



U.S. Customs and Border Protection

PUBLIC VERSION

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Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7356

To the Counsel and Representatives of the above-referenced entities:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (EAPA), for MSeafood Corporation (MSeafood). CBP is investigating whether MSeafood evaded antidumping duty (AD) order A-533-840 (the Order) on certain frozen warmwater shrimp (frozen shrimp) from India¹ when importing frozen shrimp into the United States. Because evidence supports a reasonable suspicion that MSeafood entered covered merchandise into the customs territory of the United States through evasion, CBP has imposed interim measures.²

Period of Investigation

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation....” Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”³ CBP acknowledged receipt of the properly filed

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

² See 19 USC 1517(e); see also 19 CFR 165.24.

³ See 19 USC 1517(a)(4); see also 19 CFR 165.1.

allegation against MSeafood on September 18, 2019.⁴ Therefore, the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from September 18, 2018, through the pendency of this investigation.⁵

Initiation

On October 9, 2019, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, initiated this investigation under EAPA as a result of an allegation submitted by the Ad Hoc Shrimp Trade Enforcement Committee (AHSTEC) on evasion of antidumping duties by MSeafood.⁶ In the allegation, the AHSTEC asserts that MSeafood evaded the Order by importing into the United States Indian-origin frozen shrimp that was transshipped through Vietnam.⁷

The AHSTEC claims that MSeafood imports frozen shrimp from Vietnam produced by its parent company Minh Phu Seafood Corporation and its affiliates, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd., and Minh Phu Hau Giang (collectively, the Minh Phu Group).⁸ The AHSTEC provided Panjiva data to substantiate its claim about Minh Phu Seafood and MSeafood.⁹ The AHSTEC claims that although the Minh Phu Group produces frozen shrimp, it also imports frozen shrimp into Vietnam from India for the purposes of transshipping it to the United States.¹⁰ The AHSTEC notes that CBP has provided guidance to importers of frozen shrimp regarding how minor processing does not change the country-of-origin of shrimp.¹¹ The AHSTEC also cites multiple CBP rulings that relate to how importers must make declarations of safety; how importers must maintain their records for country-of-origin rules; what constitutes substantial transformation of shrimp; and reporting country-of-origin of shrimp harvested in one country then processed in Vietnam.¹² The AHSTEC specifically points out that one such ruling pertained directly to MSeafood.¹³

The AHSTEC notes that the Minh Phu Group was subject to the AD order for frozen shrimp from Vietnam A-552-802 (the Vietnamese Order)¹⁴ and participated in a number of U.S. Department of Commerce (Commerce) proceedings until Commerce revoked to frozen shrimp

⁴ See email "Receipt of EAPA Allegation 7356: Transshipment / Certain Frozen Freshwater Shrimp from India," dated September 18, 2019.

⁵ See 19 CFR 165.2.

⁶ See CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7356 – MSeafood Corporation," dated October 9, 2019 (MSeafood Initiation).

⁷ See Letter from the AHSTEC, "Enforce and Protect Act Allegation Re: MSeafood Corporation," dated July 17, 2019 (Allegation) at 1; see also Letter from the AHSTEC "165.11 Allegation: ASHTEC – Minh Phu Seafood (7356)," dated August 30, 2019 (Allegation Supplement) at 2-4.

⁸ See Allegation at 6.

⁹ *Id.*, at Exhibit 11.

¹⁰ *Id.*, at 6-7.

¹¹ *Id.*, at 18-33.

¹² *Id.*

¹³ *Id.*, at 30-31.

¹⁴ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, 81 FR 47756 (July 22, 2016).

that was both “produced and exported” by Minh Phu Group from the Vietnamese Order in 2016.¹⁵ The AHSTEC also provides evidence that MSeafood is a subsidiary of the Minh Phu Seafood Joint Stock Company and participated in a number of Commerce proceedings that found that MSeafood imported Indian shrimp.¹⁶

The AHSTEC provides evidence indicating that Minh Phu Seafood Corporation purchased and imported Indian-origin shrimp into Vietnam during the period of investigation (POI).¹⁷ For example, the AHSTEC provides a June 2019, “Media Release” by Minh Phu Seafood Corporation acknowledging it imported a small proportion of raw materials (*i.e.*, shrimp) from India, but claiming that the Indian-origin shrimp was not exported to the United States.¹⁸ However, the AHSTEC points out that during Commerce’s AD proceedings, the Minh Phu Seafood Corporation reported that it purchased shrimp from market economy countries (*e.g.*, India) as raw inputs for its frozen shrimp exports to the United States.¹⁹ This directly conflicts with the June 2019, “Media Release” statement that Minh Phu Seafood Corporation did not export Indian-origin shrimp to the United States.²⁰ The AHSTEC further alleges that the June 2019, “Media Release” shows a production/export discrepancy, because the Minh Phu Group produced a total of 12,000 tons of frozen shrimp in 2018 but exported a total of 67,000 tons out of Vietnam globally in 2018.²¹

Further, the AHSTEC provided data indicating that the Minh Phu Group has continued to import substantial quantities of frozen shrimp from a wide variety of Indian frozen shrimp producers.²² In 2017 and 2018, the Minh Phu Group imported 16,800 metric tons and 23,800 metric tons, respectively, of frozen shrimp from India.²³ Additionally, AHSTEC claims that the Minh Phu Group imported Indian frozen shrimp from companies that have not qualified for the “Green List” under the FDA’s Import Alert.²⁴ AHSTEC points out that frozen shrimp from these companies would be subject to detention if they had been shipped directly to a U.S. port.²⁵ The

¹⁵ The companies identified by Commerce were: Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.): Minh Phu Seafood Corp.; Minh Phu Seafood Corporation; Minh Phu Seafood Pte; Minh Qui Seafood; Minh Qui Seafood Co., Ltd.; Minh Qui; Minh Phat Seafood Co., Ltd.; Minh Phat; Minh Phat Seafood; Minh Phat Seafood Corp.; Minh Phu Hau Giang Seafood Joint Stock Company; Minh Phu Hau Giang Seafood Co., Ltd.; Minh Phu Hau Giang Seafood Corp.; and Minh Phu Hau Giang Seafood Processing Co., Ltd. *See* Allegation at 34-36.

¹⁶ *Id.*, Allegation at 37-39.

¹⁷ *Id.*, at 40.

¹⁸ *Id.*, at 40.

¹⁹ *Id.*, at 41.

²⁰ *Id.*, at 41.

²¹ *Id.*, at 43.

²² *Id.*, at 42, Exhibits 14 and 15.

²³ *Id.*, at 42.

²⁴ *Id.*, at 42.

²⁵ The “Green List” are companies whose exports of shrimp to the United States would not be subject to detention without physical examination if shipped directly to a U.S. port. *Id.*, at 1-3, and 42.

transshipment of this shrimp through Vietnam could potentially avoid that detention, creating a potential health or safety risk.²⁶

Since the initial filing of its allegation, the AHSTEC obtained information from Panjiva regarding Indian exports to Vietnam from January 1, 2016, to June 30, 2019.²⁷ The AHSTEC submitted Panjiva export data indicating that since January 1, 2018, there have been 1,512 shipments of Indian shrimp products directed to either “Minh Phu Seafood Corp.” or “Minh Phu Hau Giang Seafood.”²⁸

Initiation Assessment

TRLED will initiate an investigation if it determines that “{t}he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.”²⁹ Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”³⁰ Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD order was entered into the United States by the importer alleged to be evading, but that such entry was made by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

In assessing AHSTEC’s claims in its Allegation and Allegation Supplement, TRLED finds that the Allegation and the Allegation Supplement reasonably suggest that MSeafood attempted to evade the Order through the transshipment of Indian-origin frozen shrimp through Vietnam and failed to report merchandise as subject to the Indian order.³¹ Consequently, TRLED initiated this investigation pursuant to 19 USC 1517(b)(1) and 19 CFR 165.15.

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based upon the record of the investigation if there is reasonable suspicion that merchandise covered by the AD/CVD orders was entered into the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise

²⁶ *Id.*

²⁷ See Allegation Supplement at 2 and Exhibit 1.

²⁸ *Id.*, at 2-3 and Exhibit 2.

²⁹ See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

³⁰ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

³¹ See 19 CFR 165.11; see also 19 CFR 165.15(2). See also MSeafood Initiation.

covered by an AD or CVD order was entered into the United States by the importer by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or other security. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that MSeafood entered covered merchandise into the United States through evasion by means of transshipment through Vietnam.³²

Other Record Evidence

On December 20, 2019, CBP added documents from [], the Minh Phu Group's participation in Commerce proceedings, and copies of Minh Phu's monthly export reports from its website to the administrative record.³³

The Minh Phu Group's monthly export snapshots (ES) denote a history of orders that exceed its Vietnamese production capacity and refer to the group's difficulties acquiring raw materials, *i.e.*, shrimp, to fulfill orders. On June 15, 2019, in its May 2019 ES, the Minh Phu Group stated:

Orders are expected to exceed capacity from now to the end of the year... the signed contract is exceeding the production capacity of the factories. Therefore, MP will export more inventory, expected output and sales in June will grow well and profit will be better.³⁴

On July 15, 2019, in its June 2019 ES the Minh Phu Group stated:

Contracts in June continue to increase, total value of signed contracts reached 141 millions USD, total volume is 2 times beyond the capacity of Minh Phu factories.³⁵

On September 18, 2019, in its August 2019 ES the Minh Phu Group stated:

The supply of Vietnam's raw materials has been reduced since July due to prolonged heavy rains, which reduced the supply of raw materials. As the request of the customers, Minh Phu has limited the possibility of signing new contracts. In August, the inventories decreased by more than 60% and there is not much stocking left to export. Minh Phu continues to focus on mobilizing materials resources in the following months to achieve the export target.³⁶

³² See 19 CFR 165.24(a).

³³ See CBP Memorandum, "Adding Certain Documents to the Administrative Record," dated December 20, 2019 (December 20 Memorandum).

³⁴ *Id.*, at attachment 1.

³⁵ *Id.*, at attachment 2.

³⁶ *Id.*, at attachment 3.

On October 9, 2019, in its September 2019 ES the Minh Phu Group stated:

Due to the lack of raw materials, the factory lacks resources to produce. The situation of raw materials has not been improved, which limits the ability to deliver goods to customers quickly in September and limits to sign new orders in the last months of the year.³⁷

On November 14, 2019, in its October 2019 ES the Minh Phu Group stated:

Due to the shortage of raw materials, Minh Phu has difficulty in mobilizing materials to fulfill the signed contracts. From now until the end of the year, Minh Phu will focus on finishing all signed contracts, limit to sign more contracts because of high price of raw materials leading to ineffective business.³⁸

Furthermore, [] data shows that during the POI the Minh Phu Group imported large volumes of frozen shrimp from India. From October 1, 2018, through August 31, 2019, [] data shows that Indian companies exported USD\$[] worth of frozen shrimp to the Minh Phu Group in [] shipments.³⁹

In addition, The Minh Phu Group has a known history of using [] in its raw material processing. The Minh Phu Groups Section D response⁴⁰ listed [] companies as market economy suppliers for raw material inputs (*i.e.*, []) during the 2014-2015 administrative review done by Commerce.⁴¹ Comparing the names in the Minh Phu Group's Section D response to the [] indicates that during the POI the Minh Phu Group imported from [] of the same suppliers that it admitted to using as raw material inputs in 2014-2015.⁴² Additionally, [] data shows that the shipments of [] from these suppliers was worth USD\$[].

The Minh Phu Group's own statements about their lack of production capacity in 2019, coupled with [] data showing imports from Indian shrimp producers directly to the Minh Phu Group, along with the information provided in the allegations, establishes a reasonable suspicion that the Minh Phu Group is importing shrimp from India to Vietnam, the Minh Phu Group then

³⁷ *Id.*, at attachment 4.

³⁸ *Id.*, at attachment 5.

³⁹ *Id.*, at attachment 6.

⁴⁰ In Commerce antidumping proceedings, Section D of its standard questionnaire pertains to production information of merchandise subject to review. Respondent companies must report quantities used of raw materials and its sources.

⁴¹ *Id.*, at attachment 7.

⁴² Those companies are: [

]. *Id.*, at attachment 8.

exports the Indian shrimp to MSeafood, and then MSeafood enters the covered merchandise (*i.e.*, Indian Shrimp) into the United States through evasion (*i.e.*, declaring it as Vietnamese shrimp). For this reason, CBP is imposing interim measures.

Enactment of Interim Measures

Based on the information described above, TRLED finds that reasonable suspicion exists that the frozen shrimp that MSeafood imported into the United States from Vietnam may be of Indian-origin and should have been subject to AD duties.

As interim measures, unliquidated entries of frozen shrimp subject to this investigation will be rate-adjusted to reflect that they are subject to the AD order on frozen shrimp from India and cash deposits will be owed. CBP will also suspend the liquidation for any entry that has entered on or after October 9, 2019, the date of initiation for this investigation, as well as extend the period for liquidation for all unliquidated entries that entered before that date.⁴³ Additionally, “live entry” is required for all future imports for MSeafood meaning that all entry documents and cash deposits must be provided before cargo is released by CBP into U.S. commerce. CBP will reject any entry summaries that do not comply with live entry, and require refiling of entries that are within the entry summary rejection period. CBP will also evaluate the continuous bonds for MSeafood to determine their sufficiency, among other measures, as needed. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

For any future submissions or factual information that you submit to CBP pursuant to this consolidated EAPA investigation, please provide a business confidential version and a public version to CBP, as well as public versions to the parties to this investigation, the email addresses of the parties identified at the top of this notice.⁴⁴

⁴³ See 19 CFR 165.24(b)(1)(i) and (ii).

⁴⁴ See 19 CFR 165.4; *see also* 19 CFR 165.23(c); *see also* 19 CFR 165.26.

Should you have any questions regarding this investigation, you may contact us at eapallegations@cbp.dhs.gov with “EAPA Case 7356” in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP’s website at: <https://www.cbp.gov/trade/tradeenforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bowman", written over a light blue horizontal line.

Christopher Bowman
Acting Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
CBP Office of Trade