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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India

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

SUMMARY: Apex Frozen Foods Private Limited (Apex Frozen) has requested a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from India pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b). The Department of Commerce (the Department) is initiating this changed circumstances review and issuing this notice of preliminary results pursuant to 19 CFR 351.221(c)(3)(ii). We have preliminarily determined that Apex Frozen is the successor-in-interest to Apex Exports (Apex).

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-3874 or (202) 482-3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the Federal Register an antidumping duty order on certain frozen warmwater shrimp from India.¹

On September 6, 2012, Apex Frozen informed the Department that on April 1, 2012, Apex legally converted from a partnership firm to a limited liability (i.e., private limited) company and changed its name to Apex Frozen. Apex Frozen provided supporting documentation. Additionally, Apex Frozen requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(ii) to confirm that it is the successor-in-interest to Apex for purposes of determining antidumping duty cash deposits and liabilities.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,² deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (Feb. 1, 2005).

² “Tails” in this context means the tail fan, which includes the telson and the uropods.

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

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

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain battered shrimp. Battered shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat

flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the "Background" section, we have received information indicating that Apex was incorporated as a private limited company and changed its name to Apex Frozen, effective April 1, 2012. This constitutes changed circumstances warranting a review of the order. See CFR 19 351.216(d). Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Apex's submission.

Section 351.221(c)(3)(ii) of the Department's regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.³ While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. See, e.g., Brake Rotors. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In its submission, Apex Frozen has provided sufficient evidence to warrant an expedited review to determine if it is the successor-in-interest to Apex. Apex Frozen states that its company's management, production facilities and customer/supplier relationships have not

³ See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review, 75 FR 8925 (Feb. 26, 2010), unchanged in Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review, 75 FR 27706 (May 18, 2010); and Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 70 FR 69941 (Nov. 18, 2005) (Brake Rotors), citing Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992).

changed as a result of the conversion process. To support its claims, Apex Frozen submitted the following documents: (1) the original Apex partnership deed, dated October, 24, 1995; (2) the new Apex partnership deed, dated January 1, 2012; (3) the chart showing the particulars of Apex's capital and Apex Frozen's shareholding ownership; (4) the newspaper article notifying the public of Apex's intent to convert to a company; (5) the Certificate of Incorporation for Apex Frozen; (6) the affidavits related to company conversion; (7) the Notice of Extraordinary General Meeting for Apex; (8) the Articles of Association of Apex Frozen; (9) the online printout from the Ministry of Corporate Affairs showing the approved name change; (10) the Certificate of Registration of Processing Plants for Apex, as issued by the Marine Products Export Development Authority of India (MPEDA); (11) the Certificate of Registration of Storage Premises for Apex, as issued by MPEDA; (12) the Certificate of Importer Exporter Code for Apex Frozen; (13) the Certificate of Importer Exporter Code for Apex; (14) a list of the company's main suppliers before/after the name change; and (15) a list of the company's main customers before/after the name change.

Based on the evidence reviewed, we preliminarily find that Apex Frozen is the successor-in-interest to Apex because Apex's conversion from a partnership firm to a limited liability company resulted in no significant changes to management, production facilities, supplier relationships, and customers. As a result, we preliminarily find that Apex Frozen operates as the same business entity as Apex. Thus, we preliminarily find that Apex Frozen should receive the same antidumping duty cash-deposit rate (i.e., 2.51 percent) with respect to the subject merchandise as Apex, its predecessor company. For further details of our analysis, see the October 17, 2012, Memorandum from David Crespo, Analyst, Office 2, to James Maeder,

Director, Office 2, entitled, “Changed Circumstances Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India: Successor-In-Interest Determination for Apex Exports and Apex Frozen Foods Private Limited.”

However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive and therefore no change will be made to Apex Frozen’s cash deposit rate as a result of these preliminary results. If Apex Frozen believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, 64 FR 66880 (Nov. 30, 1999). As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to suspend shipments of subject merchandise made by Apex Frozen at Apex’s cash deposit rate (i.e., 2.51 percent) effective on the publication date of our final results.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). A hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this

notice. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Paul Piquado
Assistant Secretary
for Import Administration

October 17, 2012
(Date)