

the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information, call Lee Ann Carpenter at (202) 482-2583.

Dated: August 22, 2000.

Lee Ann Carpenter,
Committee Liaison Officer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-337-803]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon from Chile

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

SUMMARY: Based on comments submitted by the petitioners with respect to the recent merger of Chilean salmon producers Marine Harvest Chile, S.A. (Marine Harvest) and Pesquera Mares Australes, Ltda. (Mares Australes), as well as information recently obtained by the Department of Commerce (the Department), we are initiating a changed circumstances review. Pursuant to this review, the Department preliminarily determines that the post-merger Marine Harvest is not the successor-in-interest to either of the pre-merger companies, and is covered by the antidumping duty order on fresh Atlantic salmon from Chile. The Department is directing that liquidation of entries of subject merchandise under the name of Marine Harvest be suspended effective retroactively to July 1, 2000, the date of the merger of Mares Australes and Marine Harvest.

EFFECTIVE DATE: August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, at (202) 482-3003 or (202) 482-3813, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On July 30, 1998, the Department issued an antidumping duty order on fresh Atlantic salmon from Chile. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile*, 63 FR 40699 (July 30, 1998). The order covered merchandise produced by a number of companies, including Mares Australes. The order excluded merchandise produced by a number of other companies, including Marine Harvest, which had been found to be dumping at a de minimis level in the less-than-fair-value (LTFV) investigation.

On July 15, 1999, the parent company of Mares Australes purchased Marine Harvest. One week after the acquisition, the managing director of Mares Australes formed several task forces of Mares Australes and Marine Harvest officials to discuss how to harmonize and integrate the management of the two companies. By the end of 1999, the companies had laid off redundant management, and had created a single management structure.

Mares Australes and Marine Harvest continued to distinguish salmon produced at their respective facilities, and to export their salmon to the United States under the respective names, until the end of June 2000. On July 1, 2000, the parent company of Mares Australes directed, through a shareholder's meeting, that Mares Australes be formally merged with Marine Harvest, and that the merged entity do business under the name of Marine Harvest. A detailed explanation of these developments can be found in the memorandum from the team to Gary

Taverman, dated August 21, 2000 (Mares Australes sales verification report), from the record of the first administrative review of the antidumping duty order on fresh Atlantic salmon from Chile.

On July 25, 2000, the petitioners filed a letter with the Department expressing concern over the merger of Marine Harvest and Mares Australes, and requesting the immediate suspension of liquidation of subject merchandise exported under the name of Marine Harvest.

Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Initiation of Changed Circumstances Antidumping Review

Based on the information discussed above, and in accordance with section 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstances review to determine whether salmon produced by the entity

known as Marine Harvest, comprised of the recently-merged operations of the former Marine Harvest and Mares Australes, is covered by the antidumping duty order on fresh Atlantic salmon from Chile.

Preliminary Results of Changed Circumstances Antidumping Review

Section 351.221(c)(3)(ii) of the Department's regulations provides that the preliminary results of a changed circumstances review may be issued concurrently with the initiation of the review if the Department determines that expedited action is warranted. As explained below, the Department preliminarily finds that Marine Harvest, after being purchased and subsequently merged with Mares Australes, is no longer the entity that was excluded from the antidumping order. As such, the Department is directing the suspension of liquidation of entries of subject merchandise by Marine Harvest. The Department finds that expedited action is warranted, particularly in light of the fact that the Department recently collected substantial evidence regarding the purchase and merger of Marine Harvest with Mares Australes.

In determining successor-in-interest questions in past cases, the Department typically has examined several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). Such determinations are made based on consideration of the totality of the circumstances. 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 and countervailing duty treatment as its predecessor.

In this case, the evidence on the record establishes that Marine Harvest, after being purchased and merged with Mares Australes, is substantially different from the pre-merger Marine Harvest. The management of Marine Harvest is now answerable to the parent company of the former Mares Australes, and consists of a number of former Mares Australes officials, including the operations manager. The production facilities of Marine Harvest have changed substantially, by the addition of the large number of hatcheries, freshwater sites, and ocean sites previously owned by Mares Australes (until the merger, the largest exporter of

subject merchandise to the United States). Supplier relationships have changed, in that Marine Harvest now purchases virtually all of its feed from an affiliate of Mares Australes (whereas previously it purchased virtually all feed from unaffiliated parties). The customer base of the company has also changed, in that it now includes the distributor clients of Mares Australes, which are fundamentally different from the retail chain clients of the pre-merger Marine Harvest.¹ *See Mares Australes sales verification report.*

The post-merger Marine Harvest is also substantially different from the pre-merger Mares Australes. Though they are now answerable to the parent company of the pre-merger Mares Australes, the current president of the merged company worked for the pre-merger Marine Harvest, as did the manager now in charge of the finance and accounting staff. With the addition of Marine Harvest's large number of freshwater and saltwater salmon growing sites, the operations of the merged company are substantially greater than those of Mares Australes prior to the merger. Moreover, Mares Australes lacked a processing plant, and subcontracted processing services; the merged company now has a large processing plant, and all processing is now done in-house. Finally, Mares Australes' customers were distributors; the customers of the merged company include the retail chain customers of the pre-merger Marine Harvest.

In sum, the merged company now doing business as Marine Harvest is substantially different from both pre-merger Marine Harvest and Mares Australes, and is therefore not the successor-in-interest to either. Given this, the Department preliminarily finds that the entity currently doing business as Marine Harvest is covered by the antidumping order on fresh Atlantic salmon. Accordingly, the Department will instruct the Customs Service to immediately suspend liquidation of all entries of fresh Atlantic salmon from Chile produced and exported under the name of Marine Harvest, that are entered, or withdrawn from warehouse, for consumption, effective retroactively to July 1, 2000, the date of the merger of Mares Australes and Marine Harvest.

In determining what cash deposit rate to assign to Marine Harvest for this purpose, we believe it is more

appropriate to assign the rate currently applicable to the pre-merger Mares Australes rather than the currently applicable all others rate. While Marine Harvest is not the successor in interest to Mares Australes, the currently applicable all others rate is higher than any antidumping margin ever assigned to either Marine Harvest or Mares Australes. Given this, we will instruct the Customs Service to require a cash deposit based on the cash deposit rate assigned to Mares Australes in the LTFV investigation, which was 2.23 percent. This requirement for a cash deposit of estimated antidumping duties on Marine Harvest merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. 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. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. Consistent with 19 CFR 351.216(e), the Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, 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 determination.

This notice is in accordance with section 751(b) of the Act.

Dated: August 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

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¹ According to the managing director of Mares Australes, the parent company of Mares Australes determined that the merged entity should retain the name of Marine Harvest principally because it had better name recognition in the U.S. market, and a more developed U.S. distribution system, than Mares Australes.