

Since the preliminary determination, and as detailed in the December 17, 2004, Issues and Decision Memorandum, the extent to which the two companies operate as a single entity has become apparent, such that we believe there to be significant potential for manipulation of price and production between CIDA and Produmar. Therefore, we have collapsed the two entities for the final determination. Accordingly, we have used the actual costs incurred by Produmar in valuing the processing services it provided to CIDA, and we have assigned the two companies a single dumping margin.

#### Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents (except for Norte Pesca as discussed above) for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from Brazil that are entered, or withdrawn from warehouse, for consumption on or after August 4, 2004, the publication date of the preliminary determination in the **Federal Register** or, in the case of EMPAF, August 30, 2004, the publication date of the amended preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

#### Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Empresa de Armazenagem Frigorifica Ltda. (EMPAF) ...	10.70
Central de Industrializacao e Distribuicao de Alimentos Ltda. (CIDA)/Cia Exportadora de Produtos do Mar (Produmar) .....	9.69
Norte Pesca S.A. ....	67.80
All Others .....	10.40

In accordance with section 735(c)(5)(A) of the Act, we have based the "all others" rate on the weighted average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding. The "all others" rate is derived exclusive of all *de minimis* margins and margins based entirely on AFA.

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 17, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

#### Appendix—Issues in the Decision Memorandum

##### Comments

##### General Issues

Comment 1: Offsets for Non-Dumped Comparisons  
Comment 2: Calculation of the "All Others" Rate

##### Company-Specific Issues

##### CIDA

Comment 3: Billing Adjustments

Comment 4: Insurance Payments as an Offset to General and Administrative Expenses  
Comment 5: Collapsing CIDA with its Affiliated Processor  
Comment 6: Cost Allocation Methodology  
Comment 7: Ration and Larva Costs  
Comment 8: Loss on Sale of Fixed Assets  
Comment 9: ICMS Taxes  
Comment 10: Change in Raw Shrimp Inventory  
Comment 11: Prompt Payment Discounts

##### EMPAF

Comment 12: Presumed Credit and IPI Export Credit Premium Revenue  
Comment 13: Brazilian Indirect Selling Expenses  
Comment 14: U.S. Indirect Selling Expenses  
Comment 15: Container Weight  
Comment 16: SPECIES Product Characteristic  
Comment 17: Accounting Errors Prior to the Cost Reporting Period  
Comment 18: Double Counting Indirect Selling Expenses  
Comment 19: Amortization of Pre-Operational Costs  
Comment 20: Allocation of Depreciation to Work-in-Process Inventory  
Comment 21: Other Adjustments to Shrimp Costs

##### Norte Pesca

Comment 22: Adverse Facts Available Rate for Norte Pesca

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BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-331-802]

#### Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador

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

**EFFECTIVE DATE:** December 23, 2004.

**SUMMARY:** On August 4, 2004, the Department of Commerce (the Department) published its preliminary determination of sales at less-than-fair-value (LTFV) of certain frozen and canned warmwater shrimp from Ecuador. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins."

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Terre Keaton,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136, or (202) 482-1280, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Final Determination

We determine that certain frozen and canned warmwater shrimp from Ecuador is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

##### Case History

The preliminary determination in this investigation was published on August 4, 2004. *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 (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. During the period July through October 2004, various interested parties, including the petitioners,<sup>1</sup> submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp.

In August and September 2004, we conducted sales and cost verifications of the questionnaire responses of the three respondents in this case, Exporklore S.A. (Exporklore), Exportadora De Alimentos S.A. (Expalsa), and Promarisco S.A. (Promarisco).

On August 13, 2004, the respondents requested a public hearing. We received case briefs on October 28, 2004, from the petitioners and the respondents. Promarisco resubmitted its brief on November 3, 2004, at the Department's request, in order to exclude unsolicited new factual information. In addition, in October 2004, Xian-Ning Seafood Co., Ltd., an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand, and two interested parties in this investigation, Eastern Fish Company, Inc., and Long John Silver's, Inc., submitted case and rebuttal briefs with respect to scope issues.

On November 5 and 10, 2004, pursuant to the Department's request,

Exporklore and Expalsa, respectively, submitted revised sales and cost databases which incorporated certain changes discovered in preparation for and during verification.

On November 23, 2004, the Department convened a public hearing on scope issues. On November 29, 2004, the Department made final scope determinations with respect to shrimp scampi and dusted and battered shrimp. *See* the November 29, 2004, Memoranda from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled "Scope Clarification on Shrimp Scampi"; and "Scope Clarification on Dusted Shrimp and Battered Shrimp," respectively. *See also* the "Scope of Investigation" section of this notice, below, for further discussion.<sup>2</sup>

Also on November 29, 2004, the Department clarified that a shrimp sauce produced by a company in the companion investigation of frozen and canned warmwater shrimp from the People's Republic of China, Lee Kum Kee (USA) Inc., is not covered by the scope of that investigation. *See* the November 29, 2004, Memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration entitled "Scope Clarification on Lee Kum Kee's Shrimp Sauce."

##### Period of Investigation

The period of investigation is October 1, 2002, through September 30, 2003.

##### Analysis of Comments Received

The various scope issues are discussed in the "Case History" section of this notice and the separate scope memoranda. All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the appendix to this notice and addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J.

<sup>2</sup> In addition to these scope determinations, the Department previously made five other scope determinations: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke Corporation, an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of this investigation; (4) on July 2, 2004, the Department found that *Macrobrachium rosenbergii* and organic shrimp are included within the scope of this investigation; and (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation.

Jochum, Assistant Secretary for Import Administration, dated December 17, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

##### Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, 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 or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 the investigation. In addition, food preparations, which are not "prepared

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

<sup>1</sup> The petitioners in this investigation are the Ad Hoc Shrimp Trade Action Committee (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); (5) dried shrimp and prawns; (6) dusted shrimp; and (7) 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 scope are currently classifiable 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

#### *Changes Since the Preliminary Determination*

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

#### *Verification*

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures

including examination of relevant accounting and production records, and original source documents provided by the respondents.

#### *Continuation of Suspension of Liquidation*

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from Ecuador that are entered, or withdrawn from warehouse, for consumption on or after August 4, 2004, the publication date of the preliminary determination in the **Federal Register**. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margin shown below. The suspension of liquidation instructions will remain in effect until further notice.

#### *Final Determination Margins*

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Exportadora De Alimentos S.A. (Expalsa) .....	2.62
Exporklore S.A. ....	2.35
Promarisco S.A. ....	4.48
All Others .....	3.26

#### *ITC Notification*

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine within 45 days whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 17, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

#### **Appendix—Issues in the Decision Memorandum**

##### *Comments*

Comment 1: Offsets for Non-Dumped Sales  
 Comment 2: Exclusion of Substandard Shrimp from the U.S. Sales Databases  
 Comment 3: "Container Weight" as Product Matching Characteristic  
 Comment 4: "As Sold" Versus HLSO Basis for Price and Quantity  
 Comment 5: "Packaging" Materials Versus "Packing" Materials  
 Comment 6: Expalsa's and Promarisco's Inland Freight and Testing Expense Methodology  
 Comment 7: Expalsa's Sales of Organic Shrimp  
 Comment 8: Grade as a Model-Matching Criterion for Expalsa Sales  
 Comment 9: Expalsa's Sales of "Non-Standard Mixes"  
 Comment 10: Treatment of Expalsa's Expenses for Returned Shipments  
 Comment 11: Expalsa's Post-Petition Filing Billing Adjustments  
 Comment 12: Treatment of Certain Expalsa Sales to Italy as Samples  
 Comment 13: Rebates on Expalsa's Italian Sales  
 Comment 14: Cost Changes for Expalsa's Minor Corrections of Preservative Code  
 Comment 15: Payments to Exporklore's Sales Agent as Rebates or Commissions  
 Comment 16: Methodology for Calculating Exporklore's Payment to Agent for Italian Sales  
 Comment 17: Ocean Freight Revenue and Expense Treatment on Exporklore C&F Sales  
 Comment 18: Exporklore Bank Charges  
 Comment 19: Exporklore's Raw Material Costs  
 Comment 20: Currency Adjustment in Calculation of Exporklore's Financial Expense Ratio  
 Comment 21: Treatment of Commissions Paid to Affiliates in Exporklore's Labor Costs  
 Comment 22: Spain as the Appropriate Comparison Market for Promarisco  
 Comment 23: Classification and Exclusion of Certain Promarisco Spanish Sales as Samples  
 Comment 24: Billing Adjustments and Date of Sale for Certain Promarisco U.S. Long-Term Contract Sales  
 Comment 25: Bonus Payment to Promarisco's Spanish Sales Agent  
 Comment 26: Calculation of Promarisco's Indirect Selling Expense Ratio  
 Comment 27: Adjustment for Unreconciled Differences in Promarisco's Cost of Manufacture  
 Comment 28: Input Adjustment for Promarisco's Shrimp Purchases from Affiliated Farms

Comment 29: Adjustment of Promarisco's G&A Expense Ratio to Exclude Packing Expenses

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-840]

#### **Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India**

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

**EFFECTIVE DATE:** December 23, 2004.

**SUMMARY:** On August 4, 2004, the Department of Commerce published its preliminary determination of sales at less than fair value of certain frozen and canned warmwater shrimp from India. The period of investigation is October 1, 2002, through September 30, 2003.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins."

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-4593, respectively.

#### **SUPPLEMENTARY INFORMATION**

##### **Final Determination**

We determine that certain frozen and canned warmwater shrimp from India is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales of LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice. In addition, we determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of the subject merchandise from India.

##### *Case History*

The preliminary determination in this investigation was published on August 4, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111 (Aug. 4, 2004) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. During the period July through October 2004, various interested parties, including the petitioners,<sup>1</sup> submitted comments on the scope of this and the companion investigations of certain frozen and canned warmwater shrimp.

From August through October 2004, we conducted verifications of the questionnaire responses of the three respondents in this case, Devi Sea Foods Limited (Devi), Hindustan Lever Limited (HLL), and Nekkanti Seafoods Limited (Nekkanti).

In October 2004, we received case and rebuttal briefs from the petitioners, the respondents, and Xian-Ning Seafood Co., Ltd. (Xian-Ning), an interested party in the companion investigation of frozen and canned warmwater shrimp from Thailand.<sup>2</sup> The Department held a public hearing on November 3, 2004, at the request of Devi, HLL, Nekkanti, and the American Breaded Shrimp Processors, an interested party in this investigation. On November 23, 2004, the Department convened a public hearing on scope issues.

On November 29, 2004, the Department made final scope determinations with respect to shrimp scampi and dusted and battered shrimp. *See* the November 29, 2004, memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification on Shrimp Scampi"; and "Scope Clarification on Dusted Shrimp and Battered Shrimp," respectively. *See also* the "Scope of Investigation" section of this notice, below, for further discussion.<sup>3</sup>

<sup>1</sup> The petitioners in this investigation are the Ad Hoc Shrimp Trade Action Committee (an *ad hoc* coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

<sup>2</sup> This brief related only to scope issues.

<sup>3</sup> In addition to these scope determinations, the Department previously made five other scope determinations: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke Corporation, an interested party in this investigation, the Department found that its

Also on November 29, 2004, the Department clarified that a shrimp sauce produced by a company in the companion investigation of frozen and canned warmwater shrimp from the People's Republic of China, Lee Kum Kee (USA) Inc., is not covered by the scope of that investigation. *See* the November 29, 2004, Memorandum from Edward C. Yang to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification on Lee Kum Kee's Shrimp Sauce."

##### *Period of Investigation*

The period of investigation (POI) is October 1, 2002, through September 30, 2003.

##### *Analysis of Comments Received*

The various scope issues are discussed in the "Case History" section of this notice and the separate scope memoranda. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 17, 2004, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

##### *Scope of Investigation*

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, 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>4</sup> deveined or not

"Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of this investigation; (4) on July 2, 2004, the Department found that *Macrobrachium rosenbergii* and organic shrimp are included within the scope of this investigation; and (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation.

<sup>4</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.