

MEMORANDUM

TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

DATE: July 26, 2007

RE: Final Results of Proceeding Under Section 129 of the Uruguay Round
Agreements Act (URAA): Antidumping Measures on Frozen Warmwater Shrimp
from Ecuador

SUBJECT: Issues and Decision Memorandum for the Final Results

Summary

This memorandum addresses issues briefed in the above-referenced proceeding. Below is a complete list of the issues in this proceeding for which we have received comments from the parties:

- Comment 1: Whether the Department Has Authority to, and Should, Issue a Determination Pursuant to Section 129 of the URAA
- Comment 2: Whether the Preliminary Results Are Consistent with U.S. Law
- Comment 3: Calculation Methodology
- Comment 4: Scope of the Proceeding

Background

The Department issued its preliminary results in this proceeding on May 31, 2007. See Memorandum from Stephen J. Claeys to David M. Spooner entitled “Calculation of the

Weighted-Average Dumping Margins” (Preliminary Results). Since the issuance of the Preliminary Results, we received case briefs and rebuttal briefs, respectively, from the petitioner in the proceeding, the Ad Hoc Shrimp Trade Action Committee (hereinafter referenced as “the petitioner), and the Government of Ecuador and the National Chamber of Aquaculture of Ecuador (hereinafter referenced as “the Ecuadorian parties”). Pursuant to a request by the petitioner, a public hearing was held on July 11, 2007.

Discussion of Issues

Comment 1: Whether the Department Has Authority to, and Should, Issue a Determination Pursuant to Section 129 of the URAA

The petitioner contends that the Department has no authority to implement the findings of a World Trade Organization (WTO) dispute settlement panel that are legally erroneous and contrary to the terms of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement). The petitioner argues that there are myriad problems with the various WTO dispute settlement reports emanating from the WTO Appellate Body and dispute settlement panels on the issue of “zeroing.” The petitioner contends that the Department should not implement the Panel’s findings at issue in this proceeding because they are contrary to the positions taken by the United States in the course of other WTO disputes and in WTO negotiations. The petitioner notes the criticisms made by the United States against the Appellate Body’s recent findings on the issue of “zeroing” and the United States’ defense of “zeroing” in calculating margins in recent WTO disputes, as well as in a communication presented to the Negotiating Group on Rules on June 1, 2007, proposing that the issue of “zeroing” be addressed in the context of the WTO Rules negotiations.¹

Alternatively, the petitioner argues the Department should suspend implementation of the Panel’s findings until the issue of “zeroing” is expressly resolved through multilateral negotiations. The petitioner states that the suspension would permit the Department to calculate the final results with the benefit of the results of the negotiations, whereas if it proceeded to the final results based on the Preliminary Results methodology, the antidumping duty order would be terminated, thus preventing reinstatement of the order at the conclusion of the negotiation process.

The Ecuadorian parties argue that the U.S. government has agreed to implement the Panel’s findings² and, consequently, is bound, and has the statutory authority, to do so. With respect to the petitioner’s argument that the Department should suspend its implementation of the Panel’s findings, the Ecuadorian parties note that the United States has agreed to implement the Panel’s findings by August 20, 2007.

¹*Offsets for Non-Dumped Comparisons, Communication from the United States, TN/RL/W/208 (1 June 2007).*

²*See Agreement on Procedures between Ecuador and the United States, WT/DS335/8 (25 October 2006), (Procedural Agreement), para. 6.*

The Ecuadorian parties further assert that the WTO negotiations have no end date and, therefore, the proposed suspension of implementation would be indefinite. The Ecuadorian parties also contend that, if negotiations did result in the renewed authorization of “zeroing,” it would have prospective effect only and, as a matter of U.S. law and international law, would not affect the outcome of this proceeding.

Department Position:

Section 129(b)(2) of the URAA provides that the Department “shall...issue a determination...that would render {the Department’s action (*i.e.*, the original less-than-fair-value (LTFV) determination)} not inconsistent with the findings of the panel.” The authority granted by this provision may be invoked based on a report by a dispute settlement panel or the Appellate Body of the WTO finding that the Department’s action was not in conformity with the obligations of the United States under the AD Agreement. We have such a report of a panel relating to the Department’s LTFV determination in this case. The statute provides that the Department’s determination shall be made within 180 days of a written request from the United States Trade Representative (USTR) to do so. In this case, the Department has received a written request from USTR dated April 23, 2007. Therefore, the Department has the authority, pursuant to section 129(b)(2) of the URAA, to issue a determination that would bring the Department’s LTFV determination into conformity with the findings of the WTO Panel.

Nothing in the statute requires the United States to agree with the Panel’s findings to have authority to issue such a determination, or at the appropriate time under the statutory scheme, to implement it. Moreover, the positions that the United States takes in other WTO dispute settlement proceedings and in negotiations have no bearing on whether the Department has the authority under section 129 of the URAA to issue a determination that, if implemented, would bring its LTFV determination into conformity with the findings in the WTO Panel report adopted by the Dispute Settlement Body (DSB).

With respect to the petitioner’s argument that the Department should “suspend implementation” of the Panel’s findings, and the Ecuadorian parties’ contention that the Department is bound to implement the findings, we note that section 129(b)(2) of the URAA provides only that, upon request from USTR, the Department shall issue a determination within 180 days. (Emphasis added.) The matter before the Department presently is the issuance of that determination. The subsequent implementation of that determination is a matter that is not presently before the Department. In order for the Department to implement such a determination, the statute first requires that USTR consult with the Department and the relevant congressional committees with respect to the determination. After such consultations, USTR may then instruct the Department to implement the determination, in whole or in part. See sections 129(b)(3) and (4) of the URAA.

Comment 2: Whether the Preliminary Results Are Consistent with U.S. Law

The petitioner asserts that, under section 102(a)(1) of the URAA (19 USC 3512(a)(1)), U.S. law must prevail in any conflict with a WTO panel or Appellate Body report; a principle the petitioner further asserts is emphasized at page 1023 of the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 (SAA), which states that USTR has the authority to instruct the Department to take action not inconsistent with a WTO panel report only if such action is in accord with U.S. law. In this instance, the petitioner argues, the Department used for purposes of the Preliminary Results a methodology that is not permitted by U.S. law. In particular, the petitioner contends that U.S. law precludes the Department from permitting “putative ‘negative margins’ of dumping” (where the average export price exceeded the average normal value) to offset positive margins of dumping (where the average normal value exceeded the average export price) because this methodology prevents the Department from accurately measuring dumping. The petitioner cites Krupp Thyssen v. United States, 25 CIT. 793, 808 (CIT 2001), SKF USA Inc. v. United States, 391 F.Supp. 2d 1327, 1334 (CIT 2005), Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990), and Shakeproof Assembly Components v. United States, 59 F. Supp. 2d 1354, 1358 (CIT 1999), in support of the proposition that Commerce must calculate margins of dumping as accurately as possible. The petitioner also refers to the Department’s longstanding practice of denying offsets for comparisons in which the average export price exceeds the average normal value as a methodology that is necessary to calculate accurate dumping margins.

The Ecuadorian parties dispute the petitioner’s contention that the Department is precluded under U.S. law from offsetting positive margins with negative ones. The Ecuadorian parties cite court cases such as Timken Co. v. United States, 354 F.3d 1334, 1341-42 (Fed. Cir. 2004), that held that the Department has the discretion to use “zeroing,” but that the statute does not mandate its use. They continue that, if the use of “zeroing” is discretionary, then its application is not required in order to make “accurate calculations” under U.S. law. The Ecuadorian parties also point to the Department’s statement in announcing its change of margin calculation practice in LTFV investigations, where the Department outlined its legal basis for eliminating “zeroing” in future LTFV investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Final Modification). The Ecuadorian parties argue that, as U.S. courts have held that the elimination of “zeroing” does not conflict with the U.S. antidumping law, there is no basis for the petitioner to claim that the Preliminary Results are contrary to U.S. law.

Department Position:

The Department responded to this issue previously with respect to the proceeding under section 129 of the URAA involving multiple LTFV investigations from the European Community countries. See Final Results for the Section 129 Determinations: Certain Hot-rolled Carbon Steel from the Netherlands, Stainless Steel Bar from France, Stainless Steel Bar from Germany,

Stainless Steel Bar from Italy, Stainless Steel Bar from the United Kingdom, Stainless Steel Wire Rod from Sweden, Stainless Steel Wire Rod from Spain, Stainless Steel Wire Rod from Italy, Certain Stainless Steel Plate in Coils from Belgium, Stainless Steel Sheet and Strip in Coils from Italy, Certain Cut-To- Length Carbon-Quality Steel Plate Products from Italy, Certain Pasta from Italy: Issues and Decision Memorandum for the Final Results of the Section 129 Determinations, dated April 9, 2007, (EC Final Results Memo) at Comment 1. As we explained in that proceeding:

While the Department, through these section 129 proceedings, is taking actions to bring these investigations into conformity with an adopted WTO panel report, the Department must apply U.S. law. See SAA at 1023 (USTR may request that the Department issue a new determination in response to a WTO report only if the action required to render the agency determination not inconsistent with the panel report is in accord with U.S. law). The {Court of Appeals for the Federal Circuit} CAFC, in construing U.S. law, held that the denial of offsets when calculating the weighted-average dumping margin is not required by statute, but is instead a reasonable interpretation of the statute. See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006); Timken Co. v. United States, 354 F.3d 1334, 1341-42 (Fed. Cir.), cert. denied sub nom., Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). While many parties have expressed disagreement with these CAFC decisions, they are binding legal precedent. See Paul Muller Industrie GmbH v. United States, 435 F. Supp. 2d 1241, 1245 (CIT 2006) (stating new argument alone does not defeat binding precedent).

Section 771(35)(A) of the {Tariff Act of 1930, as amended (the Act)} Act defines “dumping margin” as “the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” The “weighted average dumping margin” is defined as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” Section 771(35)(B) of the Act. Some parties argue that the use of the word “exceeds” in section 771(35)(A) of the Act demonstrates that only positive dumping margins should be aggregated when calculating the weighted-average dumping margin. This position, however, has been rejected by the CAFC in Timken.

In interpreting section 771(35)(A) of the Act, the CAFC examined closely the use of the word “exceeds.” Although dictionary definitions cited to the CAFC defined the word “exceeds” in terms of being greater than or going beyond something else, the court found that these dictionary definitions were not so clear so as to compel the denial of offsets. Timken, 435 F.3d at 1341. Rather, in a mathematical context, the court held that the word “‘exceeds’ does not unambiguously preclude the calculation of a negative dumping margin.” Id.

The Department’s calculation of the weighted-average dumping margins in these section 129 proceedings, therefore, is consistent with U.S. law. The Department

has aggregated all of the comparison results for a particular exporter or producer, regardless of whether the specific comparisons yielded a positive or negative result. As the CAFC held in Timken, the use of the word “exceeds” in section 771(35)(A) of the Act does not require the exclusion of those comparisons that yielded a negative result.

No new situation or circumstance has been presented in this proceeding to warrant any change in the Department’s position, as expressed above, for purposes of this final determination. Accordingly, we continue to find that the Department’s calculation of the weighted-average dumping margins for the Ecuadorian respondents Exporklore, S.A. and Promarisco S.A. in this proceeding is consistent with U.S. law.

With respect to the petitioner’s argument that permitting negative comparison results to offset positive comparison results in calculating the overall weighted-average margin of dumping leads to a dumping margin that is not as “accurate” as possible, we disagree. As explained above, the CAFC has held that the definition of dumping margin set forth in sections 771(35)(A) and (B) of the Act does not require exclusion of negative comparison results from the calculation of the weighted-average dumping margin. As such, the petitioner’s allegation of inaccuracy in the Department’s calculations resulting from the inclusion of negative comparison results in the weighted-average dumping margin is misplaced. By including such negative comparison results in this case, the Department is accurately calculating the weighted-average dumping margin in accordance with one interpretation of how that term is defined in the statute.

Comment 3: Calculation Methodology

The petitioner contends that, in implementing the Panel’s findings, the Department must examine alternative calculation methodologies that, the petitioner argues, would be consistent with U.S. law and the AD Agreement. According to the petitioner, the Panel did not prescribe a particular methodology to apply in implementing its findings but, rather, instructed the Department to bring its margin calculations into conformity with the AD Agreement. As the petitioner asserts that the methodology applied in the Preliminary Results is unlawful because the absence of “zeroing” and allowing offsets for non-dumped comparisons prevents the Department from carrying out its statutory obligation to calculate dumping margins “as accurately as possible” (see discussion in Comment 2 above), the petitioner calls on the Department to employ “lawful” alternatives for the final results.

Specifically, the petitioner believes that, by applying the same methodology as in the underlying LTFV investigation (i.e., the weighted-average to weighted-average comparison methodology) but permitting the offset of dumped comparisons with non-dumped comparisons, the ultimate results mask dumping by the Ecuadorian respondents. As an alternative, the petitioner promotes the transaction-to-transaction comparison methodology permitted under section 777A(d)(1)(A)(ii) of the Act, where the Department compares the normal values of individual transactions to the export prices of individual transactions for comparable merchandise, such as in Antidumping Measures on Certain Softwood Lumber from Canada, 70 FR 22636, 22640 (May

5, 2005) (Lumber). According to the petitioner, this methodology is appropriate for this case because of the manageable size of the sales data bases and the relative similarity of the merchandise. The petitioner proposes applying the transaction-to-transaction methodology in the same multi-step process as outlined in Lumber.

If the Department chooses not to apply the transaction-to-transaction comparison methodology, the petitioner advocates applying the weighted-average normal value-to-export price transaction comparison methodology with “zeroing” under section 777A(d)(1)(B) of the Act. The petitioner contends that WTO panels have not precluded the use of “zeroing” under this methodology, and that the U.S. sales data for LTFV respondent Promarisco S.A. demonstrates significant differences in net export prices across months for comparable merchandise sold in the comparison market to warrant this methodology. Further, the petitioner asserts that it is not necessary for the Department to consider this methodology only in response to a “targeted dumping” allegation, as the Department has the authority to self-initiate such an inquiry and analysis. The petitioner adds that, even if the Department were to require such an allegation, the Department should waive the time limits for filing an allegation for good cause under 19 CFR 351.302(b). The petitioner argues that, because the change in the Department’s long-standing calculation methodology occurred well after the deadline for filing a targeted dumping allegation, interested parties should not be penalized for relying on that methodology when it appeared a targeted dumping analysis would not be relevant.

Finally, as a third alternative, the petitioner proposes that the Department recalculate the dumping margins for the Ecuadorian companies by employing a revised difference-in-merchandise (DIFMER) adjustment methodology. While recognizing the Department’s longstanding practice to disregard potential sales comparisons between products where the difference in the variable cost of manufacturing between the U.S. product and the comparison market product exceeds 20 percent of the U.S. product’s total cost of manufacturing, the petitioner contends that the extraordinary circumstances in this case warrant a departure from normal practice. According to the petitioner, if the Department applies its normal 20-percent-DIFMER adjustment methodology, the result may be the termination of the antidumping duty order, as stated in the Preliminary Results. The petitioner believes that such a result would be difficult or impossible to reverse when the “zeroing” issue is resolved through negotiations. Because the 20-percent-DIFMER methodology is not required by law, the petitioner argues that the Department should recalculate the margins by limiting comparisons to those products where the DIFMER does not exceed 17.5 or 15 percent. According to the petitioner, this approach would not be inconsistent with the Panel’s findings and would preserve the antidumping duty order pending a final resolution of the “zeroing” issue.

The Ecuadorian parties rebut the petitioner’s arguments with reference to 19 CFR 351.414(c)(1), which sets forth that, “{i}n an investigation, the Secretary normally will use the average-to-average method,” and that the Department “will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.” The Ecuadorian

parties state that the narrow, limited conditions for which this methodology is intended do not apply here, given the substantial number of U.S. sales (over 1,300) that both responding companies made during the LTFV period of investigation. The Ecuadorian parties state that they believe that the only situation in which the Department has applied the transaction-to-transaction methodology was in Lumber, in which the Department referred to a “high level of price volatility” in the U.S. and Canadian markets that could distort the results of the dumping calculations if average-to-average comparisons were made. According to the Ecuadorian parties, no unusual conditions are present to warrant the application of this methodology, nor has the petitioner demonstrated any basis for applying this methodology. Finally in this regard, the Ecuadorian parties dispute the petitioner’s contention that the WTO Appellate Body has not proscribed “zeroing” in transaction-to-transaction comparisons, citing to WTO Appellate Body decisions in *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS/322/AB/R, 9 Jan. 2007, at paras. 119-138; and *United States – Final Dumping Determination on Softwood Lumber from Canada, Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/AB/RW, 15 Aug. 2006.

The Ecuadorian parties also contend that the petitioner’s advocacy of the weighted-average-to-individual transaction methodology amounts to an untimely “targeted dumping” allegation. The Ecuadorian parties point to the requirements of 19 CFR 351.301(d)(5) and 351.414(f)(3), which provide that the Department will normally consider a targeted dumping allegation if it is filed no later than 30 days before the scheduled date of the preliminary determination. Accordingly, they state that the petitioner’s request is untimely and should be rejected, as the Department did with similar requests, as explained in the EC Final Results Memo at Comment 2.

Finally, the Ecuadorian parties assert that the petitioner does not provide any legal or factual justification for abandoning the 20-percent-DIFMER methodology, which they contend is a longstanding and uniform agency practice embodied in Import Administration Policy Bulletin No. 92.2, Differences in Merchandise: 20% Rule (July 29, 1992). The Ecuadorian parties note that, not only is this practice the Department’s “normal” practice, it has been the Department’s only practice in this regard. The Ecuadorian parties contend that the petitioner’s argument to abandon this practice for this proceeding based on the “extraordinary circumstances” facing the Department in this case should be rejected, otherwise it would lead to findings that “extraordinary circumstances” exist with respect to any policy or practice anytime that a domestic interested party is unhappy with the result of a margin calculation. In turn, the Ecuadorian parties conclude, that result would eviscerate the principle that regulated parties are entitled to know in advance the rules under which they are required to conduct their activities.

Department Position:

As discussed above in the Department Position to Comment 2, the application of the Preliminary Results methodology is fully consistent with U.S. law and the AD Agreement. Moreover, it is fully consistent with the Department’s intentions as articulated in the Final Modification, and applied in the recent determinations made pursuant to section 129 of the URAA. See EC Final

Results Memo; see also Implementation of the Findings of the WTO Panel in US--Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007). Accordingly, this methodology is an acceptable and appropriate response to the WTO Panel report. In addition, as discussed below, we find this methodology to be superior in this instance to the alternatives suggested by the petitioner.

The Ecuadorian parties correctly point out that the transaction-to-transaction methodology is normally considered only for comparisons in unusual situations, particularly ones involving a small number of sales. We do not find that the number of sales at issue in this case is unusually small, nor do we find that the merchandise is of a type for which transaction-to-transaction comparison would be more appropriate (e.g., custom-made merchandise). Although the Department applied this methodology in Lumber, the Department found that highly volatile prices in the U.S. and home markets favored transaction-to-transaction comparisons that would maximize contemporaneity. Those same concerns are not present here.

The petitioner's arguments for considering the weighted-average-to-individual-transaction, or "targeted dumping," methodology were addressed in the EC Final Results Memo at Comment 2. In the EC Final Results Memo, the Department noted that the Department's regulations provide for examination of a targeted dumping allegation that is filed no later than 30 days before the scheduled date of the preliminary determination in the LTFV investigation. See 19 CFR 351.414(f)(3) and 351.301(d)(5). The Department also noted that, in the preamble to the regulations, it declined to adopt suggestions to extend or eliminate this deadline, reasoning among other things, that the regulation gave domestic interested parties sufficient time to analyze the relevant data and allow the Department to consider the allegation before issuing the preliminary determination. See Antidumping Duties; Countervailing Duties, 62 FR 27295, 27338, 27375 (May 19, 1997) (final rule).

In the investigation subject to this proceeding, there was ample time for domestic parties to make a targeted dumping allegation. At this late stage, the Department does not have sufficient time to make a preliminary finding regarding targeted dumping, and allow time for verification and comment. Accordingly, the Department does not find that there is "good cause" to extend the deadline and consider the targeted dumping allegation made in this proceeding.

Furthermore, as noted in the EC Final Results Memo, the targeted dumping methodology "is an independent provision of the antidumping law, unrelated to the Department's modification of its methodology of calculating weighted-average dumping margins in {this investigation}" and that if the petitioner believed that targeted dumping was occurring, "{it} had the opportunity to make {its} targeted dumping allegations in a timely manner" in the context of the LTFV investigation. Consequently, we find that the petitioner's targeted dumping allegation in this case is untimely, and there is no basis to waive the deadline. See EC Final Results Memo at Comment 2.

With respect to the petitioner's suggested departure from the Department's well-established 20-percent DIFMER methodology, we agree with the Ecuadorian parties. The Department has not deviated from this practice since promulgation of the policy in 1992, and there are no grounds on the record of this proceeding for the Department to do so here. The petitioner offers no sound basis for the Department to depart from its consistent practice. As a result, the Department has not made any changes to its Preliminary Results.

Comment 4: Scope of the Proceeding

The Ecuadorian parties assert that this proceeding has a very narrow scope, limited to determining whether the Department has correctly implemented the Panel's findings by calculating antidumping margins for Exporklore and Promarisco utilizing the weighted-average-to-weighted-average price comparison methodology without "zeroing." Accordingly, the Ecuadorian parties contend that any other arguments presented that go beyond this scope should not be considered.

The petitioner contends that the Ecuadorian parties are incorrect that the Panel's decision required the Department to apply a specific methodology. Rather, the petitioner argues, the Panel requested the Department to bring its actions into conformity with the AD Agreement, while leaving the specific means to bring the determination into conformity to the Department's discretion. The petitioner asserts that the Department is obligated to select the "most desirable" method of implementing the Panel's findings, in accordance with the SAA at page 1025.

To that end, the petitioner contends that the Department is further obligated to consider the arguments raised by the petitioner (as outlined above under Comment 3) that go beyond the mere computation of the Preliminary Results, as the Ecuadorian parties have claimed. The petitioner reiterates its arguments that the other calculation methodologies it proposes, namely the transaction-to-transaction comparison methodology or, in the alternative, the weighted-average-to-individual transaction comparison methodology, would both bring the Department's determination into conformity with the AD Agreement, and be consistent with U.S. law.

Department Position:

As explained in the Preliminary Results, the Panel found that the Department acted inconsistently with Article 2.4.2, first sentence, of the AD Agreement. Specifically, the Panel determined that, when the Department applied the average-to-average comparison methodology for purposes of the LTFV determination and engaged in multiple comparisons of export price and normal value, the margin of dumping for the product in question must reflect the results of all comparisons, including comparisons where the export price is greater than the normal value for individual models. That is, the Department should not have applied the weighted-average-to-weighted-average comparison methodology with "zeroing" for purposes of the LTFV determination. The Department has been requested by USTR, pursuant to section 129(b)(2) of the URAA, to issue a

new determination that would render its determination at issue in this dispute not inconsistent with the findings of the Panel.

To that end, pursuant to USTR's request, the new determination to be issued by the Department is intended to, if implemented, bring the LTFV investigation determination of certain warmwater shrimp from Ecuador into conformity with the findings of the Panel. Principles of finality with respect to the original determination are relevant in determining whether issues that were or could have been raised in the course of the original proceeding should be the subject of reexamination in the course of this proceeding under section 129 of the URAA. We agree with the petitioner that the United States' agreement with Ecuador on certain procedures for the WTO dispute did not equate to accepting a specific set of instructions on how to implement the findings of the Panel. We have considered the arguments raised about the alternative approaches proposed by the petitioner, as described in the response to Comment 3 above, and determined not to adopt those alternative approaches. Accordingly, it is not necessary for the Department to determine whether any of the alternative approaches that the petitioner has proposed are beyond the proper scope of this proceeding.

Final Antidumping Margins

The recalculated margins, unchanged from the Preliminary Results, are as follows:

<u>Manufacturer/Exporter</u>	<u>Weighted-Average Margin</u>
Exporklore S.A. (Exporklore)	0.00%
Promarisco S.A. (Promarisco)	1.75% (<i>de minimis</i>)

In the Amended Final Determination and Antidumping Order,³ the Department found the margin for the third respondent, Exportadora de Alimentos S.A. (Expalsa), to be *de minimis*. Accordingly, as a result of the changes to the calculations, the "All Others" rate is also *de minimis*. Therefore, implementation of the findings of the WTO Panel would result in the revocation of the AD order on certain frozen warmwater shrimp from Ecuador.

Revocation

In accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, if USTR, after consulting with the Department and the relevant congressional committees, directs the Department to implement, in whole or in part, this determination, we will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation for all shipments of subject merchandise, entered or withdrawn from warehouse, for consumption on or after the date upon which USTR directs the Department to implement its final results (the effective date). Further, the Department will instruct CBP to liquidate without regard to antidumping duties (release all

³See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 FR 5156 (February 1, 2005).

bonds and refund all cash deposits) entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date.

Recommendation

In light of the Panel's findings, we recommend this determination which, if implemented, would render our original determination not inconsistent with the recommendations and rulings of the DSB by applying the methodology in the Final Modification, and adopting the above-referenced recalculated weighted-average dumping margins.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration