Exporter/manufacturer	Weighted-average margin percentage
Empresa de Armazenagem Frigorifica Ltda./Maricultura Netuno S.A.	0.00
Central de Industrializacao e Distribuicao de Alimentos Ltda.	8.41
Norte Pesca S.A.	67.80
All Others	36.91

The All Others rate is derived exclusive of all *de minimis* margins and margins based entirely on adverse facts available.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–17814 Filed 8–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–802]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From Ecuador

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

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain frozen and canned warmwater shrimp from Ecuador are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register.**

EFFECTIVE DATE: August 4, 2004.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136, or (202) 482–1280, respectively.

Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp from Ecuador are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Background

Since the initiation of this investigation the following events have occurred. *See Initiation of Antidumping Duty Investigations: 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 Notice*).

On February 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain frozen and canned warmwater shrimp from Ecuador are materially injuring the United States industry. *See* ITC Investigation Nos. 731–TA–1063–1068 (Publication No. 3672).

On February 20, 2004, we selected the three largest producers/exporters of certain frozen and canned warmwater shrimp from Ecuador as the mandatory respondents in this proceeding. *See* Memorandum to Louis Apple, Director Office 2, from The Team dated February 20, 2004. We subsequently issued the antidumping questionnaire to Exporklore S.A. (Exporklore), Exportadora De Alimentos S.A. (Expalsa), and Promarisco S.A. (Promarisco) on February 20, 2004.

During the period February through June 2004, various interested parties, including the petitioners, submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp concerning whether the following products are covered by the scope of the investigations: a certain seafood mix,

dusted shrimp, battered shrimp, salad shrimp sold in counts of 250 pieces or higher, the species *Macrobachium Rosenbergii,* organic shrimp, and peeled shrimp used in breading.[1] In addition, the Louisiana Shrimp Alliance (LSA), an association of domestic shrimp harvesters and processors, requested that the Department expand the scope to include fresh (never frozen) shrimp. *See* ''Scope Comments'' section of this notice.

We received section A questionnaire responses from the three respondents in March 2004, and section B and C questionnaire responses in April 2004. We issued and received responses to our supplemental questionnaires from April through June 2004.

On April 29, 2004, the petitioners[2] alleged that Exporklore, Expalsa and Promarisco made third country sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales-below-cost investigation of each of the three respondents. On May 28, 2004, the Department initiated a sales-below-cost investigation of each of the three respondents, and required them to respond to section D of the Department's questionnaire. *See* Memoranda to Louis Apple, Director Office 2, from The Team Re: Petitioners' Allegation of Sales Below the Cost of Production by Explorkore S.A., Exportadora de Alimentos S.A., and Promarisco S.A. Ltd., dated May 28, 2004. With respect to Exporklore, Expalsa and Promarisco, we received original section D responses and revised sales databases in June 2004, and supplemental section D responses in July 2004.

On May 18, 2004, pursuant to sections 733(c)(1)(B) and (c)(2) of the Act and 19 CFR 351.205(f), the Department determined that the case was extraordinarily complicated and postponed the preliminary determination until no later than July 28, 2004. *See Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil (A–351–838), Ecuador (A–331–802), India (A–533–840), Thailand (A–549–822), the People's Republic of China (A–570–893), and the Socialist Republic of Vietnam (A–503–822),* 69 FR 29509 (May 24, 2004).

On May 21, 2004, the Department denied the LSA's request to amend the scope to include fresh (never frozen) shrimp. *See* Memorandum from Jeffrey A. May, Deputy Assistant Secretary, AD/CVD Enforcement Group I, and Joseph A. Spetrini, Deputy Assistant Secretary AD/CVD Enforcement Group III, to James J. Jochum, Assistant Secretary for Import Administration Re: Antidumping Investigations on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, the People's Republic of China, Thailand and the Socialist Republic of Vietnam: Scope Determination Regarding Fresh (Never Frozen) Shrimp, dated May 21, 2004 (Scope Decision Memorandum I).

On June 7, 2004, the Department determined that a particular market situation existed in Ecuador that rendered the home market inappropriate for use as the comparison market for normal value (NV) purposes. Therefore, the Department determined it appropriate to use third country sales as the basis for NV. *See* June 7, 2004 Memorandum to Louis Apple, Director Office 2, from The Team Re: Home Market as Appropriate Comparison Market. Also, on June 7, 2004, after taking into account Promarisco's and the petitioners' claims, the Department found it appropriate to select Spain as the third country comparison market for Promarisco. *See* June 7, 2004 Memorandum to Louis Apple, Director Office 2, from The Team Re: Selection of Third Country Market for Promarisco (Third Country Comparison Market Selection Memorandum). The petitioners objected to the Department's third country comparison market selection decision for Promarisco on June 10, 2004, and filed additional comments on this topic in June and July 2004. Promarisco responded to these comments in submissions filed in June and July 2004.

On June 4, 2004, Expalsa and Promarisco requested that the Department allow them to report their costs of production based on their fiscal year rather than the period of investigation (POI) because their fiscal years ended within three months of the POI. On June 9, 2004, they each provided information that the Department requested in a June 4, 2004, letter addressing the impact of such a period shift on their cost reporting. On June 14, 2004, the Department denied the respondents' requests because it appeared, based on the information they provided, that shifting the cost reporting period would materially impact the antidumping duty analysis. *See* June 14, 2004, Letter to Warren Connelly, Counsel for Respondents, from Neal Halper, Director, Office of Accounting.

Pursuant to the Department's solicitation, on June 7, 2004, various interested parties, including the petitioners, submitted comments on the issue of whether product comparisons and margin calculations in this and the concurrent investigations of certain frozen and canned warmwater shrimp should be based on data provided on an ''as sold'' basis or data converted to a headless, shell-on (HLSO) basis.[3] Additional comments were subsequently submitted on June 15 and 25, 2004. *See* ''Product Comparison Comments'' section below.

On July 2, 2004, the Department made preliminary scope determinations with respect to the following shrimp products: Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii,* organic shrimp, peeled shrimp used in breading, dusted shrimp and battered shrimp. *See* Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import

[1] Specifically, Ocean Duke Corporation (Ocean Duke), an importer and wholesaler of the subject merchandise, requested that the following products be excluded from the scope of this and the concurrent investigations on certain frozen and canned warmwater shrimp: (1) ''dusted shrimp,'' (2) ''battered shrimp,'' and (3) ''seafood mix.'' Another importer, Rubicon Resources LLP, supported Ocean Duke's request regarding dusted and battered shrimp. Eastern Fish Company and Long John Silver's, Inc. also requested that dusted and battered shrimp be excluded from the scope of the investigations. Furthermore, the Seafood Exporters' Association of India requested that the Department find that warmwater salad shrimp in counts of 250 pieces or higher are not within the scope, and that the species *Machrobachium Rosenbergii* is a separate class or kind of merchandise. Also, Exportadora de Alimentos S.A., one of the respondents in the Ecuador case, requested that the Department find that farm-raised organic shrimp is not covered by the scope of the investigations. Finally, the American Breaded Shrimp Processors Association, comprised of importers of peeled shrimp which they consume in the production of breaded shrimp products, requested that peeled shrimp imported for the sole purpose of breading be excluded from the scope of the investigations.

[2] The petitioners in this investigation are the Ad Hoc Shrimp Trade Alliance (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation and Indian Ridge Shrimp Company.

[3] Specifically, the Department received comments from the following interested parties, in addition to the petitioners, on June 7: the Brazilian Shrimp Farmers' Association and Central de Industrializacao e Distribuicao de Alimentos Ltda.; Empresa De Armazenagem Frigorifica Ltda.; Camara Nacional de Acuacultura (National Chamber of Aquaculture) of Ecuador; the Rubicon Group (comprised of Andaman Seafood Co., Ltd. Chanthaburi Seafoods Co., Ltd. And Thailand Fishery Cold Storage Public Co., Ltd.), Thai I-Mei Frozen Foods Co., Ltd. and its affiliated reseller Ocean Duke; the Seafood Exporters of India and its members Devi Sea Foods Ltd., Hindustan Lever Limited, and Nekkanti Seafoods Limited ; the VASEP Shrimp Committee and its members; and Shantou Red Garden Foodstuff Co., Ltd. In addition to addressing the ''as sold'/HLSO issue, some of these parties also commented on the significance of species and container weight in the Department's product characteristic hierarchy.

Administration Re: Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Scope Clarifications: (1) Ocean Duke's Seafood Mix; (2) Salad Shrimp Sold in Counts of 250 Pieces or Higher; (3) *Macrobrachium rosenbergii;* (4) Organic Shrimp; and (5) Peeled Shrimp Used in Breading, dated July 2, 2004 (Scope Decision Memorandum II); and Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Re: Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Scope Clarification: Dusted Shrimp and Battered Shrimp, dated July 2, 2004 (Scope Decision Memorandum III). *See also* ''Scope Comments'' section below.

The petitioners and respondents each submitted comments in July 2004 on various company-specific issues for consideration in the preliminary determination. In addition, Expalsa and Exporklore submitted new information on July 16, July 21, and July 23, 2004, respectively, including revised sales and COP data bases for Exporklore. Except for minor, readily-identifiable data corrections, we have not relied on this information for the preliminary determination because there was insufficient time to analyze it prior to the preliminary determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on June 22, 2004, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the respondent(s) account(s) for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 2002, through September 30, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2003).

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[4] deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

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

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 vannemei*), banana prawn (*Penaeus merguiensis*), 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 the investigation. 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 the investigation.

Excluded from the scope are (1) breaded shrimp[5] and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for U.S. Customs and Border Protection (CBP) purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice.* (*See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*, 69 FR at 3877.) Throughout the 20 days and beyond, the Department received many comments and submissions regarding a multitude of scope issues, including: (1) Fresh (never frozen) shrimp, (2) Ocean Duke's seafood mix, (3) salad shrimp sold in counts of 250 pieces or higher, (4) *Macrobrachium rosenbergii,* (5) organic shrimp, (6) peeled shrimp used

[4] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[5] Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes battered shrimp as discussed in the ''Scope Comments'' section below. *See* Scope Memorandum III.

in breading, (7) dusted shrimp and (8) battered shrimp.

On May 21, 2004, the Department determined that the scope of this and the concurrent investigations remains unchanged, as certain frozen and canned warmwater shrimp, without the addition of fresh (never frozen) shrimp. *See* Scope Decision Memorandum I. On July 2, 2004, the Department made scope determinations with respect to Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii,* organic shrimp and peeled shrimp used in breading. *See* Scope Decision Memorandum II. Based on the information presented by interested parties, the Department determined that Ocean Duke's seafood mix is excluded from the scope of this and the concurrent investigations; however, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii,* organic shrimp and peeled shrimp used in breading are included within the scope of these investigations. *See* Scope Decision Memorandum II at 33.

Additionally, on July 2, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. *See* Scope Decision Memorandum III. Based on the information presented by interested parties, the Department preliminarily finds that while substantial evidence exists to consider battered shrimp to fall within the meaning of the breaded shrimp exclusion identified in the scope of these proceedings, there is insufficient evidence to consider that shrimp which has been dusted falls within the meaning of ''breaded'' shrimp. However, there is sufficient evidence for the Department to consider excluding this merchandise from the scope of these proceedings provided an appropriate description can be developed. *See* Scope Decision Memorandum III at 18. To that end, along with the previously solicited comments regarding breaded and battered shrimp, the Department solicits comments from interested parties which enumerate and describe a clear, administrable definition of dusted shrimp. *See* Scope Decision Memorandum III at 23.

Fair Value Comparisons

To determine whether sales of certain frozen and canned warmwater shrimp from Ecuador to the United States were made at LTFV, we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(I) of the Act, we compared POI weighted-average EPs to NVs.

As discussed below under the ''Home Market Viability and Comparison Market Selection'' section, we have determined that a particular market situation existed in Ecuador that rendered the home market inappropriate for use as the comparison market for NV purposes. Therefore, as the basis for NV, we used third country sales to Italy (Exporklore and Expalsa) and Spain (Promarisco) when making comparisons in accordance with section 773(a)(1)(C) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the third countries during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third countries, where appropriate. Where there were no sales of identical merchandise in the third countries made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using CV.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: processed form, cooked form, head status, count size (on an ''as sold'' basis), shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

Product Comparison Comments

As Sold v. *HLSO Methodology*

We received comments from various interested parties concerning whether to perform product comparisons and margin calculations using data provided on an ''as sold'' basis or on data converted to an HLSO basis.[6]

The petitioners argue that using a consistent HLSO equivalent measure permits accurate product comparisons and margin calculations whereas the ''as sold'' measures do not. In particular, the petitioners emphasize that it is necessary to translate the actual sold volumes (weights) and count sizes to a uniform unit of measure that takes into account the various levels of processing of the different shrimp products sold and the allegedly large difference in value between the shrimp tail meat and other parts of the shrimp that may constitute ''as sold'' weight or count size, such as the head or shell. The petitioners' contention is premised upon their belief that the shrimp tail meat is the value-driving component of the shrimp.

The respondents disagree, maintaining generally that using HLSO-equivalent data violates the antidumping duty law and significantly distorts product comparisons and margin calculations. In particular, they argue that: (1) Shrimp is sold based on its actual size and form, not on an HLSO basis, and it is the Department's practice to use actual sales/cost data in its margin analysis; (2) the rates used to convert price, quantity and expense data to an HLSO basis are uncertain as they are not maintained by the respondents in the ordinary course of business, and are generally based on each individual company's experience rather than any accepted industry-wide standard; and (3) the HLSO methodology introduces a significant distortion through the incorrect assumption that the value of the product varies solely in direct proportion to the change in weight resulting from production yields, when in fact the value of the product depends also on other factors such as quality and form.

Our analysis of the company responses shows that: (1) no respondent uses HLSO equivalents in the normal course of business, for either sales or cost purposes; and (2) there is no reliable or consistent HLSO conversion formula for all forms of processed shrimp across all companies, as each company defined its conversion factors differently and derived these factors

[6] In this notice, we address only those comments pertaining to market-economy dumping calculation methodology. Any comments pertaining to non-market-economy dumping calculation methodology are separately addressed in the July 2, 2004, preliminary determinations in the antidumping duty investigations of certain frozen and canned warmwater shrimp from the People's Republic of China and the Socialist Republic of Vietnam. *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), and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672 (July 16, 2004).

based on its own production experience. Therefore, we preliminarily determine it is appropriate to perform product comparisons and margin calculations using data ''as sold.'' This approach is in accordance with our normal practice and precludes the use of conversion rates, the accuracy of which is uncertain. Given the variety and overlap of the ''as sold'' count size ranges reported by the respondents, we also preliminarily determine that it is appropriate to standardize product comparisons across respondents by fitting the ''as sold'' count sizes into the count size ranges specified in the questionnaire. *See* Memorandum to the File entitled ''Exportadora de Alimentos S.A. Preliminary Determination Notes and Margin Calculation'' dated July 28, 2004 (Expalsa Memo); Memorandum to the File entitled ''Exporklore S.A., Preliminary Determination Notes and Margin Calculation'' dated July 28, 2004; and ''Promarisco, S.A. Preliminary Determination Notes and Margin Calculation'' dated July 28, 2004 for a further discussion of our reclassification of count sizes.

Product Characteristics Hierarchy

We also received comments from various interested parties regarding the significance of the species and container weight criteria in the Department's product comparison hierarchy.

Various parties requested that the species criterion be ranked higher in the Department's product characteristic hierarchy—as high as the second most important characteristic, rather than the thirteenth—based on their belief that species is an important factor in determining price. One party provided industry publications indicating price variations according to species type. Another party requested further that the Department revise the species categories specified in the Department's questionnaire to reflect characteristics beyond color (*i.e.*, whether the shrimp was farm-raised or wild-caught). In addition, several parties requested that container weight, the eleventh characteristic in the Department's product characteristic hierarchy, be eliminated altogether as a product matching criterion, as they believe it is commercially insignificant and relates to packing size or form, rather than the physical attributes of the product.

With respect to the arguments regarding the species criterion, the petitioners disagree, maintaining that there is no credible evidence that species drives pricing to such a significant extent that buyers consider it more important than product characteristics such as head and cooked status. Rather, the petitioners contend that once shrimp is processed (*e.g.*, cooked, peeled, etc.), the species classification becomes essentially irrelevant. Therefore, the petitioners assert that while species type has some, not entirely insignificant effect on shrimp prices, it is appropriately captured in the Department's product matching hierarchy. Furthermore, with respect to the container weight criterion, the petitioners assert that, while the shrimp inside the container may be identical, in many cases the size of the container is an integral part of the product and an important determinant of the markets and channels through which shrimp can be sold. For this reason, the petitioners maintain that the Department should continue to include container weight as a product matching characteristic.

Regarding the species criterion, we have not changed the position of this criterion in the product characteristic hierarchy for the preliminary determination. We agree that the physical characteristic of species type may impact the price or cost of processed shrimp. For that reason, we included species type as one of the product matching criteria. However, based on our review of the record evidence, we find that other physical characteristics of the subject merchandise, such as head status, count size, shell status, and frozen form, appear to be more significant in setting price or determining cost. The information provided by the parties, which suggests that price may be affected in some cases by species type, does not provide sufficient evidence that species type is more significant than the remaining physical characteristics of the processed shrimp. Therefore, we find an insufficient basis to revise the ranking of the physical characteristics established in the Department's questionnaire for the purpose of product matching.

With respect to differentiating between species types beyond the color classifications identified in the questionnaire, we do not find that such differentiations reflect meaningful differences in the physical characteristics of the merchandise. In particular, we note that whether shrimp is farm-raised or wild-caught is not a physical characteristic of the shrimp, but rather a method of harvesting. Therefore, we have not accepted the additional species classifications proposed by the respondents. Accordingly, in those cases where the respondents reported additional species classifications for their processed shrimp products, we reclassified the products into one of the questionnaire color classifications. We made an exception for the shrimp identified as ''scampi'' (or *Macrobrachium rosenbergii*) and ''red ring'' (or *Aristeus alcocki*), where appropriate, because they represent species distinct from those associated by color in the Department's questionnaire. Regarding this exception, we note that while scampi and red ring are sufficiently distinct for product matching purposes, they are not so distinct as to constitute a separate class or kind of merchandise (*see* Scope Memorandum II). We also made an exception for the shrimp identified as ''mixed'' (*e.g.*, ''salad'' shrimp), where appropriate, because there is insufficient information on the record to classify these products according to the questionnaire color classifications.

Regarding the container weight criterion, we have included it as the eleventh criterion in the product characteristic hierarchy because we view the size or weight of the packed unit as an integral part of the final product sold to the customer, rather than a packing size or form associated with the shipment of the product to the customer. Moreover, we find it appropriate, where possible (other factors being equal), to compare products of equivalent container weight (*e.g.*, a one-pound bag of frozen shrimp with another one-pound bag of frozen shrimp, rather than a five-pound bag), as the container weight may impact the per-unit selling price of the product.

Grade and ''Input Materials''

Expalsa contends that the Department should include grade and input material as product matching characteristics for its sales because it states that these factors have a significant effect on both prices and costs in its normal course of business. We have not incorporated these characteristics in our matching criteria because no party in this or any of the concurrent investigations has provided evidence of consistent industry-wide standards for reporting shrimp grade. Each company or customer appears to have its own grade specifications. Accordingly, we have no basis to establish a consistent method of classifying shrimp by grade. Further, we are not convinced that input material, a characteristic which Expalsa uses to distinguish processed shrimp products consisting of ''non-standard mixes'' of shrimp (*i.e.*, shrimp of mixed grades and mixed sizes), is a proper physical characteristic to be considered as a product matching criterion. Instead, the input material appears to be a factor related to calculating the direct material

costs for each product. Moreover, because we are not considering grade to be a matching criterion for the preliminary determination, the input material issue is moot with respect to grade. With respect to the mixed size aspect of this issue, we have reclassified the count size ranges reported by the respondents into the count size ranges specified in the questionnaire, as noted above in the ''Product Comparison Comments'' section of the notice. However, we may examine Expalsa's claims further at verification for consideration in our final determination.

Substandard Quality Shrimp

Each of the respondents in this investigation reported sales of substandard quality shrimp, such as ''broken shrimp'' or ''shrimp meat'', in their sales to the U.S. market, but none to their respective third country markets. Because: (1) the matching criteria for this investigation do not currently account for substandard quality shrimp; (2) no interested parties have provided comments on the appropriate methodology to match these sales; and (3) the quantity of such sales does not constitute a significant percentage of the respondents' respective databases, we have excluded these sales from our analysis, where possible, for purposes of the preliminary determination. Nonetheless, we are seeking comments from interested parties regarding our treatment of these sales for consideration in the final determination.

Export Price

In accordance with section 772(a) of the Act, for all three respondents, we used EP methodology for sales in which the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States.

We made company-specific adjustments as follows.

Exporklore

In accordance with section 772(a) of the Act, we based EP on the packed FOB or C&F price to unaffiliated purchasers in the United States. We adjusted the starting price for billing adjustments associated with the sale, where appropriate. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, international freight, foreign inland freight, foreign inland insurance, and foreign brokerage and handling expenses.

Some of Exporklore's U.S. sales were sold on a glazed-weight basis (*i.e.*, the reported sales quantity included the weight of frozen water). Where appropriate, we converted the data in the U.S. market to a net-weight equivalent basis.

Expalsa

In accordance with section 772(a) of the Act, we based EP on the packed FOB or C&F price to unaffiliated purchasers in the United States. We adjusted the starting price, where appropriate, for certain billing adjustments and freight revenue associated with the sale. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, brokerage and handling fees and international freight.

The reported expense amount identified as ''total export charge'' in the U.S. sales listing that includes brokerage and handling fees also includes inspection fees and other expenses which may be considered selling expenses rather than movement expenses. However, as Expalsa did not separate the brokerage and handling charges from the other expenses included in the reported amount, we have treated the entire amount as movement expenses for purposes of the preliminary determination.

Expalsa reported three types of billing adjustments for certain U.S. sales, each of which was paid or credited in 2004, after the filing of the petition, although Expalsa claimed that the basis for the adjustment was established during the POI. As stated in *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Germany,* 61 FR 38166, 38181 (July 23, 1996) (*LNPP from Germany*), the Department is cautious in accepting price adjustments which occur after receipt of a petition so as to discourage potential manipulation of potential dumping margins. Based on our analysis of the information on the record at this time, we find that Expalsa has demonstrated that the basis for a price adjustment was established prior to the filing of the petition for only one of the three reported types of billing adjustments. Accordingly, we have disallowed two of the billing adjustments for purposes of the preliminary determination, but we will examine all three billing adjustments further at verification for consideration in the final determination. *See Expalsa Memo* for additional information as Expalsa has claimed proprietary treatment for the factual details surrounding these adjustments.

Promarisco

In accordance with section 772(a) of the Act, we based EP on the packed FOB, C&F, or CIF prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, foreign inland freight, foreign inland insurance, international freight, and marine insurance.

Promarisco reported as billing adjustments two sets of price revisions made after the petition in this investigation was filed. As discussed above, and consistent with *LNPP from Germany,* we have disallowed those post-petition price adjustments because the information on the record at this time fails to demonstrate that the basis for these adjustments was established prior to the filing of the petition. However, we will examine them further at verification for consideration in the final determination. *See* Promarisco Memo for additional information as Promaricso has claimed proprietary treatment for the factual details surrounding these adjustments.

Normal Value

A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

As noted above, the Department determined that a particular market situation existed in Ecuador that rendered the home market inappropriate for use as the comparison market for NV purposes. Therefore, the Department determined it appropriate to use third country sales as the basis for NV for all three respondents. For a detailed discussion of this issue, *see* June 7, 2004, Memorandum to Louis Apple, Director Office 2, from The Team Re: Home Market as Appropriate Comparison Market. Therefore, we used sales to the respondent's most appropriate third country market as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. As discussed above and in the Third Country Comparison Market Selection

Memorandum, we used Italy for Expalsa and Exporklore, and Spain for Promarisco.

With respect to the selection of Spain as the comparison market for Promarisco, the petitioners filed additional comments in June 2004, objecting to the Department's decision to select Spain, rather than Japan, as the most appropriate third country comparison market. Specifically, the petitioners claimed that the Department erred in concluding that Promarisco's sales to Spain were more similar to its U.S. sales than its Japanese sales. According to the petitioners, the Department did not accurately account for the petitioners' product comparison analysis in determining the ''most similar'' comparison market. In response, Promarisco filed additional comments supporting the Department's decision.

The petitioners' subsequent comments offer no basis to compel us to alter our decision. The Department considered the petitioners' product comparison analysis along with its own product comparison analysis in selecting Promarisco's third country comparison market. However, as we emphasized in the Third Country Comparison Market Selection Memorandum, we considered all of the criteria under 19 CFR 351.404(e) in determining the appropriate third country comparison market. That is, we considered: (1) Whether the foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries; (2) whether the volume of sales to a particular third country is larger than the volume of sales to other third countries; and (3) other factors as the Secretary considers appropriate. After analyzing the available information in terms of all three criteria, we determined that Spain is the appropriate comparison market. Based on the preliminary determination results, and after review of the additional comments submitted by the petitioners and Promarisco, we continue to hold that Spain is the appropriate comparison market.

The petitioners argue that, based on the product matching characteristics, the Japanese market offers the ''most similar'' comparisons to U.S. sales compared to the Spanish market. As we indicated in the Third Country Comparison Market Selection Memorandum, we agree with the petitioners that there is a high proportion of identical or similar product matches when comparing Japanese sales to U.S. sales. We also noted that the Spanish market also offered a high proportion of matches to U.S. sales. Our analysis at that time showed identical or similar product matches of Spanish sales to U.S. sales of at least ninety-eight percent of U.S. sales; this preliminary determination results in one-hundred percent identical or similar product matches of Spanish sales to U.S. sales.

We have no basis to dispute the petitioners' contention that we would also find a significant proportion of product matches from Japanese sales. However, similarity of foreign like product is only one of the three criteria for determining the appropriate third country market under 19 CFR 351.404(e). The petitioners' June 2004 comments do not address the criterion of sales volume. In the Third Country Comparison Market Selection Memorandum, we did not specifically address which of the two markets was the larger in terms of sales volume. We stated that both the Spanish and Japanese markets is sufficiently large for purposes of serving as the comparison market. Subsequent to this Memorandum, as discussed above, the Department has determined to perform product comparisons and margin calculations using data on an ''as sold'' basis. We note that the volume of Promarisco's sales to Spain is greater, on an ''as sold'' basis, than Promarisco's sales to Japan during the POI.

Finally, we note that the petitioners did not address the Department's analysis of the third criterion under 19 CFR 351.404(e)(3), the ''other factors the Secretary considers appropriate.'' As we explained in the Third Country Comparison Market Selection Memorandum, Promarisco reported that its Japanese customers require a higher level of quality and freshness than do its U.S. customers and its Spanish customers. Promarisco also reported that the harvesting, transportation, handling and processing procedures associated with the sale of subject merchandise in Japan are more stringent than are the same processes associated with the sale of this merchandise in the United States.

Based on a consideration of all three criteria under 19 CFR 351.404(e), we continue to find that Spain is the more appropriate third-country market for Promarisco. Nevertheless, we intend to verify all factual representations made by Promarisco on this topic; any misrepresentations may result in the use of adverse facts available under section 776(b) of the Act.

B. Level of Trade Analysis

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported third country (Italy or Spain) and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

Exporklore

Exporklore made sales to wholesalers/distributors through the same channel of distribution in both the United States and Italy. As described in its questionnaire response, Exporklore performs identical selling functions in the United States and Italy. Therefore, these sales channels are at the same LOT. Accordingly, all comparisons are at the same LOT for Exporklore and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Expalsa

Expalsa made sales to distributors through the same channel of distribution in both the U.S. and Italy. As described in its questionnaire response, Expalsa performs identical selling functions in the United States and Italy. Therefore, these sales channels are at the same LOT. Accordingly, all comparisons are at the same LOT for Expalsa and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Promarisco

Promarisco made sales to food processors and distributors through the same channel of distribution in both the United States and Spain. As described in its questionnaire response, Promarisco performs the identical selling functions in the United States and Spain. Therefore, these sales channels are at the same LOT. Accordingly, all comparisons are at the same LOT for Promarisco and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that the respondents' sales of frozen and canned warmwater shrimp in the third countries were made at prices below their respective COPs. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether sales by Expalsa, Exporklore, and Promarisco were made at prices below their respective COPs. See Memorandum to Louis Apple, Director Office 2, from The Team entitled ''Petitioners'' Allegation of Sales Below the Cost of Production by Expalsa'' dated May 28, 2004; Memorandum to Louis Apple, Director Office 2, from The Team entitled ''Petitioners'' Allegation of Sales Below the Cost of Production by Exporklore'' dated May 28, 2004; and Memorandum to Louis Apple, Director Office 2, from The Team entitled ''Petitioners'' Allegation of Sales Below the Cost of Production by Promarisco'' dated May 28, 2004.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and third country packing costs. *See* ''Test of Third Country Sales Prices'' section below for treatment of third country selling expenses. We relied on the COP data submitted by Exporklore, Expalsa and Promarisco except in the following instances:

Exporklore

1. We adjusted Exporklore's reported direct labor costs to disallow the offset taken for co-packing revenues.
2. We adjusted Exporklore's reported costs for shrimp harvested from affiliated farms to reflect the higher of transfer price, market price or the affiliate's COP in accordance with section 773(f)(3) of the Act.
3. We revised Exporklore's reported COP by re-allocating the raw shrimp costs among products sold in the U.S., third country and domestic markets.
4. We adjusted Exporklore's reported costs for affiliated payroll service commissions to reflect the higher of market or transfer price in accordance with section 773(f)(2) of the Act.
5. We revised Exporklore's G&A expense rate to exclude offshore expenses from the cost of sales denominator used to calculate the rate.
6. We revised Exporklore's financial expense rate to include the change in currency adjustment from the financial statements and to exclude offshore expenses from the cost of sales denominator used to calculate the rate.

See Memorandum to Neal Halper from Heidi Schriefer entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Exporklore, S.A.'' dated July 28, 2004.

Expalsa

1. We adjusted the reported costs for shrimp harvested from affiliated farms to reflect the higher of transfer price, market price, or the affiliate's COP in accordance with section 773(f)(3) of the Act.
2. We adjusted the fixed overhead expenses to reflect the costs for the POI rather than the calendar year 2003.

See Memorandum to Neal Halper from Nancy Decker entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Exportadora de Alimentos, S.A.'' dated July 28, 2004 (Expalsa Cost Memo).

Promarisco

1. We adjusted Promarisco's reported costs for affiliated shrimp purchases to reflect the higher of market or transfer price in accordance with section 773(f)(2) of the Act. *See* Memorandum to Neal Halper from Taija A. Slaughter entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Promarisco S.A.'' dated July 28, 2004.

2. Test of Third Country Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses. In determining whether to disregard third country market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we did not disregard any below-cost sales of that product, because we determined that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined that the below-cost sales represented substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of the respondents' respective third country sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act as the basis for determining NV. Where there were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

D. Calculation of Normal Value Based on Comparison Market Prices

Exporklore

We calculated NV based on FOB or C&F prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates. We also made deductions for movement expenses, including foreign inland freight, foreign inland insurance, brokerage and handling, and international freight, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit and inspection fees. Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Some of Exporklore's Italian sales were sold on a glazed-weight basis (*i.e.*, the reported sales quantity included the weight of frozen water). Where appropriate, we converted the data in the Italian market to a net-weight equivalent basis.

Expalsa

We calculated NV based on FOB or C&F prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates and billing adjustments. We also made deductions for movement expenses, including inland freight and international freight, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit, testing and inspection expenses, bank fees, and other direct selling expenses. Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Expalsa reported freight expenses associated with the shipment and return of cancelled sales to Italy as a direct selling expense. Expalsa is unable to determine with certainty the ultimate destination of this merchandise (*see* June 2, 2004, submission at page SB–14). When expenses cannot be associated with a sale to the first unaffiliated customer, the Department will normally treat them as indirect selling expenses to the selling market and entity of the originating sale (*i.e.*, the market for which the expenses were incurred, and the corporate entity which incurred the expenses). *See Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers From Malaysia,* 69 FR 20592 (April 16, 2004), Issues and Decision Memorandum at Comment 2. Accordingly, we have reclassified the freight expenses at issue as indirect selling expenses in the Italian market, the market of the originating sales. In addition, we recalculated these expenses by allocating them over all Italian sales made during the POI because Expalsa had incorrectly allocated them over calendar year 2003 sales. *See* Expalsa Memo.

Promarisco

We calculated NV based on CIF, C&F or FOB prices to unaffiliated customers. We made deductions from the starting price for movement expenses, including inland freight, inland insurance, marine insurance, and international freight under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses, testing expenses, inspection fees, and commissions. Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Promarisco reported a bonus paid to its unaffiliated agent in the Spanish market several months after the filing of the petition in the instant investigation. Although Promarisco claims that the bonus applied to sales made during the POI, the information on the record at this time does not adequately demonstrate that the basis for this claim was established prior to the filing of the petition. As discussed above for similar claimed adjustments, we are disallowing the bonus as an adjustment to price for the preliminary determination but will examine it further at verification.

E. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, for Expalsa, we based NV on CV in those instances where there were no comparable sales in the Italian third country market made in the ordinary course of trade.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on the methodology described in the ''Calculation of COP'' section of this notice. For further details, *see* Expalsa Cost Memo.

For comparisons to EP, we made circumstances-of-sale adjustments by deducting third country direct selling expenses and adding U.S. direct selling expenses.

Currency Conversion

As all three respondents reported their prices, expenses, and costs in U.S. dollars, no currency conversions were required in our margin calculations.

Verification

As provided in section 782(I) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Exporklore S.A.	9.35
Exportadora De Alimentos S.A.	6.08
Promarisco S.A.	6.77
All Others	7.30

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final

determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(I) of the Act.

Dated: July 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–17815 Filed 8–3–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand

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

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain frozen and canned warmwater shrimp from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Thailand.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: August 4, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. In addition, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Thailand. The critical circumstances analysis for the preliminary determination is discussed below under the section ''Critical Circumstances.''

Background

Since the initiation of this investigation (*see Initiation of Antidumping Duty Investigations: 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 Notice*)), the following events have occurred.

On February 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain frozen and canned warmwater shrimp from Thailand are materially injuring the United States industry. *See* ITC Investigation Nos. 731–TA–1063–1068 (Publication No. 3672).

On February 20, 2004, we selected the four largest producers/exporters of certain frozen and canned warmwater shrimp from Thailand as the mandatory respondents in this proceeding. *See* Memorandum to Louis Apple, Director Office 2, from the Team entitled: ''Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Thailand—Selection of Respondents,'' dated February 20, 2004. We subsequently issued the antidumping questionnaire to Chanthaburi Seafoods Co., Ltd. (CSF), Thailand Fishery Cold Storage Public Co., Ltd. (TFC), Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei), and the Union Frozen Products Co., Ltd. (UFP) on February 20, 2004. From February 11, 2004, through March 16, 2004, Andaman Seafood Co., Ltd. (AMS), CSF, and TFC provided information to the Department related to the affiliation of these companies and a U.S. importer, Rubicon Resources.

During the period February through June 2004, various interested parties, including the petitioners,[1] submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp concerning whether the following products are covered by the scope of the investigations: a certain seafood mix, dusted shrimp, battered shrimp, salad shrimp sold in counts of 250 pieces or higher, the species *Macrobachium rosenbergii*, organic shrimp, and peeled

[1] The petitioners in this investigation are the Ad Hoc Shrimp Trade Alliance (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.