

UNITED STATES COURT OF INTERNATIONAL TRADE

Z.A. SEA FOODS PRIVATE LIMITED,
 B-ONE BUSINESS HOUSE PVT. LTD.,
 HARI MARINE PRIVATE LIMITED,
 MAGNUM EXPORT,
 MEGAA MODA PVT. LTD.,
 MILSHA AGRO EXPORTS PRIVATE LTD.,
 SEA FOODS PRIVATE LIMITED,
 SHIMPO EXPORTS PRIVATE LIMITED,
 FIVE STAR MARINE EXPORTS PVT. LTD.,
 HN INDIGOS PRIVATE LIMITED,
 RSA MARINES, AND ZEAL AQUA LTD.,

Plaintiffs,

v.

UNITED STATES,

Defendant.

Court No. 21-00031

COMPLAINT

Pursuant to Rule 3(a)(2) of the Rules of the United States Court of International Trade, Plaintiffs, Z.A. Sea Foods Private Limited, B-One Business House Pvt. Ltd., Hari Marine Private Limited, Magnum Export, Megaa Moda Pvt. Ltd., Milsha Agro Exports Private Limited, Sea Foods Private Limited, Shimpo Exports Private Limited, Five Star Marine Exports Private Limited, HN Indigos Private Limited, RSA Marines, and Zeal Aqua Limited (“Plaintiffs”), by and through their counsel, allege and state, as follows:

JURISDICTION

1. Plaintiffs bring this action pursuant to, and in accordance with, sections 516A(a)(2)(A)(i)(I) and 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended (codified at 19 U.S.C. §§ 1516a(a)(2)(A)(i)(I) and (a)(2)(B)(iii)), contesting certain aspects of the final results of

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the 2018-2019 administrative review of the antidumping duty order on *Certain Frozen Warmwater Shrimp From India* (Case No. A-533-840), issued by the U.S. Department of Commerce (“Commerce”), International Trade Administration, as they apply to Plaintiffs. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 85 Fed. Reg. 85,581 (Dec. 29, 2020) (“*Final Results*”), and accompanying Issues and Decision Memorandum Dec. 21, 2020).

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2).

STANDING

3. Plaintiffs are foreign producers and exporters in India of subject merchandise, certain frozen warmwater shrimp from India, and therefore are interested parties within the meaning of 19 U.S.C. § 1677(9)(A). Plaintiffs participated in the proceedings that constituted the administrative review that is the subject of this action, and accordingly have standing to commence this action pursuant to 19 U.S.C. § 1516a(d) and 28 U.S.C. § 2631(c).

TIMELINESS

4. The *Final Results*, which are being challenged herein, were published in the *Federal Register* on December 29, 2020. *See* 85 Fed. Reg. 85,581. On January 28, 2020, Plaintiffs timely filed a Summons initiating this action within thirty days of the publication of the *Final Results*, and Plaintiffs are timely filing the Complaint today within thirty days of the filing of the Summons. The filing of the Summons and Complaint thus are timely in accordance with 19 U.S.C. § 1516a(a)(2)(A), 28 U.S.C. § 2636(c), and Rules 3(a)(2) and 6(a) of the Rules of the U.S. Court of International Trade.

STANDARD OF REVIEW

5. This Court reviews actions concerning determinations issued by Commerce brought under 19 U.S.C. § 1516a(a)(2) to determine whether they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i).

PROCEDURAL HISTORY

6. In February 2005, Commerce published in the *Federal Register* an antidumping duty (“AD”) order on shrimp from India. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 Fed. Reg. 5147 (February 1, 2005). Subsequently, on February 8, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on shrimp from India for the period February 1, 2018 through January 31, 2019. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 Fed. Reg. 2816 (February 8, 2019).

7. Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in February 2019, Commerce received requests to conduct an administrative review of the AD order on shrimp from India from two domestic interested parties, the Ad Hoc Shrimp Trade Action Committee (“the petitioner”) and the American Shrimp Processors Association (“ASPA”), for numerous Indian producers/exporters, including Plaintiffs. On May 2, 2019, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of administrative review for 254 companies, including for Plaintiffs. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 Fed. Reg. 18777 (May 2, 2019). Commerce’s period of review was February 1, 2018, through January 31, 2019.

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8. In June 2019, after considering the large number of potential producers/exporters involved in the administrative review, Commerce determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, pursuant to section 777A(c)(2)(B) of the Act, Commerce determined that it could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from India by volume during the POR. Accordingly, Commerce issued the AD questionnaire to these companies, “Devi” (comprised of Devi Fisheries Limited, Satya Seafoods Private Limited, Usha Seafoods, and Devi Aquatech Private Ltd.) and “Falcon” (comprised of Falcon Marine Exports Limited and K.R. Enterprises).

9. In July 2019, all requests for administrative review of Devi and Falcon and 69 other companies were withdrawn, and Commerce rescinded the review for those companies. *See Certain Frozen Warmwater Shrimp from India: Rescission of Antidumping Duty Administrative Review; 2018-2019, In Part*, 84 Fed. Reg. 62506 (November 15, 2019). In August 2019, Commerce selected two new respondents to examine: Plaintiff Z.A. Sea Foods Private Limited (“ZA Sea Foods”) and Razban Seafoods Ltd. (“Razban”). Subsequently, Razban reported that it had no shipments of subject merchandise to the United States during the period examined, and Commerce suspended the questionnaire deadlines for Razban, leaving Plaintiff ZA Sea Foods as the sole mandatory respondent.

10. In September 2019, ZA Sea Foods submitted its response to section A of the questionnaire indicating that it did not have a viable home market and that Vietnam was its largest third country market. Commerce issued a supplemental questionnaire to ZA Sea Foods related to its third country market sales, and ZA Sea Foods submitted its response on October 2, 2019, confirming Vietnam as ZA Sea Foods’ largest third country market, and also identifying

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its Vietnam market as most similar to its U.S. market in terms of product mix. On October 4, 2019, ZA Sea Foods submitted its responses to the remaining sections of the AD questionnaire (i.e., sections B, C, and D, the sections covering comparison market sales to Vietnam, U.S. sales, and cost of production, respectively).

11. From December 2019 through January 2020, Commerce issued supplemental sales and cost questionnaires to ZA Sea Foods, all of which addressed ZA Sea Foods's sales to Vietnam. ZA Sea Foods submitted responses to the questionnaires in January 2020.

12. On February 27, 2020, Commerce issued its preliminary results of the 2018-2019 administrative review. *See Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 Fed. Reg. 13,131 (Dep't Commerce Mar. 6, 2020) ("*Preliminary Results*") and accompanying unpublished Decision Memorandum for the Preliminary Results (Dep't Commerce Feb. 27, 2020).

13. In accordance with section 773(a)(1)(B)(i) of the Act, Commerce normally uses home market sales as the basis for normal value. In the *Preliminary Results*, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal, Commerce compared the volume of ZA Sea Foods' home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Commerce determined that the aggregate volume of ZA Sea Foods' home market sales was insufficient to permit a proper comparison with U.S. sales of the subject merchandise (i.e., the aggregate volume of home market sales of the foreign like product was not five percent or more of the aggregate volume of U.S. sales). In such case, pursuant to section 773(a)(1)(C)(ii), Commerce normally uses third country sales of the foreign like product as the basis for normal value. But in the *Preliminary Results*, Commerce



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