

DEPARTMENT OF COMMERCE

International Trade Administration

A-331-802

Implementation of the Findings of the WTO Panel in *United States – Antidumping Measure on Shrimp from Ecuador*: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador

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

SUMMARY: On August 15, 2007, the U.S. Trade Representative instructed the Department of Commerce (the Department) to implement its determination under section 129 of the Uruguay Round Agreements Act (URAA) regarding the investigation of frozen warmwater shrimp from Ecuador. The Department issued its determination on July 26, 2007, regarding the offsetting of dumped sales with non-dumped sales when making average-to-average comparisons of export price and normal value in the investigation challenged by Ecuador before the World Trade Organization. The Department is now implementing this determination.

DATES: The effective date of this determination is August 15, 2007.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Irene Darzenta Tzafolias, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-4136, or (202) 482-0922, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On May 21, 2007, the Department advised interested parties that it was initiating a proceeding under section 129 of the URAA to issue a determination that would implement the findings of the World Trade Organization (WTO) dispute settlement panel in *United States - Antidumping Measure on Shrimp from Ecuador*, WT/DS335/R (January 30, 2007) (*Panel Report*). On May 31, 2007, the Department issued its preliminary results, in which it recalculated the weighted-average dumping margins from the antidumping investigation of frozen warmwater shrimp from Ecuador¹ by applying the calculation methodology described in [Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification](#); see 71 FR 77722 (December 27, 2006). The Department also invited interested parties to comment on the preliminary results. After receiving comments and rebuttal comments from the interested parties, the Department issued its final results for the section 129 determination on July 26, 2007.

On August 9, 10 and 13, 2007, consistent with section 129(b)(3) of the URAA, the U.S. Trade Representative held consultations with the Department and the appropriate congressional committees with respect to this determination. On August 15, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative directed the Department to implement this determination.

¹ See [Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador](#), 69 FR 79613 (December 23, 2004), and accompanying Issues and Decision Memorandum; and [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).

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) provides that “notwithstanding any provision of the Tariff Act of 1930,” within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. See 19 USC 3538(b)(2). The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a “new,” “second,” and “different” determination. See SAA at 1025, 1027. After consulting with the Department and the appropriate congressional committees, the U.S. Trade Representative may direct the Department to implement, in whole or in part, the new determination made under section 129. See 19 USC 3538(b)(4). Pursuant to section 129(c), the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement the new determination. See 19 USC 3538(c). The new determination is subject to judicial review separate and apart from judicial review of the Department’s original determination. See 19 USC 1516a(a)(2)(B)(vii).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by interested parties to this proceeding are addressed in the Issues and Decision Memorandum for the Final Results of Proceeding Under Section 129 of the Uruguay Round Agreements Act (URAA): Antidumping

Measures on Frozen Warmwater Shrimp from Ecuador from Stephen J. Claeys to David M. Spooner, dated July 26, 2007 (Issues and Decision Memorandum), which is hereby adopted by this notice. The Issues and Decision Memorandum is on file in the Central Records Unit (CRU), room B-099 of the Department of Commerce main building and can be accessed directly at http://ia.ita.doc.gov/download/section129/ecuador-shrimp_sec129-final-072607.pdf. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice.

Final Antidumping Margins

The recalculated margins, unchanged from the preliminary results, are as follows:

- The margin for Exporklore, S.A., decreases from 2.48 percent to zero.
- The margin for Promarisco, S.A. decreases from 4.42 percent to de minimis.
- Expalsa, S.A. was excluded from the order and that does not change as a result of this proceeding.
- Because there are no above de minimis margins remaining, the all-others rate is based on a simple average of the zero and de minimis margins. Therefore, the all-others rate changes from 3.58 percent to de minimis.
- As a result of the recalculations, all of the margins are either zero or de minimis. Accordingly, we are now revoking this order effective August 15, 2007 (the effective date).

Revocation of the Antidumping Duty Order

On August 15, 2007, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, the U.S. Trade Representative, after consulting with the Department and Congress,

directed the Department to implement this determination. We will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping duties entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 15, 2007 (the effective date), and to discontinue collection of cash deposits of antidumping duties.

This determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

David M. Spooner
Assistant Secretary
for Import Administration

Date

Appendix I

Issues Raised in the Issues and Decision Memorandum

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