

22, 2002) (“*Final Results*”) and accompanying *Issues and Decision Memorandum* (“*Memo*”), covering the period of review (“*POR*”), September 1, 1999 August 31, 2000. Following publication of the *Final Results*, Fujian Pelagic Fishery Group Co. (“*Fujian*”) and Pacific Coast Fishery Corp. (“*Pacific Coast*”), filed a lawsuit with the United States Court of International Trade (“*CIT*”) challenging the Department’s *Final Results*. In the *Final Results*, the Department determined that *Fujian* and *Pacific Coast* were not affiliated pursuant to section 771(33) of the Tariff Act of 1930, as amended (“*the Act*”). See *Memo* at Comment 18. *Fujian* and *Pacific Coast* challenged the Department’s determination and the *CIT* affirmed the Department’s determination that *Fujian* and *Pacific Coast* were not affiliated parties because “*Fujian* had not made an investment, whether in cash or in the form of a promissory note, in *Pacific Coast*” and because “*Fujian* did not exercise control over *Pacific Coast*.” See *Crawfish Processors Alliance, et al. v. United States*, 343 F. Supp. 2d 1242, 1269 (*CIT* 2004).

*Fujian* and *Pacific Coast* timely appealed the *CIT*’s decision with the United States Court of Appeals for the Federal Circuit (“*CAFC*”). The only issue considered on appeal was whether *Fujian* and *Pacific Coast* were affiliated parties pursuant to section 771(33)(E) of the Act. The *CAFC* reversed the *CIT*’s affirmation of the Department’s determination that *Fujian* and *Pacific Coast* were not affiliated because section 771(33)(E) of the Act does not require “proof of full payment in cash or merchandise during the review period to show affiliation” and that *Fujian* and *Pacific Coast* “have presented sufficient evidence to show that *Fujian* directly or indirectly owns at least 5% of *Pacific Coast*’s shares.” See *Crawfish Processors Alliance, et al. v. United States*, 477 F.3d 1375, 1384 (Fed. Cir. 2007). The *CAFC* remanded the case to the *CIT* for proceedings consistent with its opinion. Therefore, on October 30, 2007, the *CIT* directed the Department to recalculate the antidumping duty margin treating *Fujian* and *Pacific Coast* as affiliated parties in compliance with the *CAFC*’s decision and mandate.

On December 11, 2007, the Department released the draft final results of redetermination for comment. No party submitted comments by the December 20, 2007, deadline. On January 24, 2008, the Department filed its final results of redetermination pursuant to remand with the *CIT*. See *Final Results of Redetermination Pursuant to Court Remand*, Court No.

02–00376 (January 24, 2008) (“*Final Redetermination*”), found at <http://ia.ita.doc.gov/remands/07–156.pdf>. In the remand redetermination, pursuant to the *CIT*’s order, the Department considered *Fujian* and *Pacific Coast* affiliated parties under section 771(33)(E) of the Act and recalculated *Fujian*’s dumping margin using *Pacific Coast*’s CEP sales data. On March 5, 2008, the *CIT* sustained all aspects of the remand redetermination made by the Department pursuant to the *CIT*’s remand of the *Final Results*. See *Crawfish Processors Alliance v. United States*, Slip Op. 08–27 (March 5, 2008).

On March 20, 2008, consistent with the decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the *CIT*’s decision was not in harmony with the Department’s final results. See *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Court Decision Not In Harmony With Final Results of Administrative Review*, 73 FR 14960 (March 20, 2008). No party appealed the *CIT*’s decision. As there is now a final and conclusive court decision in this case, we are amending our *Final Results*.

**Amended Final Results**

As the litigation in this case has concluded, the Department is amending the *Final Results* to reflect the results of our remand determination. The revised dumping margin in the amended final results is as follows:

| Exporter            | Margin |
|---------------------|--------|
| <i>Fujian</i> ..... | 60.83% |

The Department will instruct U.S. Customs and Border Protection (“*CBP*”) to liquidate entries of freshwater crawfish tail meat from the People’s Republic of China during the review period at the assessment rate the Department calculated for the final results of review as amended. We intend to issue the assessment instructions to *CBP* 15 days after the date of publication of these amended final results of review.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 3, 2008.

**David M. Spooner**,  
Assistant Secretary for Import Administration.

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**A–351–838**

**Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review**

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

**SUMMARY:** On March 6, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Brazil. This review covers 15 producers/exporters of the subject merchandise to the United States. The period of review (*POR*) is February 1, 2006, through January 31, 2007. We are rescinding the review with respect to one company which made no shipments of the subject merchandise during the *POR*.

Based on our analysis of the comments received, we have made certain changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled “*Final Results of Review*.”

**EFFECTIVE DATE:** July 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–4929 and (202) 482–4007, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

This review covers 15 producers/exporters.<sup>1</sup> The respondents which the Department selected for individual review are Amazonas Industrias Alimenticias S.A. (“*AMASA*”) and Comercio de Pescado Aracatiense Ltda. (“*Compescal*”). The respondents which were not selected for individual review are listed in the “*Final Results of Review*” section of this notice.

On March 6, 2008, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Brazil. See *Certain Frozen Warmwater Shrimp from Brazil*:

<sup>1</sup> This figure does not include those companies for which the Department is rescinding the administrative review.

*Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12081 (March 6, 2008) (Preliminary Results).

We invited parties to comment on our preliminary results of review. On April 7, 2008, AMASA requested a public hearing. On April 14, 2008, we received a case brief from the Louisiana Shrimp Association, an interested party in this proceeding. On April 16, 2008, we received case briefs from AMASA and the petitioner (*i.e.*, the Ad Hoc Shrimp Trade Action Committee). On April 28, we received rebuttal briefs from AMASA and the petitioner. On May 2, 2008, AMASA withdrew its request for a hearing.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Scope of the Order

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

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

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

<sup>2</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

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

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 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, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

### Period of Review

The POR is February 1, 2006, through January 31, 2007.

### Partial Rescission of Review

In the *Preliminary Results*, we preliminarily rescinded this review with respect to Qualimar Comercio Imp. E Exp. Ltda. ("Qualimar"). On September

13, 2007, Qualimar submitted a quantity and value ("Q&V") questionnaire response stating that it had no shipments/exports of subject merchandise to the United States during the POR. Furthermore, data from U.S. Customs and Border Protection ("CBP") show that Qualimar did not have shipments of subject merchandise during the POR. Accordingly, we are rescinding this review with respect to Qualimar.

### Successor-In-Interest

As discussed in the *Preliminary Results*, on April 18, 2007, Empresa De Armazenagem Frigorifica Ltda. (Empaf) informed the Department that it is now doing business as Netuno Alimentos S.A. (Netuno).<sup>3</sup> On May 9, 2007, in response to the Department's request for additional information, Netuno asserted its view that it is the successor-in-interest to Empaf. Specifically, Netuno stated that there were no changes to Empaf's management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. Based on our analysis of Netuno's May 9, 2007, submission, we preliminarily found that its organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. We also found that Netuno operates as the same business entity as Empaf with respect to the production and sale of certain frozen warmwater shrimp. Thus, we preliminarily found that Netuno is the successor-in-interest to Empaf, and, as a consequence, its exports of certain frozen warmwater shrimp are subject to the antidumping duty order on shrimp from Brazil.

Since the *Preliminary Results*, no party to this proceeding has commented on this issue, and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of these final results, we continue to find that Netuno is the successor-in-interest to Empaf for purposes of determining antidumping duty liability.

### Facts Available

In the *Preliminary Results*, we determined that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available was appropriate as the basis for the dumping margins for the

<sup>3</sup> In the original investigation, we found that Empaf and Maricultura Netuno comprised a single entity. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (Dec. 23, 2004).

following producer/exporters: Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. See *Preliminary Results* at 12083.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In April 2007, the Department requested that all companies subject to review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 23, 2007. Because numerous companies did not respond to this initial request for information, in May and June 2007, we issued letters to these companies affording them a second and third opportunity to submit a response to the Q&V questionnaire. The above-mentioned companies again failed to respond to our requests for Q&V data. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, we preliminarily found that the use of total facts available was warranted. Consistent with the *Preliminary Results*, the Department finds that the use of total facts available for Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. is appropriate for purposes of the final results, pursuant to sections 776(a)(2)(A) and (C) of the Act.

#### Application of Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g.,

*Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). See also, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquacultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting the facts otherwise available. See *Nippon*, 337 F. 3d at 1382–83.

In the *Preliminary Results*, we assigned to the uncooperative companies an adverse facts available (AFA) rate of 68.15 percent, the preliminary margin calculated for AMASA, which, at the time, was the highest rate determined for any respondent in any segment of the proceeding (i.e., the less-than-fair-value (LTFV) investigation, the first administrative review, or the instant review). However, given the changes made to the margin calculations for AMASA since the *Preliminary Results*,<sup>4</sup> the rate assigned to AMASA for purposes of these final results is 48.60 percent. Therefore, in accordance with Department policy to assign the highest rate on record of the proceeding as AFA, for the final results, we have applied an AFA margin of 67.80 percent from the LTFV investigation. The Court of

International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice in this regard. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); see also *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 680 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent) and *Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In selecting an appropriate AFA rate, the Department considered: 1) the rates alleged in the petition (see *Notice of 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, 3879 (January 27, 2004)); 2) the rates calculated in the final determination of the LTFV investigation, as amended, which ranged from 4.97 to 67.80 percent (see *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) (*LTFV Amended Final Determination and Order*)); 3) the rates calculated in the final results of the 2004–2006 administrative review, which ranged from 4.62 to 15.41 percent (see *Certain*

<sup>4</sup> See Issues and Decision Memorandum (Decision Memo) accompanying this notice for further discussion.

*Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52061 (September 12, 2007) (2004–2006 Administrative Review); and 4) the rate calculated for AMASA in the final results of this administrative review. As discussed further below, we find that the rates alleged in the petition no longer have probative value for purposes of this review. In addition, we find that the rate calculated for AMASA in this review, as well as the rates calculated in the 2004–2006 administrative review, are not sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we do not find that these rates are high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). Therefore, we have assigned a rate of 67.80 percent as AFA, which is the highest margin determined for any respondent in any segment of the proceeding (*i.e.*, the LTFV investigation).<sup>5</sup> We consider the 67.80-percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

#### Corroboration

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); see also SAA. The rates alleged in the petition and information from prior segments of the proceeding constitute secondary information and, to the extent practicable, the Department will examine the reliability and relevance of the information to be used.

For purposes of the final results, we did not use either of the two highest of the three petition rates (*i.e.*, 320 percent and 349 percent) because these rates did not corroborate with independent information reasonably at our disposal, *i.e.*, the transaction-specific margins in the current administrative review. We did not use the remaining petition rate (*i.e.*, 32 percent) because it was lower than the selected AFA rate, and as such

would not accomplish the objectives of AFA, stated above. Moreover, we have an alternative that we find to be sufficiently adverse to effectuate the purpose of the AFA provision of the statute.

The reliability of the selected AFA rate was determined by the calculation of the margin for Norte Pesca, as published in the *LTFV Amended Final Determination and Order*. With respect to corroboration of a rate calculated in a segment of a proceeding, we note that, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive dumping margins. The only source for calculated dumping margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See, *e.g.*, *Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 44283, 44284 (July 28, 2003), and *Anhydrous Sodium Metasilicate from France: Final Results of Antidumping Duty Administrative Review*, 68 FR 60080 (October 21, 2003) (unchanged in final). Therefore, given that we are using the highest margin calculated for any respondent in any segment of the proceeding, it is not necessary to question the reliability of this rate. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself.

However, because none of the following companies (*i.e.*, Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquicultura Fortaleza Aquafort SA, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda.) submitted information to the Department or participated in a previous segment of this proceeding, we do not have information specific to these companies to consider in determining whether the 67.80-percent margin is relevant to each of them or to the current POR. Therefore, to determine whether the 67.80-percent margin is relevant in this administrative review, we compared this rate to the transaction-specific rates calculated for AMASA in this review. With respect to Compescal, which participated in the 2004–2006 administrative review, we also compared the AFA rate to the transaction-specific rates calculated for

Compescal in the previous review. Based on these comparisons, we find that the selected AFA rate is relevant because it fell within the range of, or approximated, the individual transaction margins calculated for AMASA in this review and for Compescal in the previous review. See Memorandum to The File from Kate Johnson and Rebecca Trainor entitled "Corroboration of Adverse Facts Available Rate for the Final Results in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil," dated July 3, 2008; see also *2004–2006 Administrative Review and Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006).

The Department also considers information reasonably at its disposal to determine whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). For the instant review, we examined whether any information on the record would discredit the selected rate as reasonable facts available and have found none. Because we did not find evidence indicating that the margin selected as AFA in this review is not appropriate, we have determined that the highest margin calculated for any respondent in any segment of the proceeding (*i.e.*, 67.80 percent) is appropriate to use as AFA, and are assigning this rate to Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda., Aquicultura Fortaleza Aquafort SA, Compescal, ITA Fish - S.W.F. Importacao e Exportacao Ltda., Orion Pesca Ltda., Santa Lavinia Comercio e Exportacao Ltda., Secom Aquicultura Comercio E Industria SA, and Tecmares Maricultura Ltda. in the final results of this review.

#### Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether AMASA made

<sup>5</sup> This margin was based on the rate we calculated for respondent Norte Pesca S.A. in the preliminary determination of the LTFV investigation, based on information it submitted in its questionnaire responses. Although this company withdrew from the investigation after the preliminary determination, this rate was used as the AFA rate in the final determination. See *LTFV Amended Final Determination and Order*.

home market sales of the foreign like product during the POR at prices below the cost of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the *Decision Memo*.

For AMASA, we found that 20 percent or more of comparison market sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. See sections 773(b)(2)(B) - (D) of the Act. Therefore, for purposes of these final results, we found that AMASA made below-cost sales not in the ordinary course of trade during the POR. Consequently, we disregarded these sales and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

**Analysis of Comments Received**

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the *Decision Memo*, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department building.

In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Decision Memo* are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we have made certain changes in the margin calculations for AMASA. These changes are discussed in the relevant sections of the *Decision Memo*.

**Final Results of Review**

We determine that the following weighted-average margin percentages exist for the period February 1, 2006, through January 31, 2007:

| Manufacturer/Exporter                              | Percent Margin |
|--|----------------|
| Amazonas Industrias Alimenticias S.A. ("AMASA") .. | 48.60          |

| Manufacturer/Exporter                                     | Percent Margin |
|---|----------------|
| Comercio de Pescado Aracatiense Ltda. ("Compescal") ..... | 67.80          |

Review-Specific Average Rate Applicable to the Following Companies:

| Manufacturer/Exporter  | Percent Margin |
|--|----------------|
| Aquatica Maricultura do Brasil Ltda./Aquafeed do Brasil Ltda.  | 48.60          |
| Central de Industrializacao e Distribuicao de Alimentos Ltda. ("CIDA") and Cia Exportadora de Produtos do Mar ("Produmar") ..... | 48.60          |
| Ipesca - Industria de Frio e Pesca S.A. ....   | 48.60          |
| Intermarine Servicos Nauticos Ltda. ....   | 48.60          |
| JK Pesca Ltda. ....  | 48.60          |
| Pesqueira Maguary Ltda. ....   | 48.60          |

AFA Rate Applicable to the Following Companies:

| Manufacturer/Exporter                                 | Percent Margin |
|---|----------------|
| Acarau Pesca Distr. de Pescado Imp. e Exp. Ltda. .... | 67.80          |
| Aquacultura Fortaleza Aquafort SA .....               | 67.80          |
| ITA Fish - S.W.F. Importacao e Exportacao Ltda. ....  | 67.80          |
| Orion Pesca Ltda. ....                                | 67.80          |
| Santa Lavinia Comercio e Exportacao Ltda. ....        | 67.80          |
| Secom Aquicultura Comercio E Industria SA .....       | 67.80          |
| Tecmares Maricultura Ltda. ....                       | 67.80          |

**Assessment**

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Because AMASA did not report the actual entered value of its U.S. sales, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value. For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any

which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. This clarification will also apply to POR entries of subject merchandise produced by companies for which we are rescinding the review based on certifications of no shipments, because these companies certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the LTFV investigation if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

**Cash Deposit Requirements**

The following deposit requirements will be effective for all shipments of shrimp from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for

the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.05 percent, the all-others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: July 3, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

#### Appendix – Issues in Decision Memorandum

1. Selection of Adverse Facts Available Rate
2. Consideration of Grade as a Matching Criterion
3. Date of Sale for Sales to Kenkoh
4. Sales to Employees
5. Calculation of Variable and Total Costs of Manufacturing
6. Corrections Presented at Cost Verification
7. Adjustments to Costs for Reconciling Differences

8. Adjustments to AMASA's General and Administrative Expense Ratio  
9. Financial Expense Ratio  
[FR Doc. E8-15827 Filed 7-10-08; 8:45 am]  
BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-331-802

#### Certain Frozen Warmwater Shrimp from Ecuador: Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** On March 6, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Ecuador. This review covers 43 producers/exporters of the subject merchandise to the United States. The period of review (POR) is February 1, 2006, through January 31, 2007. We are rescinding the review with respect to one company because this company made no shipments of the subject merchandise during the POR.

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Promarisco S.A., one of the producer/exporters selected for individual review. Therefore, the final results for Promarisco S.A. differ from the preliminary results. We have made no changes to the margin calculation of OceanInvest S.A., the other producer/exporter selected for individual review. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** July 11, 2008.

#### FOR FURTHER INFORMATION CONTACT:

David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration—Room 1117, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-3773, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

This review covers 43 producers/exporters.<sup>1</sup> The respondents which the

<sup>1</sup> This figure does not include those companies for which the Department is rescinding the

Department selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents which were not selected for individual review are listed in the "Final Results of Review" section of this notice.

On March 6, 2008, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Ecuador. *See Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12115 (March 6, 2008) (*Preliminary Results*). We invited parties to comment on those preliminary results. In April 2008, we received case briefs from the petitioner (the Ad Hoc Shrimp Trade Action Committee), the Louisiana Shrimp Alliance (an interested party in the proceeding), OceanInvest, and Promarisco, and rebuttal briefs from the petitioner, OceanInvest, and Promarisco.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order

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

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

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted

administrative review. In the notice announcing the preliminary results, this figure was incorrectly reported as 45 companies.

<sup>2</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.