DEPARTMENT OF COMMERCE

International Trade Administration

A–351–838

Certain Frozen Warmwater Shrimp from Brazil: 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 from Brazil with respect to 15 companies.[1] The respondents which the Department selected for individual review are Amazonas Industrias Alimenticias S.A. (''AMASA'') and Comercio de Pescado Aracatiense Ltda. (''Compescal''). Compescal did not respond to the Department's request for information in this review. For further discussion, see the ''Use of Facts Available'' section of this notice. The respondents which were not selected for individual review are listed in the ''Preliminary Results of Review'' section of this notice. This is the second administrative review of this order. The period of review (''POR'') is February 1, 2006, through January 31, 2007.

We preliminarily determine that sales made by AMASA have been made below normal value (''NV''). In addition, we have preliminarily determined a weighted–average margin for those companies that were not selected for individual review, but were responsive to the Department's requests for information, based on the preliminary results for the respondents selected for individual review. To those companies which were not responsive to the Department's requests for information, we have preliminarily assigned a margin based on adverse facts available (''AFA'').

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 6, 2008.).

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, 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) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Brazil. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) (''*Shrimp Order*''). On February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Brazil for the period February 1, 2006, through January 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (February 2, 2007). On February 28, 2007, the petitioner[2] and the Louisiana Shrimp Association (''LSA''), a domestic interested party, requested an administrative review for numerous Brazilian exporters of subject merchandise in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(b)(2)(1).

On April 5, 2007, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. See ''Duty Absorption'' section below for further discussion.

On April 6, 2007, the Department initiated an administrative review for 40 companies and requested that each company provide data on the quantity and value (''Q&V'') of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 72 FR 17100 (April 6, 2007) (''*Notice of Initiation*'').

In its April 18, 2007, entry of appearance, Empresa De Armazenagem Frigorifica Ltda., (''Empaf'') notified the Department that its name changed to Netuno Alimentos S.A., Maricultura Netuno S.A. and Netuno USA, Inc. (collectively ''Netuno''). As a result, on April 24, 2007, we solicited information on this name change from Netuno. Netuno supplied this information on May 9, 2007. After analyzing this information, we preliminarily find that Netuno is the successor–in-interest to Empaf. For further discussion, see the ''Successor–in-Interest'' section of this notice, below.

During the period April through September 2007, we received responses to the Department's Q&V questionnaire from 26 potential respondents. Eighteen of these companies reported that they had no shipments/exports of subject merchandise to the United States during the POR. We also received timely requests for withdrawal of the review with respect to certain companies. Accordingly, of the 40 named firms for which the Department initiated an administrative review, eight entities had both an active request for review and an appropriately submitted Q&V questionnaire response which indicates exports to the United States during the POR.

Based upon our consideration of the responses to the Q&V questionnaire and 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 request remained. As a result, on July 19, 2007, we selected the two largest remaining producers/exporters by export volume of certain frozen warmwater shrimp from Brazil during the POR, AMASA and Compescal, as the mandatory respondents in this review. *See* Memorandum to Stephen Claeys, Deputy Assistant Secretary for Import Administration, from James Maeder, Director, Office 2, AD/CVD Operations, entitled ''2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil: Selection of Respondents for Individual Review,'' dated July 19, 2007. On July 20, 2007, we issued the antidumping questionnaire to AMASA and Compescal.

On August 24, 2007, we published a notice rescinding the administrative review with respect to 22 companies in accordance with 19 CFR 351.213(d)(1). For further discussion, *see Certain Frozen Warmwater Shrimp from Brazil; Partial Rescission of Antidumping Duty Administrative Review*; 72 FR 48616 (August 24, 2007).

We received a response to section A of the questionnaire from AMASA on August 24, 2007. We received a

[1] This figure does not include those companies for which the Department is preliminarily rescinding the administrative review. See ''Partial Rescission of Review'' section for further discussion.

[2] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

response to sections B and C of the questionnaire from AMASA on September 24, 2007.

On October 9, 2007, the petitioner requested that the Department initiate a sales–below-cost investigation of AMASA. On October 26, 2007, we initiated this investigation. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled ''Petitioner's Allegation of Sales Below the Cost of Production for Amazonas Industrias Alimenticias S.A.,'' dated October 26, 2007.

On October 26, 2007, the Department postponed the preliminary results in this review until no later than February 28, 2008. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, and the Socialist Republic of Vietnam: Notice of Extension of Time Limits for the Preliminary Results of the Second Administrative Reviews*, 72 FR 60800 (October 26, 2007).

We issued a supplemental questionnaire to AMASA on October 25, 2007, and received a response on November 20, 2007.

AMASA submitted a response to section D of the questionnaire on December 4, 2007. We issued supplemental questionnaires to AMASA with respect to section D on December 14, 2007, January 9, 2008, and February 5, 2008, and received responses to these supplemental questionnaires on December 31, 2007, January 22, 2008, and February 12, 2008.

On January 14 and 18, 2008, the petitioner and LSA, respectively, withdrew their requests for administrative review of AMASA and requested that the Department rescind the current administrative review of that company. On January 18, 2008, we issued letters to the petitioner and LSA stating that we were unable to grant their requests because the requests were not timely and the Department had already expended significant resources in this administrative review.

The sales verification was conducted during the period January 22–24, 2008, and the report of the Department's findings was issued on February 11, 2008. The cost verification will take place following the preliminary results.

At the request of the Department, AMASA submitted revised U.S. and home market sales databases on February 13, 2008.

On February 22, 2008, AMASA submitted comments with respect to the calculation of AMASA's preliminary antidumping margin. These comments were received too late for consideration in the preliminary results. However, if these issues are raised in the context of parties' case briefs, we will address the issues in the final results.

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,[3] shell–on or peeled, tail–on or tail–off, 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 vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn *(Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of 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.

Partial Rescission of Review

On September 13, 2007, Qualimar Comercio Imp. E Exp. Ltda. (''Qualimar'') submitted a Q&V response stating that it had no shipments/exports of subject merchandise to the United States during the POR. *See* Memorandum to The File from Rebecca Trainor, Senior Analyst, Office 2, entitled ''2006–2007 Administrative Review of Certain Frozen Warmwater Shrimp from Brazil: Qualimar Comercio Importacao e Exportacao Ltda.,'' dated August 17, 2007. Data from CBP show that Qualimar did not have shipments of subject merchandise during the POR. Therefore, we are preliminarily rescinding this review with respect to Qualimar.

Successor–in-Interest

As noted above, on April 18, 2007, Empaf informed the Department that it is now doing business as Netuno. On April 24, 2007, we requested that Netuno address the following four factors with respect to this change in corporate structure in order to determine whether Netuno is the

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

successor–in-interest to Empaf: management, production facilities for the subject merchandise, supplier relationships, and customer base.

On May 9, 2007, Netuno responded to the Department's request. In this submission, Netuno confirmed 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 find that its organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we find 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 find that Netuno is the successor–in-interest to Empaf, and, as a consequence, its exports of certain frozen warmwater shrimp are subject to this proceeding.

Facts Available

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, 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.

As discussed in the ''Background'' section, above, 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. The following seven firms did not respond to the Department's request for information: 1) Acarau Pesca Distr. de Pescado Imp. E Exp. Ltda.; 2) Aquacultura Fortaleza Aquafort SA; 3) ITA Fish - S.W.F. Importacao e Exportacao Ltda.; 4) Orion Pesca Ltda.; 5) Santa Lavinia Comercio e Exportacao Ltda.; 6) Secom Aquicultura Comercio E Industria SA; and 7) Tecmares Maricultura Ltda. In May and June 2007, we issued letters to these companies affording them a second and third opportunity to respond to the Q&V questionnaire; however, none of the companies responded or submitted a Q&V questionnaire response. 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, the Department preliminarily finds that the use of total facts available is appropriate for these firms.

Compescal, one of the two mandatory respondents in this administrative review, also did not submit a response to the antidumping questionnaire. On August 29, 2007, we sent a letter to the company advising it that we had not received its questionnaire response. If it had indeed sent a response, we asked Compescal to provide the courier tracking number so we could locate the submission. We also reiterated the statement included in the cover letter to the questionnaire issued to Compescal that failure to respond to the Department's questionnaire may result in the use of AFA as required by section 776 of the Act for the determinations in this administrative review. We received no response to our letter. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available is appropriate for Compescal.

Application of Adverse Facts Available and Corroboration

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 from among the facts otherwise available. *See Nippon*, 337 F. 3d at 1382–83.

For purposes of the preliminary results, we have applied to the above–listed companies an AFA margin of 68.15 percent, which is 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). The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit have consistently upheld this approach. *See 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).

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).

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 at 870. Information from prior segments of the proceeding constitutes secondary information and, to the extent practicable, the Department will examine the reliability and relevance of the information to be used.

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, which ranged from 9.69 to 67.80[4] percent (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004; and *Shrimp Order*); 3) the rates calculated in the 2004–2006 administrative review, which ranged from 4.62 to 15.41 percent (*see Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52061 (September 12, 2007); and 4) the rate calculated for the sole participating respondent in the current administrative review (68.15 percent).

For purposes of the preliminary results, we did not use either of the two highest of the three petition rates (*i.e.*, 320 percent and 349 percent) because we were unable to corroborate them 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 current AFA rate, and as such would not accomplish the objectives of AFA, stated above.

In addition, we find that the rates calculated for the respondents in the LTFV investigation and the 2004–2006 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 68.15 percent as AFA, which is the highest margin determined for any respondent in any segment of the proceeding (*i.e.*, the current administrative review). We consider the 68.15 percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding. No corroboration of this rate under section 776(c) of the Act is necessary because we are relying on information obtained in the course of the current segment of the proceeding, rather than on secondary information.

The Department will also consider information reasonably at its disposal as to 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 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.*, 68.15 percent) is appropriate to use as AFA, and are assigning this rate to 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. in the preliminary results of this review.

Duty Absorption

On April 5, 2007, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Although this review was initiated two years after the publication of the order, AMASA, the only cooperative mandatory respondent in this review, did not sell subject merchandise in the United States through an affiliated importer. Therefore, it is not appropriate to make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act. *See Agro Dutch Industries Ltd. v. United States*, No. 2007–1011 (Fed. Cir. November 20, 2007).

Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp by AMASA 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 AMASA 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 to sales made in the home market 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. 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. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by AMASA 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. In addition, we compared whole shrimp to whole shrimp and broken shrimp to broken shrimp, where possible.

AMASA reported cost differences associated with two quality–related physical characteristics: 1) whole vs. broken shrimp; and 2) premium grade shrimp vs. shrimp that is part of an all

[4] 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.

other' category of grades. We allowed the differentiation of costs by broken/non–broken shrimp because AMASA's records differentiate costs on this basis[5] and such treatment is consistent with our normal practice in this proceeding to match whole shrimp with whole shrimp and broken shrimp with broken shrimp, where possible. *See*, *Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10680 (March 9, 2007) and *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52061 (September 12, 2007) (unchanged in final). However, because we have never distinguished shrimp by grade in the context of this proceeding and AMASA has not provided sufficient evidence warranting a change to the Department's product comparison criteria in this review, we have disallowed product comparisons by grade as well as the differentiation of costs by grade.

Export Price

For all U.S. sales made by AMASA, 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.

We based EP on packed 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 from the starting price for foreign inland freight and foreign brokerage 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.

Because AMASA's aggregate volume of 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, we determined that its home market was viable. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated–Party Transactions and Arm's–Length Test

During the POR, AMASA sold the foreign like product to affiliated customers (employees). To test whether these sales were made at arm's–length prices, we compared, on a product–specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all taxes, discounts and rebates, movement charges, direct selling expenses, and packing expenses, where applicable. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the comparison market that were not made at arm's–length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* 19 CFR 351.102(b).

C. 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. *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), 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 more remote from the factory than the CEP LOT 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 AMASA regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities it performed for each channel of distribution. AMASA reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to distributors). We examined the selling activities performed for this channel, and found that AMASA performed the following selling functions: sales forecasting and strategic/economic planning, sales promotion, packing, order input/processing, direct sales personnel, sales/marketing support, freight services and provision of guarantees. These selling activities can be generally grouped into two core selling function categories for analysis: 1) sales and marketing; and 2) freight and delivery services. Because all sales in the United States are made through a single distribution channel, we

[5] During the POR, AMASA purchased all of the raw shrimp it used in the production of subject merchandise, and its purchase prices differed depending on whether the shrimp was whole or broken.

preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, AMASA made sales to distributors (or customers of distributors). We examined the selling activities performed for this channel, and found that AMASA performed the following selling functions: sales forecasting and strategic/economic planning, sales promotion, packing, order input/processing, direct sales personnel, sales/marketing support, payment of commissions, and provision of guarantees. These selling activities can be generally grouped into one core selling function category for analysis: sales and marketing. Accordingly, based on the core selling functions, we find that AMASA performed sales and marketing for all home market sales. We do not find the fact that commissions are not provided for certain home market sales sufficient to establish a separate LOT. Accordingly, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the EP LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers are virtually identical, with the exception of freight/delivery services and the payment of commissions. We do not find these differences sufficient to determine that the U.S. and home market sales are made at different LOTs. Therefore, we determined that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

D. 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 AMASA's sales of frozen warmwater shrimp in the home market were made at prices below its cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a sales–below-cost investigation to determine whether AMASA's sales were made at prices below its COP. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled ''Petitioner's Allegation of Sales Below the Cost of Production for Amazonas Industrias Alimenticias S.A.,'' dated October 26, 2007.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated AMASA'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 home market selling expenses.

The Department relied on the COP data submitted by AMASA in its February 12, 2008, 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.

1. We disallowed the differentiation of costs for different grades of shrimp.
2. We increased AMASA's total reported cost of manufacturing (''COM'') by the unreconciled difference between AMASA's total COM for the POR based on its normal books and records and the total POR COM submitted to the Department.
3. We increased AMASA's reported G&A expenses to include other non–operating costs.
4. We disallowed AMASA's claimed interest income offset to its reported financial expenses because AMASA failed to provide supporting evidence that the interest income was earned on short–term interest–bearing assets.

Our revisions to AMASA's COP data are discussed in the Memorandum from LaVonne Clark, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Amazonas Industrias Alimenticias, S.A,'' dated February 28, 2008.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market 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 were exclusive of any applicable taxes, movement charges, discounts, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market or third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of 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 home market 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 products, more than 20 percent of AMASA's home market 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.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV on FOB prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for taxes, under section 773(a)(6)(B)(iii) 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 circumstance–of-sale (''COS'') for imputed credit expenses and commissions. As commissions were granted in the home market but not in the U.S. market, we deducted commissions paid in the home market from the starting price, and made an upward adjustment to NV for the lesser of 1) the amount of commissions paid in the home market, or 2) the amount of indirect selling expenses incurred in the U.S. market. With regard to credit expenses, AMASA reported that it had not received payment for certain U.S. sales. Consequently, for these sales, we used

a payment date of February 28, 2008 (*i.e.*, the date of the preliminary results), and recalculated imputed credit expenses accordingly.

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

E. 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 constructed value (''CV''). Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison–market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the 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. We calculated the cost of materials and fabrication, SG&A, and interest based on the methodology described in the ''Cost of Production Analysis'' section, above.

We based SG&A and profit on the actual amounts incurred and realized by AMASA 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 home market sales from, and adding U.S. direct selling expenses to, CV.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted–average dumping margins exist for the respondents for the period February 1, 2006, through January 31, 2007, as follows:

Manufacturer/Exporter	Percent Margin
Amazonas Industrias Alimenticias S.A. (''AMASA'') ..	68.15
Comercio de Pescado Aracatiense Ltda. (''Compescal'')	68.15

Review–Specific Average Rate Applicable to the Following Companies:[6]

Manufacturer/Exporter	Percent Margin
Pesqueira Maguary Ltda.	68.15
Ipesca - Industria de Frio e Pesca S.A.	68.15
Central de Industrializacao e Distribuicao de Alimentos Ltda. (''CIDA'') and Cia Exportadora de Produtos do Mar (''Produmar'')	68.15
Intermarine Servicos Nauticos Ltda.	68.15
Aquatica Maricultura do Brasil Ltda./Aquafeed do Brasil Ltda.	68.15
JK Pesca Ltda.	68.15

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Acarau Pesca Distr. de Pescado Imp. e Exp. Ltda.	68.15
Aquacultura Fortaleza Aquafort SA	68.15
ITA Fish - S.W.F. Importacao e Exportacao Ltda.	68.15
Orion Pesca Ltda.	68.15
Santa Lavinia Comercio e Exportacao Ltda.	68.15
Secom Aquicultura Comercio E Industria SA	68.15
Tecmares Maricultura Ltda.	68.15

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 cases briefs not later than 30 days after the date of issuance of the last verification report in this case. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of issuance of the last verification report in this case. Parties who submit case briefs or rebuttal briefs in this proceeding are requested 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, Room 1117, 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 appraisement 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.

Because AMASA reported the estimated 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 351.106c)2), we will calculate importer–specific *ad valorem* ratios based on the estimated entered value. For the responsive companies which were not selected for individual review, we will calculate 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 (*i.e.*, based on the cash deposit rate calculated for AMASA).

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

[6] This rate is normally based on the weighted average of the margins calculated for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA. However, in this review, the only calculated margin is the rate applicable to AMASA, which is also the rate used for AFA purposes in this review.

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 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 and for future deposits of estimated duties, where applicable.

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 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 cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, 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 original 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 made effective by the LTFV investigation. *See Shrimp Order*. These requirements, when imposed, shall remain in effect until further notice.

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.

These preliminary results of 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.

Dated: February 28, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–4392 Filed 3–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: 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 from Thailand with respect to 42 [1] companies. The four respondents which the Department selected for individual review are Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd., Euro-Asian International Seafoods Co., Ltd., Intersia Foods Co., Ltd. (Intersia Foods) (formerly Y2K Frozen Foods Co., Ltd. (Y2K Frozen Foods)), Phattana Seafood Co., Ltd., Phattana Frozen Food Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Seawealth Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited (collectively ''the Rubicon Group''); Pakfood Public Company Limited and its affiliated subsidiaries, Asia Pacific (Thailand) Company Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, and Takzin Samut Company Limited (collectively ''Pakfood''); Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei); and Thai Union Frozen Products Public Co., Ltd. (Thai Union Frozen), Thai Union Seafood Co., Ltd. (Thai Union Seafood) (collectively ''Thai Union''). The respondents which were not selected for individual review are listed in the ''Preliminary Results of Review'' section of this notice. This is the second administrative review of this order. The review covers the period February 1, 2006, through January 31, 2007.

We preliminarily determine that sales were made by Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

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 6, 2008.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Operations, Office 2, Import Administration—Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR 5145 (Feb. 1, 2005) (*Shrimp Order*). On February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from

[1] This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.