

also reduce fuel continuity in areas adjacent to private lands. Treatment objectives would be achieved through a combination of the following activities (more than one treatment may occur on a single acre): mechanical thinning (approximately 1,300 acres), prescribed burning of activity fuels (approximately 2,100 acres), grapple piling of activity fuels (approximately 1,000 acres) and yarding with tops attached. Non-commercial thinning by hand or mechanical methods would remove trees that are less than 10 inches diameter at breast height in stands with excess ladder fuels (approximately 200 acres).

**Road Management**—To accomplish implementation of proposed activities approximately 32 miles of closed system roads and 45 miles of seasonally open roads would be used as haul routes. All system roads would remain the same after project implementation, closed roads would continue to be closed and seasonally open roads would continue with that designation. Approximately 3.0 miles of temporary road would be constructed, of which 1.4 miles would be constructed over previous road templates. All temporary roads would be decommissioned after project activity use. No new road construction is proposed.

**Danger Tree Removal**—Danger trees would be felled and removed along all previously described haul routes used for timber sale activity. If considered economically feasible, they would be sold as part of a timber sale. Danger trees within Riparian Habitat Conservation Areas (RHCAs) would not be removed; they would be cut and left to provide additional coarse woody debris.

**Landscape Prescribed Fire**—Landscape prescribed fire would occur across approximately 3,000 acres within the project planning area. This treatment would reintroduce fire to a fire-dependent ecosystem to lessen the effects of a future uncharacteristic large wildfire and improve forage quality for big game. In the project planning area, fire intensities would be kept low by keeping fire out of the overstory and burning mainly surface fuels. Individual tree and group torching would likely occur in areas where there is sufficient ladder fuels and in timber stands with high occurrences of mistletoe. Upon completion the area would likely be a mosaic of unburned, lightly burned, moderately burned, and intensely burned patches.

#### Responsible Official

Monte Fujishin, District Ranger,  
Pomeroy Ranger District, Umatilla

National Forest, 71 West Main Street,  
Pomeroy, Washington 99347.

#### Nature of Decision To Be Made

The decision to be made is whether to approve the proposed action or any alternative way to achieve the desired outcome. No Forest Plan amendment is proposed.

#### Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments and input regarding this proposed action are being requested from the public and other interested parties in conjunction with this notice of intent. The comment period will be open for thirty days, beginning on the date of publication of this notice of intent. Response to the draft environmental impact statement will be sought from interested tribes and public beginning approximately in September 2009.

It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and comments. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: March 2, 2009.

**Monte Fujishin,**

*District Ranger.*

[FR Doc. E9-4764 Filed 3-6-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Southwest Idaho Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended, (Pub. L. 110-343), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

**DATES:** Thursday, March 19, beginning at 10:30 a.m.

**ADDRESSES:** Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

**SUPPLEMENTARY INFORMATION:** Agenda topics will include review and approval of project proposals, and is an open public forum.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Brandel, Designated Federal Official, at (208) 347-0301 or e-mail [kbrandel@fs.fed.us](mailto:kbrandel@fs.fed.us).

Dated: February 27, 2009.

**Suzanne C. Rainville,**

*Forest Supervisor, Payette National Forest.*

[FR Doc. E9-4765 Filed 3-6-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-331-802

#### Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador with respect to 81 companies. The respondents which the Department selected for individual examination are Promarisco, S.A. (Promarisco) and Sociedad Nacional de Galapagos, S.A. (Songa). The respondents which were not selected for individual examination are listed in the "Preliminary Results of Review" section of this notice. This is the third administrative review of this order. The period of review (POR) covers February 1, 2007, through August 14, 2007.

We preliminarily determine that sales made to the United States by Promarisco and Songa have been made below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual examination, we have determined a preliminary weighted-average margin for those companies that were not individually examined.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

**EFFECTIVE DATE:** March 9, 2009.

**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**

In February 2005, the Department published in the *Federal Register* an antidumping duty order on certain frozen warmwater shrimp from Ecuador. See *Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156 (February 1, 2005). On February 4, 2008, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador for the period February 1, 2007, through August 14, 2007.<sup>1</sup> See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 6477 (February 4, 2008). In response to timely requests from interested parties, pursuant to 19 CFR 351.213(b)(1) and (2), to conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, the Department initiated an administrative review for 81 companies. These companies are listed in the Department's notice of initiation. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, and Thailand: Notice of Initiation of Administrative Reviews*, 73 FR 18754 (April 7, 2008) (*Notice of Initiation*).

Based upon the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on May 27, 2008, we selected the two largest producers/exporters of certain frozen warmwater shrimp from Ecuador during the POR, Promarisco and Songa, for individual

examination in this segment of the proceeding. See Memorandum entitled, "2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Ecuador: Selection of Respondents for Individual Review," dated May 27, 2008. On June 2, 2008, we issued the antidumping duty questionnaire to Promarisco and Songa. In addition, we instructed Promarisco to respond to section D of the questionnaire because we had disregarded sales by Promarisco made below the cost of production (COP) in the most recently completed segment of this proceeding. See "Cost of Production Analysis" section below.

We received responses to sections A, B, and C of the questionnaire from Promarisco and Songa in July and August 2008. We also received a response to section D of the questionnaire from Promarisco in August 2008.

On August 18, 2008, the petitioner requested that the Department initiate a sales-below-cost investigation of Songa. On September 22, 2008, we initiated this investigation. See Memorandum entitled "The Petitioner's Allegation of Sales Below the Cost of Production for Songa S.A.," dated October 30, 2007 (Songa COP Initiation Memo). On that date, we instructed Songa to respond to section D of the Department's questionnaire. Songa submitted its response to section D of the questionnaire on October 27, 2008.

During the period of July to September 2008, the petitioner submitted general comments regarding the selection of the appropriate comparison market in this review with regard to Promarisco and Songa. In September 2008, Promarisco and Songa responded to these comments.

In October 2008, we determined that Spain constitutes the appropriate comparison market for Promarisco and Songa in this review. See Memorandum entitled "Selection of the Appropriate Third Country Market for Promarisco," dated October 24, 2008 (Promarisco Comparison Market Memo), and Memorandum entitled "Selection of the Appropriate Third Country Market for Songa," dated October 6, 2008 (Songa Comparison Market Memo).

On October 8, 2008, the Department postponed the preliminary results in this review until no later than March 2, 2009. See *Certain Frozen Warmwater Shrimp From Ecuador, India, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the Third Administrative Reviews*, 73 FR 58931 (October 8, 2008).

During the period July 2008 through February 2009, we issued supplemental questionnaires to Promarisco and Songa. We received responses to these supplemental questionnaires during the period August 2008 through February 2009.

We conducted a verification of Promarisco's sales data in December 2008, and verifications of Promarisco's and Songa's COP data in January and February 2009, respectively.

**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*).

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

<sup>1</sup> The antidumping duty order was revoked with an effective date of August 15, 2007. See *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador*, 72 FR 48257 (August 23, 2007) (*Section 129 Final Results*). Accordingly, this administrative review covers the period prior to the effective revocation date.

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

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, 2007, through August 14, 2007.

#### Facts Available

Section 776(a) of the Tariff Act of 1930, as amended (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, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information

cannot be verified. During the verification of Promarisco's sales data, we found that Promarisco had failed to report in its questionnaire response the full range of payment terms or arrangements applicable to its sales during the POR, as requested in the Department's questionnaire. In its questionnaire response, Promarisco reported one payment date for each sale, and stated that the date represented the date of customer payment. However, we found that, for several sales examined at verification, Promarisco had obtained cash advances from its banks for most, if not all, of the invoiced amounts prior to the receipt of the customer's payment. In other cases, the customer paid the invoiced amount in multiple partial payments. Neither of these payment arrangements was identified for the record prior to verification, and we did not discover them until we examined several sales at verification. Promarisco did not indicate or explain why it was not possible to provide this information prior to verification. Moreover, at the commencement of verification, Promarisco presented a list of corrected payment dates for certain sales. However, most of the actual payment dates for the sales examined at verification did not match the reported payment dates, as revised at the commencement of verification. See Memorandum entitled "Verification of the Sales Questionnaire Response of Promarisco S.A. in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Ecuador," dated February 10, 2008 (Promarisco Sales Verification Report) at pages 15 – 20.

Due to the fact that Promarisco did not disclose these payment arrangements prior to verification and the time constraints at verification, we were unable to determine the full impact of these sales payment discrepancies across the entire U.S. and Spanish sales databases. Moreover, the large number of such discrepancies discovered among the sales examined at verification undermines the reliability of the reported payment information for the remaining sales not specifically examined at verification. Additionally, these discrepancies affect the calculation of imputed credit expenses. For these reasons, we find that it is appropriate to resort to facts otherwise available to account for the unreported information. See *Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 68 FR

65247 (November 19, 2003), and accompanying Issues and Decision Memorandum at Comment 20b (where the Department applied facts otherwise available to a respondent that did not provide requested information). Therefore, we have preliminarily determined that the date of payment and imputed credit expenses for Promarisco's U.S. and Spanish sales should be based on facts available in accordance with section 776(a)(2)(B) and section 776(a)(2)(D) of the Act.

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 (September 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 (August 30, 2002). The Statement of Administrative Action provides guidance by explaining that 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). 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*). Because: 1) Promarisco had the necessary information within its control and it did not report this information; and 2) it failed to put forth its maximum effort as required by the Department's questionnaire, we preliminarily find that Promarisco failed to cooperate to the best of its ability. Therefore, for the preliminary results we are using facts available with an adverse inference to determine imputed credit expenses. Specifically, with respect to all U.S. sales, we are calculating imputed credit expenses based on the longest period between shipment date and payment date either reported in the U.S. sales database, or observed at verification. With respect to all Spanish sales, we are

calculating imputed credit expenses based on the shortest period between shipment date and payment date either reported in the Spanish sales database, or observed at verification. See Memorandum entitled "Promarisco S.A. Preliminary Results Notes and Margin Calculation," dated March 2, 2009 (Promarisco Sales Calculation Memo).

#### Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp by Promarisco and Songa to the United States were made at less than NV, we compared export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Promarisco and Songa covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made to Spain for Promarisco and Songa within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. See "Home Market Viability and Selection of Comparison Markets" section below. Where there were no sales of identical merchandise in the comparison market 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 in the comparison market made in the ordinary course of trade to compare to U.S. sales, we made product comparisons using constructed value (CV).

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Promarisco and Songa in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

With respect to sales comparisons involving broken shrimp, we compared Promarisco's and Songa's sales of broken shrimp in the United States to its sales of comparable quality shrimp in the comparison market. Where there were no sales of identical broken shrimp in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of broken shrimp to sales of the most similar broken shrimp made in the ordinary course of trade. Where there were no sales of identical or similar broken shrimp, we made product comparisons using CV.

With respect to the product characteristic of count size, Songa requests in its February 10, 2009, submission that the Department modify the reporting of count-size ranges for certain head-on shrimp products. Songa notes that the Department's methodology for converting products sold on a per-kilogram basis to the per-pound count-size ranges specified in the Department's questionnaire results in two distinct per-kilogram count-size ranges being classified into the same per-pound count-size range. According to Songa, this grouping results in significant price distortions when comparing products. To reduce these distortions, Songa proposes that one of the two affected groups of products be reclassified into the next larger count-size range.

We have not accepted Songa's proposed revision. As we explained in *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 39940 (July 11, 2008), and accompanying Issues and Decision Memorandum at Comment 2, "{o}ur normal practice is to consider proposed changes to product-matching criteria in the very early stages of a proceeding, to allow adequate time for all parties to comment on such proposed changes and for the Department to properly analyze them before making a determination." Moreover, issues involving product-matching characteristics, including classifications within a given characteristic, cannot be analyzed only in the context of one respondent's reported data, as they have the potential to impact other respondents in this segment of the proceeding and the current segments of the companion proceedings involving shrimp from India, the People's Republic of China, Thailand, and Vietnam. In this case, as noted above, Songa did not raise this matter until February 10, 2009, less than a month prior to these preliminary results, and more than eight months

after the antidumping duty questionnaire was issued in this review (*i.e.*, June 2, 2008). Accordingly, there is insufficient time remaining in this and the companion shrimp reviews to solicit and consider comments on the change to the count-size product characteristic proposed by Songa, as well as to obtain and analyze any revised sales and COP data that may be necessary.

#### Export Price

For all U.S. sales made by Songa and Promarisco, we applied the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

#### A. Promarisco

We based EP on delivered, duty-paid (DDP) prices to the first unaffiliated purchaser in the United States. We made deductions to the starting price for billing adjustments, foreign inland freight expenses, bill of lading fees, ocean freight expenses, marine insurance expenses, U.S. customs duties (including merchandise processing and harbor maintenance fees), U.S. brokerage and handling expenses, and U.S. warehousing expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

We made various minor revisions to the reported U.S. sales data, as identified by Promarisco in its December 17, 2008, submission and verified by the Department. See Promarisco Sales Verification Report. Promarisco reported bill of lading fees as part of its indirect selling expense calculation. These fees are more appropriately classified as movement expenses, as they are associated with the shipment of the subject merchandise to the United States. We recalculated the bill of lading fees as separate movement expenses, based on information obtained during verification. See Promarisco Sales Calculation Memo.

Although Promarisco did not report that it granted any billing adjustments during the POR, we observed at verification that billing adjustments were made on certain U.S. sales. We calculated the billing adjustments for these sales based on information obtained at verification, and took them into account in our calculation of the net U.S. price, where appropriate. See Promarisco Sales Calculation Memo.

## B. Songa

We based EP on C&F or DDP prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for billing adjustments. We made deductions to the starting price, where appropriate, for foreign inland freight expenses, foreign inland insurance, Ecuadorian brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. customs duties (including merchandise processing and harbor maintenance fees), and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

### Normal Value

#### A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the 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.

In the less-than-fair-value (LTFV) investigation segment of this proceeding, the Department determined that a particular market situation existed which rendered the Ecuadorian market inappropriate for purposes of determining NV for the three respondents in the LTFV investigation, including Promarisco. See Memorandum entitled "Home Market as Appropriate Comparison Market," dated June 7, 2004, as included at Exhibit A-2 of Promarisco's July 24, 2008, response to section A of the questionnaire. Promarisco reported that the particular market situation still applies to its home market sales and there is no information on the record to suggest otherwise. Accordingly, although the aggregate volume of Promarisco's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, because of the particular market situation, we could not rely on Promarisco's home market sales for determining NV. Therefore, we used Promarisco's sales to Spain, Promarisco's largest 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. See Promarisco Comparison Market Memo, for a more detailed discussion of this issue.

Furthermore, based on our analysis of Songa's questionnaire responses, we determined that Songa's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise.<sup>3</sup> Therefore, with respect to Songa, we used sales to Spain, which was Songa's largest third-country market during the POR, as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. See Songa Comparison Market Memo, for a more detailed discussion of this issue.

### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See *id*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (*i.e.*, NV based on either home market or third-country prices),<sup>4</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the

same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison-market. In comparing EP or CEP sales at a different LOT in the comparison-market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Plate from South Africa*, 62 FR at 61732-33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market 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.

#### 1. Promarisco

Promarisco made direct sales of frozen warmwater shrimp to retailers, food processors, restaurant chains, and distributors in the U.S. market, and food processors and distributors in the Spanish market. Promarisco reported that it made EP sales in the U.S. market on a DDP basis through one channel of distribution. We examined the selling activities performed for this channel, and found that Promarisco performed the following selling functions: sales forecasting, sales promotion, order input/processing, freight and delivery, and claim services. These selling activities can be generally grouped into two selling function categories for analysis: 1) sales and marketing (*e.g.*, order input/processing, sales promotion, claim services); and 2) freight and delivery. Accordingly, we find that Promarisco performed the selling functions of sales and marketing, and freight and delivery for all customers in the U.S. market. Because all sales in the U.S. market are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the Spanish market, Promarisco reported that it made sales on an FOB, CIF, or CFR basis through one channel of distribution. We examined the selling activities performed for this channel, and found that Promarisco performed the following selling functions: sales forecasting, sales promotion, order input/processing,

<sup>3</sup> Because Songa's sales in the home market did not meet the viability threshold, it was unnecessary to address whether a particular market situation existed with respect to such sales.

<sup>4</sup> Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (SG&A) expenses, and profit for CV, where possible.

payment of commissions, freight and delivery, and claim services. These selling activities can be generally grouped into two selling function categories for analysis: 1) sales and marketing (e.g., order input/processing, sales promotion, claim services); and 2) freight and delivery. Accordingly, we find that Promarisco performed sales and marketing for all Spanish sales, and freight and delivery services for certain Spanish sales. We do not find that the provision of freight and delivery services for some sales is sufficient to distinguish it as a separate LOT. Accordingly, we preliminarily determine that there is one LOT in the Spanish market.

Finally, we compared the EP LOT to the comparison-market LOT and found that the selling functions performed for U.S. and Spanish market customers are virtually identical. Therefore, we determined that sales to the U.S. and Spanish markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

## 2. Songa

Songa sold frozen warmwater shrimp to distributors and wholesalers in the Spanish and U.S. markets. Songa reported that it made EP sales in the U.S. market through a single channel of distribution. We examined the selling activities performed for this channel, and found that Songa performed the following selling functions: packing, order input/processing, sales promotion, payment of commissions, and freight and delivery arrangements. These selling activities can be generally grouped into two selling function categories for analysis: 1) sales and marketing (e.g., order input/processing, sales promotion); and 2) freight and delivery. Accordingly, we find that Songa performed the same sales functions for all customers in the U.S. market. Because all sales in the U.S. market are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the Spanish market, Songa reported that it made sales through a single channel of distribution. We examined the selling activities performed for this channel, and found that Songa performed the following selling functions: packing, order input/processing, sales promotion, payment of commissions, and freight and delivery arrangements. These selling activities can be generally grouped into two selling function categories for analysis: 1) sales and marketing (e.g., order input/processing, sales promotion); and 2) freight and delivery. Accordingly, we

find that Songa performed the same sales functions for all customers in the Spanish market. Because all sales in the Spanish market are made through a single distribution channel, we preliminarily determine that there is one LOT in the Spanish market.

Finally, we compared the EP LOT to the comparison-market LOT and found that the selling functions performed for U.S. and Spanish market customers are identical. Therefore, we determined that sales to the U.S. and Spanish markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

## C. Cost of Production Analysis

Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that Songa's sales of frozen warmwater shrimp in the third-country market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Songa's sales were made at prices below their respective COPs. See Songa COP Initiation Memo.

### Calculation of Cost of Production

We found that Promarisco had made sales below the COP in the 2004–2006 administrative review, the most recently completed segment of this proceeding as of the date this administrative review was initiated, and such sales were disregarded. See *Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10658 (March 9, 2007); unchanged in *Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Promarisco made sales in the third-country market at prices below the cost of producing the merchandise in the current review period. Accordingly, we instructed Promarisco to respond to section D (cost of production) of the questionnaire.

In accordance with section 773(b)(3) of the Act, we calculated each respondent's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see "Test of Comparison Market Sales Prices" section below for treatment of third-country selling expenses). The Department relied on the COP data submitted by each respondent in its

most recent supplemental response to section D of the questionnaire for the COP calculation, except for the following instances where the information was not appropriately quantified or valued.

### A. Promarisco

We relied on the COP data submitted by Promarisco except as follows.

1. We recalculated Promarisco's G&A and financial expense ratios to reflect the reclassification of write-offs of affiliated party transactions, and certain miscellaneous income and expenses.
2. We recalculated the financial expense ratio to exclude long-term interest income and certain selling expenses. For additional details, see Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Promarisco, S.A.," dated March 2, 2009.

### B. Songa

We relied on the COP data submitted by Songa except as follows.

1. We revised Songa's fixed overhead costs to include the depreciation expense related to the revaluation of fixed assets.
2. We revised Songa's G&A expense rate to include employee profit sharing costs and to reverse the claimed offset for duty drawback income.
3. We revised Songa's financial expense rate to include the amortization of exchange rate loss and the amortization of export certificates. For additional details, see Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Sociedad Nacional de Galapagos S.A.," dated March 2, 2009.

### Test of Comparison Market 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. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, and direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the "Price-to-Price Comparisons" section.

### Results of the COP Test

In determining whether to disregard third-country sales made at prices

below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) or the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third-country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Promarisco's and Songa's third-country sales were at prices less than the COP and, in addition, such 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 as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable third country sales in the ordinary course of trade, we compared EPs to the CV in accordance with section 773(a)(4) of the Act. *See* "Calculation of Normal Value Based on Constructed Value" section below.

#### **D. Calculation of Normal Value Based on Comparison-Market Prices**

##### **1. Promarisco**

We calculated NV based on CIF, CFR or FOB prices to unaffiliated customers in the Spanish market. We made adjustments to the starting price for billing adjustments. We made deductions from the starting price for movement expenses, including inland freight, bill of lading fees, marine insurance, and international freight, under section 773(a)(6)(B)(ii) of the

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. 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 (COS) for imputed credit expenses, commissions, and analysis and inspection fees.

We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, as commissions were granted in the Spanish market but not in the U.S. market, we deducted commissions paid in the Spanish market from the starting price, and made an upward adjustment to NV for the lesser of 1) the amount of commission paid in the Spanish market, or 2) the amount of indirect selling expenses incurred in the U.S. market.

We made various minor revisions to the reported Spanish sales data, as identified by Promarisco in its December 17, 2008 submission and verified by the Department. *See* Promarisco Sales Verification Report.

Although Promarisco did not report that it granted any billing adjustments during the POR, we observed at verification that billing adjustments were made on certain Spanish sales. We calculated the billing adjustments for these sales based on information obtained at verification, and took them into account in our calculation of NV, where appropriate. *See Promarisco Sales Calculation Memo.*

Promarisco reported bill of lading fees as part of its indirect selling expense calculation. These fees are more appropriately classified as movement expenses, as they are associated with the shipment of the subject merchandise to Spain. We recalculated the bill of lading fees as separate movement expenses based on information obtained during verification. *See Promarisco Sales Calculation Memo.*

Promarisco did not include analysis and inspection fees associated with U.S. and comparison-market sales in its sales databases. We calculated these fees as direct selling expenses, based on information obtained during verification. *See Promarisco Sales Calculation Memo.*

Promarisco reported indirect selling expenses inclusive of bill of lading fees. Because we have calculated the bill of lading fees separately, as discussed above, we recalculated indirect selling expenses exclusive of these fees. *See Promarisco Sales Calculation Memo.*

As discussed in the "Facts Available" section above, we relied on facts available with an adverse inference to determine Promarisco's imputed credit expense for U.S. and Spanish sales. Specifically, with respect to U.S. sales, we calculated imputed credit expenses based on the longest period between shipment date and payment date either reported in the U.S. sales database, or observed at verification. With respect to Spanish sales, we calculated imputed credit expenses based on the shortest period between shipment date and payment date either reported in the Spanish sales database, or observed at verification. For those U.S. sales for which Promarisco had not received payment as of the sales verification, we calculated imputed credit expenses using the date of the first day of the sales verification, December 15, 2008, as the date of payment.

We also deducted comparison-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

##### **2. Songa**

We based NV for Songa on FOB or C&F prices to unaffiliated customers in Spain. We made adjustments, where appropriate, to the starting price for billing adjustments. We made deductions to the starting price, where appropriate, for foreign inland freight expenses, foreign inland insurance, Ecuadorian brokerage and handling expenses, and ocean freight expenses, under section 773(a)(6)(B)(ii) of the Act.

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. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in COS for imputed credit expenses, bank fees, analysis and inspection fees, and commissions.

We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If the commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment



to NV for the lesser of: 1) the amount of commission paid in the comparison market; or 2) the amount of indirect selling expenses incurred in the U.S. market.

We also deducted comparison market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

**F. Calculation of Normal Value Based on Constructed Value**

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison-market sales because there were no useable sales of a comparable product or all sales of comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV, revised where appropriate, as discussed above.

**Currency Conversion**

We did not make any currency conversions pursuant to section 773A of the Act and 19 CFR 351.415 because all sales and cost data for both respondents were reported in U.S. dollars.

**Preliminary Results of the Review**

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2007, through August 14, 2007, as follows:

Manufacturer/Exporter	Percent Margin	Manufacturer/Exporter	Percent Margin
Promarisco, S.A. ....	2.00	Inepexa SA .....	2.09
Sociedad Nacional de Galapagos C.A. (Songa) .....	2.20	Jorge Luis Benitez Lopez .....	2.09
Review-Specific Average Rate Applicable to the Following Companies: <sup>5</sup>		Karpicorp SA .....	2.09
		Luis Loaiza Alvarez .....	2.09
		Mardex Cia. Ltda./ ENT≤ .....	2.09
		Marine .....	2.09
		Marines CA .....	2.09
		Mariscos de Chupadores Chupamar .....	2.09
		Mariscos del Ecuador C. Ltda. (Marecuador) .....	2.09
		Natural Select SA .....	2.09
		Negocios Industriales Real Nirsa SA (NIRSA) .....	2.09
		Novapesca SA .....	2.09
		Ocean Fish .....	2.09
		Oceaninvest SA .....	2.09
		Oceanmundo SA .....	2.09
		Oceanpro SA .....	2.09
		Operadora y Procesadora de Productos Marinos SA (Omarsa) .....	2.09
		Oyerly SA .....	2.09
		P.C. Seafood SA .....	2.09
		Pacfish SA .....	2.09
		PCC Congelados & Frescos SA .....	2.09
		Pescazul SA .....	2.09
		Peslasa SA .....	2.09
		Phillips Seafoods of Ecuador CA (Phillips) ....	2.09
		Pisacua SA .....	2.09
		Procesadora del Rio SA (Proriosa) .....	2.09
		Productos Cultivados del Mar Proc. ....	2.09
		Productos Cultivados del Mar Proculmar Cia. Ltda. ....	2.09
		Productos del Mar Santa Rosa Cia. Ltda. (Promarosa) .....	2.09
		Propemar SA .....	2.09
		Provefrut .....	2.09
		Rommy Roxana Alvarez Anchundia .....	2.09
		Sea Pronto Hector Marty Canino (Sea Pronto) .....	2.09
		Sociedad Atlantico Pacifico SA .....	2.09
		Soitgar SA .....	2.09
		Studmark SA .....	2.09
		Tecnica y Comercio de la Pesca CA (TECOPECA) .....	2.09
		Tolyp SA .....	2.09
		Trans Ocean .....	2.09
		Transcity SA .....	2.09
		Transmarina CA .....	2.09
		Transocean Ecuador SA .....	2.09
		Uniline Transport System .....	2.09
Agricola e Industrial Ecuaplantation SA ....	2.09		
Agrol SA .....	2.09		
Alberto Xavier Mosquera Rosado ....	2.09		
Alquimia Marina SA .....	2.09		
Babychic SA .....	2.09		
Biolife SA .....	2.09		
Braistar .....	2.09		
Camaronera Jenn Briann .....	2.09		
Camarones .....	2.09		
Comar Cia Ltda. ....	2.09		
Doblertel SA .....	2.09		
Dumary SA .....	2.09		
Dunci SA .....	2.09		
El Rosario Ersas SA .....	2.09		
Empacadora Bilbo SA (Bilbosa) .....	2.09		
Empacadora del Pacifico SA (EDPACIF SA) .....	2.09		
Empacadora Dufer Cia. Ltda. (DUFER) .....	2.09		
Empacadora Grupo Gran Mar (Empagran) SA .....	2.09		
Empacadora Nacional CA .....	2.09		
Empacadora y Exportadora Calvi Cia. Ltda. ....	2.09		
Emprede SA .....	2.09		
Estar CA .....	2.09		
Exporclam SA .....	2.09		
Exporklore SA .....	2.09		
Exportadora Bananera Noboa .....	2.09		
Exportadora de Productos de Mar (Proumar) .....	2.09		
Exportadora del Oceano (Oceanexa) CA .....	2.09		
Exportadora Langosmar SA .....	2.09		
Exportadora del Oceano Pacifico SA (OCEANPAC) .....	2.09		
Exports Langosmar SA .....	2.09		
Fortumar Ecuador SA ...	2.09		
Gambas del Pacifico SA .....	2.09		
Gondi SA .....	2.09		
Hector Canino Marty ....	2.09		
Hectorosa SA .....	2.09		
Industrial Pesquera Santa Priscila SA (Santa Priscila) .....	2.09		

**Disclosure and Public Hearing**

The Department will disclose to parties the calculations performed in



connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. See 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

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, HCHB Room 1870, within 30 days of the date of 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 issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Regarding Promarisco, because it reported the entered value of all of its U.S. sales, we will calculate an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. We will calculate a single importer-specific assessment rate for Promarisco, consistent with our practice in *AR2 Final Results; see also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore: Final Results of the Antidumping Administrative Reviews, Rescission of Administrative Review in part, and Determination Not to Revoke*

*Order in Part*, 68 FR 35623 (June 16, 2003), and accompanying Issues and Decision Memorandum at Comment 9B; *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 13.

Regarding Songa, because it reported the entered value of all of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

For the responsive companies which were not selected for individual examination, we will calculate an assessment rate based on the weighted average of the margin rates calculated for the companies selected for individual examination 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 or customer-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). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this 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. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate in effect during the POR 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

On August 15, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the Uruguay Round Agreements Act (URAA), the U.S. Trade Representative, after consulting with the Department and Congress, directed the Department to implement its determination to revoke the antidumping duty order on certain frozen warmwater shrimp from Ecuador. See *Section 129 Final Results*. Accordingly, the antidumping duty order on certain frozen warmwater shrimp from Ecuador was revoked effective August 15, 2007. As a result, the collection of cash deposits of antidumping duties on entries of the subject merchandise is no longer required.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

March 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-533-840

#### Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from