

estimated duties, where applicable. See 751(a)(2)(C) of the Act.

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The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the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 10.17 percent, the all-others rate made effective by the LTFV investigation. See *Shrimp Order*, 70 FR at 5148. These deposit 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.

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.

Dated: February 28, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-331-802]

#### Certain Frozen Warmwater Shrimp From Ecuador: 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 Ecuador with respect to 45 companies.<sup>1</sup> The respondents which the Department selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the second administrative review of this order. The period of review (POR) covers February 1, 2006, through January 31, 2007.

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

<sup>1</sup> 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.

responsive to the Department's requests for information.

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:

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) (*LTFV Amended Final Determination and 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 Ecuador for the period February 1, 2006, through January 31, 2007. See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (February 2, 2007). On February 28, 2007, the petitioner<sup>2</sup> and the Louisiana Shrimp Association (LSA), a domestic interested party, submitted timely requests that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(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 published a notice of initiation of administrative review for 64 companies

<sup>2</sup> The petitioner is the Ad Hoc Shrimp Trade Action Committee.

and requested that each provide data on the quantity and value (Q&V) of its exports of subject merchandise to the United States during the POR. 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, 17107–09 (April 6, 2007) (*Notice of Initiation*).

During the period April through July 2007, we received responses to the Department's Q&V questionnaire from 64 companies. Subsequently, the Department received timely requests for withdrawal of the administrative review with respect to many of the companies. On August 24, 2007, we published a notice rescinding the administrative review with respect to 18 companies for which the requests for a review were withdrawn in a timely manner, in accordance with 19 CFR 351.213(d)(1). See *Certain Frozen Warmwater Shrimp from Ecuador; Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 48616 (August 24, 2007).

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 20, 2007, we selected the two largest remaining producers/exporters by export volume of certain frozen warmwater shrimp from Ecuador during the POR, OceanInvest and Promarisco, as the mandatory respondents in this review. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Ecuador: Selection of Respondents for Individual Review," dated July 20, 2007. On this same date, we issued the antidumping questionnaire to OceanInvest and Promarisco. We requested Promarisco respond to section D of the questionnaire, because we found Promarisco had made sales below cost in the most recently completed segment of the proceeding. See "Cost of Production Analysis" section below.

On May 9, August 28, and September 5, 2007, the petitioner submitted general comments regarding the selection of the appropriate comparison market in this review with regard to Promarisco. Promarisco responded to these comments on August 31, 2007.

We received responses to sections A, B and C of the questionnaire from Promarisco and OceanInvest in August and September 2007. We also received a response to section D of the questionnaire from Promarisco in September 2007.

On October 1, 2007, we determined that Spain constitute the appropriate comparison market with respect to Promarisco. See Memorandum to James Maeder, Director Office 2, AD/CVD Operations, from The Team entitled "Selection of the Appropriate Third Country Market for Promarisco," dated October 1, 2007 (*Promarisco Comparison Market Memo*).

Also on October 1, 2007, the petitioner requested that the Department initiate a sales-below-cost investigation of OceanInvest. On October 30, 2007, we initiated this investigation. See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled "The Petitioner's Allegation of Sales Below the Cost of Production for OceanInvest S.A.," dated October 30, 2007 (*OceanInvest COP Initiation Memo*). On that date, we instructed OceanInvest to respond to section D of the Department's questionnaire. OceanInvest submitted its response to section D of the questionnaire on November 27, 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).

During the period October 2007 through January 2008, we issued to Promarisco and OceanInvest supplemental sections A, B, C, and D questionnaires. We received responses to these supplemental questionnaires during the period November 2007 through February 2008.

#### 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>3</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

<sup>3</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

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

that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

#### Period of Review

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

#### Partial Rescission of Review

The Department received a no-shipment response from Exportadora del Oceano Pacifico OCEANPAC (Oceanpac) for which there appeared to be U.S. customs entries of subject merchandise. We requested data on the relevant entries from CBP and determined that the entries were not reportable transactions for Oceanpac. See Memorandum to the File entitled "Reconciliation of Respondent "No Shipment" Statements to CBP Data," dated February 6, 2008. Under these circumstances, we determine that Oceanpac satisfies the requirement under 19 CFR 351.213(d)(3) that it did not have "entries, exports, or sales of the subject merchandise," and, consistent with the Department's practice, we are preliminarily rescinding the review with respect to Oceanpac. See, e.g., *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665, 67666 (November 8, 2005).

#### 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, neither OceanInvest nor Promarisco sold subject merchandise in the United States through an affiliated importer during the POR. Therefore, it is not appropriate to make a duty absorption determination with respect to OceanInvest and Promarisco 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 OceanInvest and Promarisco 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 OceanInvest and Promarisco 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 non-broken shrimp to sales of non-broken shrimp made to Italy for OceanInvest and Spain for Promarisco 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 non-broken 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 OceanInvest and Promarisco 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.

#### Export Price

For all U.S. sales made by OceanInvest 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. OceanInvest

We based EP on FOB or delivered, duty-paid (DDP) prices to the first unaffiliated purchaser in the United States. We also made deductions to the starting price for demurrage expenses, foreign inland freight expenses, Ecuadorian brokerage and handling expenses, ocean freight 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.

OceanInvest reported that it received periodic "bonus payments" during the POR from one of its U.S. customers. Pursuant to 19 CFR 351.401(c), the Department may make post-sale price adjustments that are reasonably attributable to the subject merchandise. However, the preamble to the regulations states that exporters or producers should not be allowed "to eliminate dumping margins by providing price adjustments 'after the fact'." See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27344 (May 19, 1997). In addition, the Department's regulations state that, "[t]he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of the particular adjustment \* \* \*" 19 CFR 351.401; see also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Rep. No. 103-316 at 829 (1994), ("[A]s with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such an adjustment."). Accordingly, where a price adjustment made after the fact lowers a respondent's dumping margin, the Department will closely examine the circumstances surrounding the

adjustment to determine whether it was a *bona fide* adjustment made in the ordinary course of business. See *Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 70948 (December 7, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

According to OceanInvest, the bonus payments were made as part of an agreement between OceanInvest and the customer where the customer agreed to buy large quantities of subject merchandise from OceanInvest and the parties agreed to share the profits from these sales to the customer's customers. The "bonus payments" represent OceanInvest's profit sharing under the agreement. OceanInvest reported that it received periodic payments from the customer under this agreement, but that the payments could not be tied to specific sales. While the agreement outlines how the profit sharing returns are to be distributed, OceanInvest reports that the agreement does not provide any obligation for the customer to support its accounting of the profit sharing distribution to OceanInvest. Further, while the agreement in question was drafted prior to the POR, OceanInvest acknowledged that the agreement was not signed until the Department noted the absence of signatures on the copy of the agreement submitted for the record. See OceanInvest's December 18, 2007, supplemental questionnaire response.

OceanInvest reported a series of payments made to it by its customer during the POR, but was unable to demonstrate that these payments are tied to the terms of the agreement. The Department cannot determine that the amounts of the payments are consistent with the distribution method outlined in the agreement. OceanInvest acknowledges that it does not have the ability to examine the basis for the payment it received. Therefore, we find that OceanInvest has failed to demonstrate adequately that the post-sale bonus payments were made consistent with the terms indicated in the agreement. As a result, we have disallowed this adjustment to EP.

OceanInvest reported the demurrage expenses as a direct selling expense. We reclassified this item as a movement expense, consistent with our treatment of this item in the previous review. See *Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10698, 10702 (March 9, 2007) (*AR1 Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from*

*Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007) (*AR1 Final Results*).

#### B. Promarisco

We based EP on DDP prices to the first unaffiliated purchaser in the United States. We made deductions to the starting price for foreign inland freight expenses, 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.

#### 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 dated June 7, 2004, entitled "Home Market as Appropriate Comparison Market," as included at Exhibit A-2 of Promarisco's August 24, 2007, 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. See *Promarisco Comparison Market Memo* for a more detailed discussion of this issue.

Furthermore, based on our analysis of OceanInvest's questionnaire responses,

we determined that OceanInvest'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>4</sup> Therefore, with respect to OceanInvest, we used sales to Italy, which is OceanInvest'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.

#### 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>5</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

<sup>4</sup> Because OceanInvest'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>5</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.

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 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. OceanInvest

OceanInvest sold frozen warmwater shrimp to distributors and traders in the U.S. market, and distributors in the Italian market. OceanInvest reported that it made EP sales in the U.S. market through two channels of distribution: FOB sales and DDP sales. We examined the selling activities performed for these channels, and found that OceanInvest performed the following selling functions for both channels: Packing, order input/processing, direct sales personnel services, and claim services (*i.e.*, billing adjustments). In addition, for DDP sales, OceanInvest made freight and delivery arrangements. These selling activities can be generally grouped into two core selling function categories for analysis: 1) sales and marketing (*e.g.*, order input/processing, direct sales personnel services, claim services); and 2) freight and delivery. Accordingly, based on the core selling functions, we find that OceanInvest performed sales and marketing for all U.S. sales, and freight and delivery services as well for certain U.S. sales. We do not find that the provision of freight and delivery services for one channel of distribution is sufficient to distinguish it as a separate LOT. Accordingly, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the Italian market, OceanInvest reported that it made FOB sales through one channel of distribution. We examined the selling activities performed for this channel, and found that OceanInvest performed the following selling functions: Packing, order input/processing, direct sales

personnel services, payment of commissions, and claim services (*i.e.*, billing adjustments). These selling activities can be generally grouped into one core selling function for analysis: Sales and marketing. Accordingly, we find that OceanInvest performed the core selling function of sales and marketing for all customers in the Italian market. Because all sales in the Italian market are made through a single distribution channel, we preliminarily determine that there is one LOT in the Italian market.

Finally, we compared the EP LOT to the comparison market LOT and found that, with the exception of freight and delivery services performed on some U.S. sales, and the payment of commissions on Italian sales, the core selling functions performed for U.S. and Italian market customers are virtually identical. Therefore, we determined that sales to the U.S. and Italian markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

#### 2. 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, payment of commissions, freight and delivery, and claim services. These selling activities can be generally grouped into two core 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 core 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, payment of commissions, freight and

delivery, and claim services. These selling activities can be generally grouped into two core selling function categories for analysis: (1) Sales and marketing (*e.g.*, order input/processing, sales promotion, claim services); and (2) freight and delivery. Accordingly, based on the core selling functions, 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 core 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.

#### 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 OceanInvest's sales of frozen warmwater shrimp in the third-country market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether OceanInvest's sales were made at prices below their respective COPs. *See OceanInvest COP Initiation Memo*.

In the LTFV investigation, the most recently completed segment of this proceeding as of April 6, 2007, the publication date of the initiation of this review, we found that Promarisco had made sales below the COP. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From Ecuador*, 69 FR 47091 (August 4, 2004); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador*, 69 FR 76913 (December 23, 2004), and *LTFV Amended Final Determination and Order*. 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.

### Calculation of Cost of Production

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. OceanInvest

We relied upon the COP data submitted by OceanInvest, including a correction to the raw material cost for one product that OceanInvest reported in its February 11, 2008, response. We recalculated the G&A and financial expenses reported for this product based on the revised total cost of manufacturing for this product. *See* Memorandum to Neal M. Halper, Director, Office of Accounting, from Gina K. Lee, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—OceanInvest S.A.," dated February 28, 2008.

#### b. Promarisco

We relied upon the COP data submitted by Promarisco with the exception of the financial expense ratio. We have recalculated Promarisco's financial expense ratio to exclude a certain interest income offset that was generated from assets classified as long-term assets. *See* Memorandum to Neal M. Halper, Director, Office of Accounting, from Christopher J. Zimpo, Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Promarisco, S.A.," dated February 28, 2008.

### 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 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 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 OceanInvest's and Promarisco'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 usable 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. OceanInvest

We based NV for OceanInvest on FOB prices to unaffiliated customers in Italy.

We made adjustments, where appropriate, to the starting price for billing adjustments. We made deductions, where appropriate, from the starting price for foreign inland freight and Ecuadorian brokerage and handling 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 circumstances of sale (COS) for imputed credit expenses, bank fees, inspection fees, bill-of-lading document fees, and international courier 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 Italian market but not in the U.S. market, we deducted commissions paid in the Italian market from the starting price, and made an upward adjustment to NV for the lesser of (1) the amount of commission paid in the Italian 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.

OceanInvest reported certain ancillary freight-related expenses related to Italian sales, such as anti-narcotic inspection fees and bill-of-lading document fees, under the international freight expense variable in the third-country sales listing. We reclassified these expenses as selling expenses, consistent with our treatment of these expenses in *AR1 Preliminary Results*, 72 FR at 10704, unchanged in *AR1 Final Results*.

##### 2. Promarisco

We calculated NV based on CIF, CFR or FOB prices to unaffiliated customers in the Spanish market. We made deductions from the starting price for movement expenses, including inland freight, marine insurance, and international freight, 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. 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 also deducted comparison market packing costs and added U.S. packing costs, in accordance with section 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 usable sales of a comparable product, 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.

#### 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, 2006, through January 31, 2007, as follows:

Manufacturer/exporter	Percent margin
OceanInvest, S.A .....	0.64
Promarisco, S.A .....	0.46 ( <i>de minimis</i> )
Review-Specific Average Rate Applicable to the Following Companies there:&thnsp; <sup>6</sup>	
Agrol, S.A .....	0.64
Alquimia Marina S.A .....	0.64
Comar Cia Ltda .....	0.64
Dunci S.A .....	0.64
El Rosario S.A .....	0.64
Empacadora Bilbo Bilbosa	0.64
Empacadora Del Pacifico S.A.	0.64
Empacadora Dufer Cia. Ltda.	0.64
Empacadora Gran Mar S.A (Empagran).	0.64
Empacadora Nacional .....	0.64
Empacadora y Exportadora Calvi Cia. Ltda.	0.64
Emprede .....	0.64
Estar C.A .....	0.64
Exporklore, S.A .....	0.64
Exportadora Del Oceano Oceanexa C.A.	0.64
Gondi S.A .....	0.64
Industria Pesquera Santa Priscila S.A.	0.64
Inepexa S.A .....	0.64
Jorge Luis Benitez Lopez ..	0.64
Karpicorp S.A .....	0.64
Luis Loaiza Alvarez .....	0.64
Mardex Cia. Ltda .....	0.64
Mariscos del Ecuador c. l. Marecuador.	0.64
Marines C.A .....	0.64
Natural Select S.A .....	0.64
Negocios Industriales .....	0.64
Novapesca S.A .....	0.64
Oceanmundo S.A .....	0.64
Oceanpro .....	0.64
Operadora y Procesadora de Productos Marinos S.A (Omarsa).	0.64
Oyerly S.A .....	0.64
Pacfish S.A .....	0.64
PCC Congelados & Frescos S.A.	0.64
Pescazul S.A .....	0.64
Peplasa S.A .....	0.64
Phillips Seafood .....	0.64
Procesadora del Rio Proriosa S.A.	0.64
Promarosa Productos .....	0.64
Sociedad Nacional de Galapagos C.A (SONGA).	0.64
Tolyp S.A .....	0.64

<sup>6</sup> This rate is 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 adverse facts available.

Manufacturer/exporter	Percent margin
Transcity S.A .....	0.64

#### 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 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). 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.

Regarding OceanInvest, for those sales where it reported the entered value 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 those sales where OceanInvest did not report the

entered value of its U.S. sales, we will calculate customer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific or customer-specific *ad valorem* ratios based on the estimated entered value.

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 *AR1 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; and *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.

For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the margin rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific 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). 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.

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.

#### **Discontinuation of 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 *Final Results of the section 129 Determination of Certain Frozen Warmwater Shrimp from Ecuador*, 72 FR 48257 (August 23, 2007). Accordingly, the antidumping duty order on certain frozen warmwater shrimp from Ecuador was revoked effective August 15, 2007. As a result, we have instructed CBP to discontinue collection of cash deposits of antidumping duties on entries of the subject merchandise.

#### **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.

Dated: February 28, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8-4424 Filed 3-5-08; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-570-896]

#### **Magnesium Metal From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to timely request from Tianjin Magnesium International Co., Ltd. (TMI) the Department of Commerce (the Department) is conducting the 2006–2007 administrative review of the antidumping duty order on magnesium metal from the People’s Republic of China (PRC). The Department has reviewed shipments of subject merchandise made by TMI and has determined that TMI made sales below normal value (NV) during the period of review (POR). If the preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** *Effective Date:* March 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4081.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 15, 2005, the Department published an antidumping duty order on magnesium metal from the PRC. See *Notice of Antidumping Duty Order: Magnesium Metal From the People’s Republic of China*, 70 FR 19928 (April 15, 2005). On April 2, 2007, the Department published a notice of opportunity to request an administrative review of the above-referenced order.