARGIN

Pursuant to sections 777A(c)(2)(B) and 735(c)(5) of the Tariff Act of 1930, as amended, and our practice, the Department calculated the separate-rate margin using a weighted-average calculation methodology based on the calculated volume of subject merchandise sales of the mandatory respondents, excluding respondents that received de minimis or zero dumping margins, or margins based entirely on facts available. In this case, that includes the revised margins of three of the four mandatory respondents from the investigation, Yelin, Red Garden, and Allied.¹⁰ As a result, the recalculated weighted-average margin for the SR companies, unchanged from the draft results of redetermination, is 6.70 percent, based on the margins and volumes as adjusted in remand, for Yelin, Red Garden, and Allied.¹¹

Consequently, we determine to assign a separate rate to the 29 plaintiffs equal to the weighted-average of the revised dumping margins for Allied, Red Garden, and Yelin. The revised separate rate margins for the 29 plaintiffs are as follows:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Beihai Zhengwu Industry Co., Ltd.	6.70 %
Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng)	6.70 %
Hainan Fruit Vegetable Food Allocation Co., Ltd.	6.70 %
Pingyang Xinye Aquatic Products Co., Ltd.	6.70 %
Shantou Jinhang Aquatic Industry Co., Ltd.	6.70 %
Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.)	6.70 %
Shantou Ocean Freezing Industry and Trade General Corporation	6.70 %
Shantou Ruiyuan Industry Co., Ltd.	6.70 %

¹⁰ See id.


¹¹ See “Memorandum to the File, from Irene Gorelik, Senior Analyst, re; Remand Redetermination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China” and “Memorandum to the File, from Irene Gorelik, Senior Analyst, re; Recalculation of the Investigation Separate Rate Margin,” both dated September 11, 2013 (“Draft Remand Results”).

Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.	6.70 %
Shantou Shengping Oceanstar Business Co., Ltd.	6.70 %
Shantou Wanya Food Factory Co., Ltd.	6.70 %
Shantou Yuexing Enterprise Company	6.70 %
Taizhou Zhonghuan Industrial Co., Ltd.	6.70 %
Yantai Wei-Cheng Food Co., Ltd.	6.70 %
Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.	6.70 %
Zhejiang Daishan Baofa Aquatic Product Co., Ltd.	6.70 %
Zhejiang Evernew Seafood Co., Ltd.	6.70 %
Zhejiang Taizhou Lingyang Aquatic Products Co.	6.70 %
Zhejiang Zhenglong Foodstuffs Co., Ltd.	6.70 %
Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.	6.70 %
Zhoushan Diciyuan Aquatic Products Co., Ltd.	6.70 %
Zhoushan Haichang Food Co. Ltd.	6.70 %
Zhoushan Huading Seafood Co., Ltd.	6.70 %
Zhoushan Industrial Co., Ltd.	6.70 %
Zhoushan Juntai Foods Co., Ltd.	6.70 %
Zhoushan Lizhou Fishery Co., Ltd.	6.70 %
Zhoushan Putuo Huafa Sea Products Co., Ltd.	6.70 %
Zhoushan Xifeng Aquatic Co., Ltd.	6.70 %
Zhoushan Zhenyang Developing Co., Ltd.	6.70 %

CONCLUSION

In accordance with the Court's Remand Opinion and Order, in the Draft Remand Results, we recalculated the weighted-average margin assigned to the SR companies based on the antidumping duty margins recalculated for the mandatory respondents in their respective remands, employing the calculated volume of subject merchandise sales as the weight.

As no party commented on the Draft Remand Results, the Department is reaffirming herein the recalculated weighted-average separate rate margin of 6.70 percent.



Paul Piquado
Assistant Secretary
for Import Administration

26 SEPTEMBER 2013
Date