MEMORANDUM TO:	Louis Apple Director, Office 2 AD/CVD Operations
THROUGH:	Irene Darzenta Tzafolias Program Manager, Office 2 AD/CVD Operations
FROM:	Gemal Brangman David Goldberger Terre Keaton Office 2, AD/CVD Operations
RE:	<u>Ministerial Error Allegations in the Final Determination of the</u> <u>Antidumping Duty Investigation on Certain Frozen Warmwater Shrimp</u> <u>from Ecuador</u>

I.   <u>Summary</u>

On December 23, 2004, we received an allegation from the petitioners (i.e., the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company) that the Department of Commerce (the Department) made a ministerial error with respect to its exclusion of "dusted" shrimp from the scope of this investigation. In addition, on December 30, 2004, respondents Exportadora de Alimentos S.A. (Expalsa), and Promarisco S.A. (Promarisco) alleged that the Department made ministerial errors in calculating their respective margins for the final determination (69 FR 76913, December 23, 2004), and the petitioners alleged that the Department made ministerial errors in calculating the margins for Expalsa and Exporklore S.A. (Exporklore). On December 28, 2004, Eastern Fish Company, Inc. (Eastern Fish), and Long John Silver's, Inc. (LJS), interested parties in this investigation, submitted a reply response to the petitioners' December 23, 2004, ministerial error allegation. On January 6, 2005, Exporklore submitted a reply response to the petitioners' ministerial allegations. On January 10, 2005, the petitioners submitted a reply response to Expalsa's allegations, and Expalsa submitted a reply response to the petitioners' allegations.

II.   Definition of Ministerial Error

A "ministerial error" is defined under 19 CFR 351.224(f) as:

> an error in addition, subtraction, or other arithmetical function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

See also section 735(e) of the Tariff Act of 1930, as amended.

III.   General Allegations

1.   Exclusion of Dusted Shrimp from the Scope of Investigation

The petitioners contend that the Department made a ministerial error in the exclusion of dusted shrimp from the scope of this investigation. The petitioners note that the Department excluded dusted shrimp from the scope of this investigation in spite of the petitioners' opposition. The petitioners point to the fact that the Department cited significantly to the declarations of Dr. Otwell and Mr. Thompson submitted by Eastern Fish and LJS in support of excluding dusted shrimp. The petitioners contend that the Department based much of its decision to exclude dusted shrimp from the scope of this investigation on these affidavits. The petitioners specifically note that the Department referenced both declarations eight times regarding an adequate definition to separate dusted shrimp from subject merchandise and at least four times regarding the fact that the benefits of removing the dusting layer from the shrimp did not outweigh the costs.

The petitioners contend that they provided a declaration that directly rebutted many of the claims by Eastern Fish and LJS. According to the petitioners, their declaration stated that frozen dusted shrimp can have its dusting layer removed. Additionally, the practice of thawing and rinsing undusted frozen shrimp is common industry practice, thus the same can be done for dusted shrimp. Furthermore, the barriers to removing the dusting layer are economic, not physical. The declaration provided by the petitioners further noted that the cost of removing the dusting layer could be more economially sensible than paying the dumping duty. The declaration also notes that the technology to remove the dusting layer is available. See petitioners' December 7, 2004, scope submission at page 11.

According to the petitioners, the Department did not address these statements, which directly contested Eastern Fish's and LJS' claims, in its decision. See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist

Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp (Dusted/Battered Scope Memo), dated November 29, 2004. Furthermore, the petitioners assert that the Department did not acknowledge that the petitioners' declaration even existed. The petitioners therefore conclude that the Department completely overlooked the petitioners' declaration, and thus made an unintentional error that must be corrected by including dusted shrimp in the scope of this investigation.

Eastern Fish and LJS respond to these allegations by stating that, in excluding certain dusted shrimp from the scope of these investigations, the Department thoroughly identified and analyzed all of the evidence and arguments submitted by all parties. Eastern Fish and LJS also state that, to be a ministerial error, in accordance with 19 CFR 351.224(c)(1), the alleged error must pertain to calculations used by the Department to determine antidumping duty margins. As such, the Department's alleged error of failing to consider a declaration does not in any manner relate or pertain to any exporter's disclosed dumping margin calculation. Lastly, Eastern Fish and LJS point out that, to qualify as a correctable ministerial error, an alleged error must meet at least one of three definitions listed in 19 CFR 351.225(f). Eastern Fish and LJS argue that the petitioners do not identify which of the three definitions fits the alleged error. Furthermore, Eastern Fish and LJS state that the alleged error does not fit any of the three definitions because it was deliberate and cannot be considered ministerial in any way.

Analysis and Recommendation

We disagree with the petitioners that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in its decision to exclude dusted shrimp from the scope of this investigation. The Department notes that it did not reference the petitioners' affiant by name, but did reference the provided affidavit and statements made by the affiant. See Dusted/Battered Scope Memo at pages 15 and 16. The Department carefully reviewed and considered all evidence submitted by all parties prior to making its determination to exclude dusted shrimp from the scope of this investigation, as well as the concurrent warmwater shrimp investigations. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004). The Department's decision to exclude dusted shrimp from the scope of this investigation was an intentional decision, not a ministerial error.

Agree ____   Disagree ____   Let's Discuss _____

IV.   Company-Specific Allegations

1.   Revision of Expalsa's Packing Expense

Expalsa alleges that the Department used the wrong computer variable to calculate the weighted-average U.S. packing expense in the final determination margin calculation program. Expalsa notes that the Department properly deducted the cost of packaging materials (AVGDIRPACK) from the total packing expense reported in the U.S. sales data base (PACK2U) and created a new variable for the revised packing expense (PACKINGU). However, in the programming instructions to weight-average POI prices and expenses, the original variable, PACK2U, was used, rather than PACKINGU. According to Expalsa, correcting this ministerial error decreases the dumping margin.

Analysis and Recommendation

We agree with Expalsa that we made a ministerial error, as defined under 19 CFR 351.224(f), by using the wrong packing expense variable for weight-averaging U.S. packing expenses. We recommend correcting the programming language in the manner proposed by Expalsa.

Agree _____   Disagree _____   Let's Discuss _____

2.   Raw Material Cost Revision for Non-standard Mixes

According to Expalsa, the Department erred when it used revised shrimp costs for non-standard mixes because Expalsa properly reported the actual costs of raw material inputs for these products, as represented by their control numbers (CONNUM). The Department erroneously replaced the raw shrimp costs with the average raw shrimp costs for the products in question by inserting the cost of only one of the shrimp inputs used in each mix. By replacing the raw shrimp costs, Expalsa argues, the Department completely disregarded the verified costs of the shrimp inputs for the mixed CONNUMs it reported, even though the Department had never previously questioned the accuracy of Expalsa's cost reporting methodology for these CONNUMs. Expalsa contends that it accurately reported the raw material cost of each CONNUM and the Department made a ministerial error in recalculating its raw material costs when no error existed. Therefore, the Department should amend its final determination to include this correction.

The petitioners assert that the Department did not err in calculating Expalsa's non-standard mix shrimp costs based on a single raw shrimp count size. According to the petitioners, the Department's final determination provided a detailed explanation of how it calculated the costs for the non-standard mix CONNUMs, and that is precisely how the revised costs were calculated. As such, the Department did precisely what it stated it intended to do.

Analysis and Recommendation

Expalsa raises a methodological issue, rather than a ministerial error as defined under 19 CFR 351.224(f). As noted in the Final Cost Memo[1], our intention was to replace the raw shrimp costs for the products in question with the average raw shrimp costs (unaffiliated grade-specific price) adjusted by the respective product yields, in the same manner that the costs for all other CONNUMs were reported. For example, the input for a peeled product with a count size reported as 41/50 was count size 36/40. Thus, we obtained the raw shrimp costs for count size 36/40 and adjusted the cost, based on the yield, to reflect the reported final product count size of 41/50. Therefore, we agree with the petitioners that no ministerial error occurred and do not recommend revising the raw shrimp cost for non-standard mix CONNUMs.

Agree ____   Disagree ____   Let's Discuss _____

3.   Yields Used in Revising Non-Standard Mix Raw Material Costs

Expalsa alleges that, if the Department maintains that raw material costs for non-standard mix CONNUMs should be adjusted, then the Department made a ministerial error in revising these costs by applying the wrong yields when adjusting the shrimp costs for these products, thereby overstating Expalsa's raw material costs. According to Expalsa, all the non-standard mix CONNUMs were treated with the same preservative, STPP, which adds weight to the product. However, when the Department revised Expalsa's raw shrimp costs for these non-standard mix products for the final determination, the yields that were applied to the raw shrimp costs did not reflect the preservative treatment.

According to the petitioners, there is no indication that the Department in its final determination intended to employ STPP yields for the products at issue. Moreover, the petitioners assert the Department's decision not to use the STPP yield was intentional because the yields were not verified. However, according to the petitioners, if the Department concludes that an error was made and different yields should be used, the yields proffered by Expalsa were incorrect. First, Expalsa reported more than one yield for certain products in question and these yields should be averaged. Second, the cost verification report noted that the reported yields for the products in question were based on the calendar year versus the POI. Therefore, the difference between the yields for these products should be accounted for if the Department were to revise the shrimp costs. Finally, for one of the non-standard mix CONNUMs, the

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[1] See "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Expalsa, S.A." Memorandum to Neal Halper dated December 17, 2004 (Final Cost Memo).

petitioners claim that the yield proffered by Expalsa is for a tail-on shrimp; however, the CONNUM characteristics indicate that the product is for tail-off shrimp.

Analysis and Recommendation

We agree with Expalsa that we inadvertently applied yields that did not reflect the STPP treatment to the non-standard mix CONNUMs that were treated with STPP. However, we disagree with both Expalsa and the petitioners with respect to the proper yields that should be used to revise the raw shrimp costs. For the final determination, we intended to use the verified weighted-average yields by product type submitted in Exhibit SA-2 of Expalsa's May 3, 2004, Supplemental Section A questionnaire response, and therefore have done so for the amended final determination. For the revised CONNUM costs, see Attachment 1.

With respect to the yields proffered by Expalsa, we agree with the petitioners that these yields only reflect a portion of the products in question and for one CONNUM, the product yield provided is for a tail-off shrimp and not a tail-on shrimp. Further, with respect to the petitioners assertion that the yields should be averaged, we agree. However, the yields should be based on a weighted average, not a simple average as proposed by the petitioners. Finally, with respect to petitioners' assertion that the yields should be adjusted for the differences between the calendar year and POI, we disagree. We note that these yield differences, which would both slightly increase and decrease the reported costs, depending on the product type, were fully described in the cost verification report at pages 22-23. Neither Expalsa nor the petitioners submitted briefs on this issue for the final determination. Therefore, as intended, we used the yields as reported by Expalsa for the final determination and will continue to use those yields weight-averaged for purposes of re-calculating raw shrimp costs for non-standard mix products for the amended final determination.

Agree _____   Disagree _____   Let's Discuss _____

4.   Expalsa's Count Size Codes for Excluded Sales

The petitioners allege that the Department made a typographical error in coding the SAS language intended to exclude substandard merchandise in the final determination comparison market and margin programs. The petitioners point out that in both programs the Department had included a trailing blank space in one of the count-size codes (i.e., "44") that identified the substandard merchandise. The petitioners claimed that, because of this error, the programs failed to exclude all substandard merchandise, as intended.

Expalsa responds that it did not sell any merchandise in the Italian market with the count-size code of "44," and the margin program correctly excluded all products with this count-size code

from the U.S. sales data base. Accordingly, Expalsa contends no error occurred and no change is necessary.

<u>Analysis and Recommendation</u>

We agree that we made the typographical error in the programming language by inadvertently including a trailing blank space. However, according to our analysis, correcting this programming error does not affect the calculated margin[2]. We note that correcting this programming error does not change the number of sales excluded from the margin calculation, indicating that all substandard sales were properly excluded from the final determination margin calculation. Nevertheless, we recommend correcting the programming in an amended final determination to delete the trailing blank space, as noted by the petitioners, because this error was unintentional within the meaning of 19 CFR 351.224(f).

Agree _____   Disagree _____   Let's Discuss _____

5.   <u>Expalsa's Direct Selling Expense Adjustment for Returned Sales</u>

According to the petitioners, the Department made an error in the final determination comparison market program when it unintentionally applied the direct selling expense adjustment for returned sale expenses to all Italian sales, rather than sales to one customer, as the Department intended.

Expalsa agrees with the petitioners that the Department made this programming error and concurs with the petitioners' proposed programming language to correct it. Expalsa notes that correcting this error increases the margin by only .01 percent.

<u>Analysis and Recommendation</u>

We agree with the petitioners that we made a ministerial error, as defined under 19 CFR 351.224(f), in Expalsa's comparison market program by incorrectly applying the returned sales expenses to all Italian sales after a certain date, rather than to sales to a specific customer after that date. We recommend correcting the programming language in the manner proposed by the petitioners.

Agree _____   Disagree _____   Let's Discuss _____

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[2] We understand that, in more recent releases of the SAS software, including the current version used by Import Administration, the trailing blank space noted by the petitioners here and with respect to the Exporklore calculation described below, may be ignored by the program. Accordingly, including the trailing blank space in this situation would not affect the Department's calculations.

6.   Exporklore's Count Size Codes for Excluded Sales

The petitioners allege that the Department made a typographical error in coding the SAS language intended to exclude substandard merchandise in the final determination comparison market and margin programs. The petitioners point out that in both programs the Department had a trailing blank space in one of the count-size codes (i.e., "40") that identified the substandard merchandise. The petitioners claimed that, because of this error, the programs failed to exclude all substandard merchandise, as intended.

Exporklore does not state a position on this allegation, but it notes that making this change would have no effect on Exporklore's dumping margin.

Analysis and Recommendation

We agree that we made the typographical error in the programming language by inadvertently including a trailing blank space. However, according to our analysis, correcting this programming error does not affect the calculated margin. We identified substandard sales for exclusion from the calculations based on two sets of variables: QGRADET/U (quality grade) and CNTSIZ2T/U (as-sold count size). This methodology was redundant but insured that all sales of substandard shrimp were excluded as intended. Nevertheless, we recommend correcting the programming in an amended final determination to delete the trailing blank space, as noted by the petitioners, because this error was unintentional within the meaning of 19 CFR 351.224(f).

Agree _____   Disagree _____   Let's Discuss _____

7.   Data Formatting for Exporklore's Recoding of Count Sizes for Certain Sales

According to the petitioners, the Department made a data-formatting error while attempting to revise reported codes under CNTSIZ2T and CNTSIZ2U fields. By doing so, the Department inadvertently introduced leading spaces, and inconsistent coding with respect to the use of leading zeroes for observations it was trying to revise (e.g., showing a "1" rather than "01"). Thus, some sales were incorrectly assigned a default count size of "00."

Exporklore does not state a position on this allegation. Exporklore notes that if the alleged errors are corrected, there would be a minimal increase on Exporklore's dumping margin.

Analysis and Recommendation

We agree with the petitioners that the programming in question did not properly revise certain CNTSIZ2T/U codes as intended. Accordingly, we agree that we made a ministerial error, as defined under 19 CFR 351.224(f), with respect to the programming language in question. In order to correct this error, we recommended applying the programming language suggested by the petitioners in reverse order. That is, the petitioners' proposal re-codes the count sizes in ascending order. We recommended re-coding the count sizes in descending order in order to avoid the possibility that each successive line of programming would cancel out the preceding one.

Agree _____   Disagree _____   Let's Discuss _____

8.   Misidentification of Invoice Number in Exporklore Program

The petitioners argue that the Department made an error in its calculations by omitting a hyphen in an applicable invoice number. In Item 11 of the December 17, 2004 "Exporklore S.A., Final Determination Notes and Margin Calculation Memorandum," the Department stated its intent to make a correction to the amount reported for BILLADJ2T with respect to one Italian invoice. In making this correction, the Department inadvertently omitted a hyphen that identifies the Italian invoice to be adjusted. Petitioners allege that, with the hyphen missing, the program fails to make the billing adjustment correction to the invoices identified and should be corrected.

Exporklore does not state a position on this allegation. Exporklore notes that making this change would have no effect on Exporklore's dumping margin.

Analysis and Recommendation

We agree that we made a ministerial error, as defined under 19 CFR 351.224(f), by incorrectly inputting an invoice number in the comparison market program for the purpose of correcting a billing adjustment. While we recommend correcting this programming error in an amended final determination, we note that, based on our analysis, this error had no impact on the margin calculated in the final determination.

Agree _____   Disagree _____   Let's Discuss _____

9.   Calculating Promarisco's CV Selling Expense Ratios

According to Promarisco, the Department made a ministerial error in calculating the weighted-average selling expense ratios to be used in the constructed value calculation. Specifically, Promarisco alleges the error is due to a problem with the structure of the Department's computer language. The variable names for two of the weighted-average variables had been inadvertently transposed, which thus unintentionally included commission expenses in the

calculation of the imputed credit expense ratio, and credit expenses in the commission expense ratio. Promarisco asserts that when this error is corrected its margin will decrease.

Analysis and Recommendation

We agree that we made a ministerial error, as defined under 19 CFR 351.224(f), with respect to the programming language for weight-averaging the selling expense ratios for CV expenses. In the set of programming instructions to assign weighted-average ratios, we transposed the variable names for the imputed credit expense and commission expense ratios. We recommend correcting the programming language in the manner proposed by Promarisco.

Agree _____   Disagree _____   Let's Discuss _____

10.   Promarisco's U.S. Commission Expenses

Promarisco asserts that the Department incorrectly revised Promarisco's U.S. commission expenses when it did not implement the segregation of U.S. commission and brokerage and handling expenses properly in the margin program. Promarisco states that an "ELSE" statement was omitted in the programming language to reallocate these expenses. Because of this error the program did not properly assign the reallocated costs to the appropriate sales. To correct this error, the Department should revise the programming language to add the "ELSE" statement. Promarisco alleges that when this error is corrected, its margin will decrease slightly.

Analysis and Recommendation

We agree with Promarisco that we made a ministerial error, as defined under 19 CFR 351.224(f), in the programming language for revising U.S. commission and brokerage handling expenses on certain sales by omitting the "ELSE" statement at the place cited in the margin calculation program. We recommend correcting the programming language in the manner proposed by Promarisco.

Agree _____   Disagree _____   Let's Discuss _____

11.   Revision of Promarisco's Count Size-Codes

Promarisco alleges that the Department incorrectly revised product count-size codes in the margin and comparison market programs for certain sales. The Department's programming language correctly re-coded the headless shrimp products, but for the head-on shrimp products the Department inadvertently omitted an "ELSE" statement. The omission of the "ELSE" statement caused the program to assign the wrong codes to the head-on shrimp products. Promarisco asserts that this programming error should be corrected, but notes that correcting this error does not affect the margin results.

Analysis and Recommendation

We agree with Promarisco that we made a ministerial error, as defined under 19 CFR 351.224(f), in the programming language for re-coding the count size for certain products by omitting the "ELSE" statement at the places cited in the comparison market and margin calculation programs. We recommend correcting the programming language in the manner proposed by Promarisco.

Agree _____   Disagree _____   Let's Discuss _____

V.   Amended Margins

If the team recommendations are accepted, the final margins become:

Manufacturer/Exporter	Final Determination Weighted-average margin	Amended Weighted-average margin
Exporklore S.A. (Exporklore)	2.35%	2.48%
Exportadora de Alimentos S.A. (Expalsa)	2.60%	1.97% (de minimis)
Promarisco S.A. (Promarisco)	4.48%	4.42%
All Others Rate	3.26%	3.58%[3]

[3] The all-others rate is the weighted average of all calculated rates that are not de minimis and not based on total facts available.

VI.   Recommendation

We recommend correcting each of the errors noted above and calculating revised dumping margins for Exporklore, Expalsa, and Promarisco. In addition, we recommend recalculating the "all others" rate.

Agree _____   Disagree _____   Let's Discuss _____

_____

Louis Apple
Director, Office 2
AD/CVD Operations

_____
        (Date)

Attachment