



C-331-803
Investigation
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May 28, 2013

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Certain Frozen Warmwater
Shrimp from Ecuador

I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of certain frozen warmwater shrimp (“frozen shrimp”) in Ecuador, as provided in section 703 of the Tariff Act of 1930, as amended (“the Act”).

II. BACKGROUND

A. Initiation and Case History

On December 28, 2012, the Coalition of Gulf Shrimp Industries (“COGSI” or “the petitioner”)¹ filed a petition with the Department seeking the imposition of countervailing duties (“CVDs”) on frozen shrimp from, *inter alia*, Ecuador.² Supplements to the petition and our consultations with

¹ The members of the Coalition of Gulf Shrimp Industries are: Bayou Shrimp Processors, Inc.; Bluewater Shrimp Company, Inc.; Carson & Co., Inc.; C.F. Gollott & Sons Seafood, Inc.; Dean Blanchard Seafood, Inc.; Dominick Seafood; Fisherman’s Reef Packing Plant; Golden Gulf Coast Pkg. Co., Inc. (and Gollott’s Oil Dock & Ice House); Graham Fisheries, Inc.; Graham Shrimp, Inc.; Gulf Crown Seafood Co., Inc.; Gulf Fish Inc.; Gulf Island Shrimp & Seafood, LLC; Gulf Pride Enterprises, Inc.; Hi-Seas of Dulac, Inc.; Indian Ridge Shrimp Co.; JBS Packing Co., Inc.; Lafitte Frozen Foods Corp.; M&M Shrimp (Biloxi Freezing and Processing); Ocean Springs Seafood Market, Inc.; Paul Piazza & Sons, Inc.; R.A. Lesso Brokerage Co., Inc.; Sea Pearl Seafood Co., Inc.; Smith and Sons Seafood; Tideland Seafood Co., Inc.; Tommy’s Seafood; Vincent Piazza & Sons Seafood, Inc.; Wood’s Fisheries; Mariah Jade Shrimp Company, LLC; David Chauvin’s Seafood Company, LLC; and Rountree Enterprises, Inc. (dba Leonard & Sons Shrimp Co. and R&R Fisheries).

² See Letter from the petitioner, “Petitions for the Imposition of Countervailing Duties on Certain Frozen Warmwater Shrimp from the People’s Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam,” (December 28, 2012).



the Government of Ecuador (“GOE”) are described in the Initiation Checklist.³ On January 17, 2013, the Department initiated a CVD investigation on frozen shrimp from Ecuador.⁴

We stated in the *Initiation Notice* that we intended to base our selection of mandatory company respondents on U.S. Customs and Border Protection (“CBP”) entry data for the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings listed in the scope of the investigation. On January 18, 2013, the Department released under administrative protective order (“APO”) CBP entry data and requested comments from interested parties.⁵ On February 1, 2013, the petitioner submitted comments on the CBP data. On February 4, 2013, two Ecuadorian producers and exporters of frozen shrimp, Sociedad Nacional de Galapagos C.A. (“Songa”) and Exportadora de Alimentos S.A., also submitted comments on the CBP data. On February 13, 2013, the Department selected Promarisco S.A. (“Promarisco”) and Songa as the two mandatory company respondents.⁶

For the reasons explained in the *Initiation Notice*, we determined to include in this investigation subsidies allegedly provided to producers of fresh shrimp as well as to producers of frozen shrimp. Thus, we sent questionnaires to the mandatory company respondents seeking information about their suppliers of fresh shrimp.⁷ Based on the responses we received,⁸ we are analyzing the alleged subsidies provided for the shrimp farming operations owned by Promarisco, and to the shrimp farming companies cross-owned by Songa.⁹

On February 14, 2013, the Department issued initial CVD questionnaires to the GOE, Promarisco, and Songa. The GOE,¹⁰ Promarisco,¹¹ and Songa,¹² submitted their responses to the

³ See “Countervailing Duty Initiation Checklist: Certain Frozen Warmwater Shrimp from Ecuador,” (January 17, 2013) (“Initiation Checklist”).

⁴ See *Certain Frozen Warmwater Shrimp From the People’s Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 78 FR 5416 (January 25, 2013) (“*Initiation Notice*”).

⁵ See Memorandum to the File, “Release of Customs and Border Protection (“CBP”) Data,” dated January 18, 2013.

⁶ See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, “RE: Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Ecuador: Respondent Selection Memorandum,” (February 13, 2013).

⁷ See Letters from the Department to Promarisco and Songa, “Questionnaire on Sources of Fresh and Frozen Shrimp,” (February 13, 2013); see also Memorandum from Joshua Morris, International Trade Compliance Analyst, AD/CVD Operations, Office 1, through Yasmin Nair, Program Manager, AD/CVD operations, Office 1, to the File, “Preliminary Determination Calculation Memorandum for Promarisco S.A. (“Promarisco”),” (“Promarisco Preliminary Calculation Memorandum”) and Memorandum from Austin Redington, International Trade Compliance Analyst, AD/CVD Operations, Office 1, through Yasmin Nair, Program Manager, AD/CVD operations, Office 1, to the File, “Preliminary Determination Calculation Memorandum Sociedad Nacional de Galapagos C.A. (“Songa”),” (May 28, 2013) (“Songa Preliminary Calculation Memorandum”).

⁸ See Letter from Promarisco to the Department, “Re: Certain Frozen Warmwater Shrimp from Ecuador: Response to the Department’s Questionnaire on Sources of Fresh and Frozen Shrimp,” (February 20, 2013) (“Promarisco Sources QR”); see also Letter from Songa to the Department, “Re: Certain Frozen Warmwater Shrimp from Ecuador: Response to the Department’s Questionnaire on Sources of Fresh and Frozen Shrimp,” (February 20, 2013).

⁹ See Letter from the Department to Promarisco and Songa, “Shrimp Suppliers,” (March 15, 2013).

¹⁰ See Letter from the GOE to the Department, “Certain Frozen Warmwater Shrimp from Ecuador: CVD Questionnaire Response,” (April 1, 2013) (“GQR”).

¹¹ See Letter from Promarisco to the Department, “Certain Frozen Warmwater Shrimp from Ecuador: CVD Questionnaire Response,” (April 1, 2013) (“PQR”).

Department's initial CVD questionnaire on April 1, 2013. On April 8, 2013, the GOE,¹³ Promarisco,¹⁴ and Songa,¹⁵ each submitted additional translations corresponding to the GQR, PQR, and SQR, respectively. On April 9, 2013, Promarisco submitted further translations corresponding to the PQR.¹⁶

On February 13, 2013, the petitioner filed its first set of new subsidy allegations.¹⁷ The Department determined to investigate certain of the newly alleged subsidies¹⁸ and sent new subsidy questionnaires on March 5, 2013.¹⁹ The GOE, Promarisco, and Songa included their responses to the new subsidy allegation questionnaires with their responses to the initial CVD questionnaire on April 1, 2013.

On March 7, 2013, the petitioner requested that the Department reconsider its determination not to investigate alleged value-added tax ("VAT") exemptions (included in the First NSA Letter).²⁰ In this submission, the petitioner revised its allegation and provided additional information in support. On April 18, 2013, the petitioner filed its second set of new subsidy allegations.²¹ On April 23, 2013, the petitioner filed its allegation that Promarisco and Songa were uncreditworthy during the POI and 2010.²² The Department determined to defer its investigation of the subsidies newly alleged on April 18, 2013, to the first administrative review (should this investigation result in a CVD order) due to the complexity of the alleged subsidies.²³ The Department also addressed the petitioner's request for reconsideration of our earlier determination not to investigate alleged VAT exemptions on the basis that the petitioner did not meet the requisite elements of the Department's subsidy initiation standard.²⁴

On April 17, 2013, the Department issued supplemental questionnaires to the GOE, Promarisco,

¹² See Letter from Songa to the Department, "Certain Frozen Warmwater Shrimp from Ecuador: CVD Questionnaire Response," (April 1, 2013) ("SQR").

¹³ See Letter from the GOE to the Department, "Certain Frozen Warmwater Shrimp from Ecuador: Additional Translations to the Government of Ecuador's CVD Questionnaire Response," (April 8, 2013).

¹⁴ See Letter from Promarisco to the Department, "Certain Frozen Warmwater Shrimp from Ecuador: Additional Translations for the Notes to Promarisco's Financial Statements," (April 8, 2013).

¹⁵ See Letter from Songa to the Department, "Certain Frozen Warmwater Shrimp from Ecuador: Additional Translations to SONGA's CVD Questionnaire Response," (April 8, 2013).

¹⁶ See Letter from Promarisco to the Department, "Certain Frozen Warmwater Shrimp from Ecuador: Additional Translation for the Notes to Promarisco's Financial Statements," (April 9, 2013).

¹⁷ See Letter from the petitioner to the Department, "Re: Certain Frozen Warmwater Shrimp from Ecuador – New Subsidy Allegations," (February 13, 2013) ("First NSA Letter").

¹⁸ See Memorandum to Susan Kuhbach, "New Subsidy Allegations," (March 5, 2013) ("NSA Initiation Memorandum").

¹⁹ See Letter from Department, "Re: Countervailing Duty Investigation: Certain Frozen Warmwater Shrimp from Ecuador," (March 5, 2013).

²⁰ See Letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Request to Reconsider VAT Subsidy Allegations," (March 7, 2013).

²¹ See Letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) - COGSI's New Subsidy Allegations," (April 18, 2013).

²² See Letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803), "Creditworthiness Allegations for Promarisco and SONGA," (April 23, 2013).

²³ See Memorandum to Susan Kuhbach, Office Director, AD/CVD Operations, Office 1, through Yasmin Nair, Program Manager, AD/CVD Operations, Office 1, from Austin Redington and Joshua Morris, International Trade Analysts, AD/CVD Operations, Office 1, "Additional New Subsidy Allegations," (May 14, 2013).

²⁴ *Id.*

and Songa, and received responses on April 30, 2013.²⁵

On May 9, 2013, the GOE, Promarisco, and Songa submitted pre-preliminary determination comments,²⁶ followed by the petitioner on May 13, 2013.²⁷

Interested Party Status of the Ad Hoc Shrimp Trade Enforcement Committee (“AHSTEC”): On March 12, 2013, AHSTEC asked that it be placed on the public service list for the seven ongoing CVD investigations of frozen shrimp and that it be granted access to proprietary information under APO.²⁸ Numerous submissions commenting on AHSTEC’s applications followed.²⁹ The Department met with counsel for the petitioner and AHSTEC on March 28 and April 19, 2013, respectively.³⁰ On April 23, 2013, the Department found that AHSTEC qualifies as an interested party under section 771(9)(F) of the Act because it is an association, a majority of whose members manufacture, produce, or wholesale frozen shrimp.³¹ Consequently, AHSTEC’s APO

²⁵ See Letter from the GOE to the Department, “Certain Frozen Warmwater Shrimp from Ecuador: Supplemental CVD Questionnaire Response,” (April 30, 2013) (“GSQR”); see also Letter from Promarisco to the Department, “Certain Frozen Warmwater Shrimp from Ecuador: Supplemental CVD Questionnaire Response,” (April 30, 2013); and Letter from SONGA to the Department, “Certain Frozen Warmwater Shrimp from Ecuador: Supplemental CVD Questionnaire Response,” (April 30, 2013).

²⁶ See Letter from the GOE, Promarisco, and Songa to the Department “Countervailing Duty Investigation of Certain Frozen Warmwater Shrimp from Ecuador; Pre-Preliminary Comments of the Government of Ecuador, Songa, and Promarisco,” (May 9, 2013) (“the respondents’ Pre-Preliminary Comments”).

²⁷ See Letter from the petitioner to the Department, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – {the} {p}etitioner’s Comments on the Upcoming Preliminary Determination,” (May 13, 2013) (“the petitioner’s Pre-Preliminary Comments”).

²⁸ See Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Ecuador: Entry of Appearance and Administrative Protective Order Application” (March 12, 2013).

²⁹ See Letter from the petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Response to Ad Hoc’s Entry of Appearance and APO Application,” (March 13, 2013); Letter from the GOE, Promarisco, and SONGA, “Certain Frozen Warmwater Shrimp from Ecuador: Opposition to Entry of Appearance and APO Application of the Ad Hoc Shrimp Trade Enforcement Committee,” (March 13, 2013); Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Ecuador: Response to Oppositions of COGSI and SONGA to AHSTEC’s Entry of Appearance and Administrative Protective Order Application,” (March 15, 2013); Letter from the petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803): Reply to AHSTEC’s Response to Opposition of COGSI to AHSTEC’s Entry of Appearance and APO Application,” (March 19, 2013); Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Ecuador: Response to Second Filing in Opposition of COGSI to AHSTEC’s Entry of Appearance and Administrative Protective Order Application,” (March 25, 2013); Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Ecuador: Supplemental Filing in Support of AHSTEC’s Entry of Appearance and Administrative Protective Order Application,” (April 8, 2013); Letter from the petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Response to AHSTEC’s Supplemental Filing,” (April 11, 2013); and Letter from AHSTEC, “Certain Frozen Warmwater Shrimp from Ecuador: Comments On COGSI’s Response to AHSTEC’s Supplemental Filing,” (April 17, 2013).

³⁰ See Department Memoranda, “Ex Parte Meeting with Coalition of Gulf Shrimp Industries on March 28, 2013; Countervailing Duty Investigations of Certain Frozen Warmwater Shrimp,” (April 1, 2013) and “Meeting with Ad Hoc Shrimp Trade Enforcement Committee (“AHSTEC”) on April 19, 2013; Countervailing Duty Investigations of Frozen Warmwater Shrimp,” (April 19, 2013).

³¹ See Department Memorandum, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, Socialist Republic of Vietnam: Entries of Appearance and Administrative Protective Order Applications; Interested Party Status Determination,” (April 23, 2013).

applications were approved.³²

Extension of Preliminary Deadline: On February 8, 2013, the petitioner requested that the deadline for the preliminary determination be extended until no later than 130 days after the initiation of the investigation. The Department granted the petitioner's request and on February 27, 2013, postponed the preliminary determination until May 28, 2013, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).³³

B. Period of Investigation

The period of investigation ("POI") is January 1, 2011, through December 31, 2011.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.³⁴ On March 28, 2013, the petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.³⁵ Further comments on this scope clarification were submitted by AHSTEC and the petitioner.³⁶

For the reasons explained in "Scope Clarification re Brine-Frozen Shrimp," we preliminarily determine that brine-frozen shrimp are not excluded from this investigation.³⁷

IV. SCOPE OF THE INVESTIGATION

This investigation covers 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,³⁸ deveined or not deveined, cooked or raw, or otherwise processed in

³² See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Administrative Protective Order Applications of AHSTEC," (April 23, 2013).

³³ See *Certain Frozen Warmwater Shrimp From the People's Republic of China, Ecuador, India, Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 78 FR 13325 (February 27, 2013).

³⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

³⁵ See Letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Request for Scope Clarification," (March 28, 2013).

³⁶ See Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Ecuador: Supplemental Filing in Support of AHSTEC's Entry of Appearance and Administrative Protective Order Application" (April 8, 2013); Letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador (C-331-803) – Response to AHSTEC's Supplemental Filing," (April 11, 2013); Letter from AHSTEC, "Certain Frozen Warmwater Shrimp from Ecuador: Comments On COGSI's Response to AHSTEC's Supplemental Filing," (April 17, 2013); and Letter from the petitioner, "Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from Ecuador – Response to AHSTEC's Comments from April 17, 2013," (April 23, 2013).

³⁷ See Department Memorandum, "Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People's Republic of China, Thailand, Socialist Republic of Vietnam: Scope Clarification re Brine-Frozen Shrimp," dated concurrently with this memorandum ("Scope Clarification re Brine-Frozen Shrimp").

³⁸ "Tails" in this context means the tail fan, which includes the telson and the uropods.

frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the 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. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (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; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered 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 individually quick frozen freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products included in the scope of this investigation are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

V. INJURY TEST

Because Ecuador is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (“ITC”) is required to determine whether imports of the subject merchandise from Ecuador materially injure, or threaten material injury to, a U.S. industry. On February 15, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of frozen shrimp from, *inter alia*, Ecuador.³⁹

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (“AUL”) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.⁴⁰ The Department notified the GOE, Songa, and Promarisco (collectively, “the respondents”) of the 12-year AUL in the initial questionnaire and requested data accordingly.

The petitioner did not dispute this AUL period. While the respondents did not generally dispute this AUL period for “renewable physical assets,” the respondents contend that because land is not depreciable and, therefore, does not have an AUL under generally accepted accounting principles, the AUL for any allocable land subsidies should be 30 years.⁴¹ The petitioner disputes the respondents’ claim stating that they “failed to demonstrate that the 12-year AUL set forth by the IRS Tables for the industry does not reasonably reflect the company-specific AUL or the country-wide AUL.”⁴² Therefore, according to the petitioner, the AUL for all nonrecurring benefits, regardless of the program under which such benefit is conferred, should be 12 years.

We have applied the 12-year allocation period in terms of the subsidies the respondents were asked to report to the Department, *i.e.*, they reported subsidies received during the POI and eleven preceding years. Regarding land subsidies, we are preliminarily treating them as recurring.⁴³

Furthermore, for non-recurring subsidies, we have applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value,

³⁹ See Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam: Inv. No. 701-TA-491-497 (Preliminary) (February 2013); *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, 78 FR 11221 (February 15, 2013).

⁴⁰ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

⁴¹ See SQR at 16 and PQR at 13.

⁴² See the petitioner’s Pre-Preliminary Comments at 14-15.

⁴³ See 19 CFR 351.524(a).

then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by the respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁴⁴

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁴⁵

⁴⁴ *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

⁴⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Promarisco

Founded on October 13, 1981, and currently headquartered in the canton of Duran, Guayas province, Ecuador, Promarisco is a producer of fresh shrimp, as well as a processor and exporter of frozen shrimp.⁴⁶ Originally owned by the Gomez, Pino, and Arrantia families, in 2008, Promarisco was acquired by the Spanish-based Pescanova Group.⁴⁷

Promarisco responded to the Department's initial and supplemental questionnaires on behalf of itself and two affiliates.⁴⁸ These affiliates are wholly-owned subsidiaries of Promarisco. Accordingly, we find that they are cross-owned with Promarisco under 19 CFR 351.525(b)(6)(vi). Promarisco has claimed proprietary treatment for the names and business activities of these cross-owned companies. We intend to examine this claim further for the final determination. For this preliminary determination, we have attributed all subsidies received by these companies to Promarisco's sales. For further information on the cross-ownership and attribution of subsidies to Promarisco, *see* Promarisco Preliminary Calculation Memorandum, which is hereby adopted by this memorandum.⁴⁹

Songa

Songa responded to the Department's initial and supplemental questionnaires on behalf of itself and certain companies it identified as being cross-owned.⁵⁰ Songa has claimed proprietary treatment for the names and business activities of these cross-owned companies. We intend to examine this claim further for the final determination. For this preliminary determination, we have attributed all subsidies received by these companies to Songa's sales. For further information on the cross-ownership and attribution of subsidies to Songa, *see* Songa Preliminary Calculation Memorandum, which is hereby adopted by this memorandum.⁵¹

Subsidies to Fresh Shrimp: Section 771B of the Act directs that subsidies provided to producers of a raw agricultural product shall be deemed to be provided with respect to the manufacture, production or exportation of the processed form of the product when two conditions are met. First, the demand for the prior stage (raw agricultural) product is substantially dependent on the demand for the latter stage (processed) product. Second, the processing operation adds only limited value to the raw commodity. As explained above, the petitioner claimed that these conditions are met with respect to fresh and processed shrimp, and supported its claim such that the Department sought information that would permit inclusion of subsidies to fresh shrimp in the CVD rates for the processed product.

The respondents dispute the petitioner's claim, maintaining that the value added through shrimp processing is more than "limited."⁵² Specifically, the GOE asserts that raw, unprocessed shrimp

⁴⁶ *See* Promarisco Sources QR at 1-3 and PQR at 5-6.

⁴⁷ *See* PQR at 5-6.

⁴⁸ *Id.* at 1-3. We note that the word "two" is unbracketed in the Public Version of the PQR at 3, thereby making this information public in nature.

⁴⁹ *See* Promarisco Preliminary Calculation Memorandum at 2.

⁵⁰ *See* SQR at 2-10.

⁵¹ *See* Songa Preliminary Calculation Memorandum at 1-3.

⁵² *See* the respondents' Pre-Preliminary Comments at 7.

differs from processed shrimp in that it has not been sorted, graded, or packaged, and is transported from shrimp farms alongside various detritus, thereby making it unsuitable for human consumption.⁵³ That notwithstanding, we have not addressed this issue at length, because even with the application of section 771B of the Act, we are preliminarily making a negative determination.

To calculate the amount of subsidies to be attributed to frozen shrimp as a result of the GOE's provision of subsidies to producers of fresh shrimp, we have relied on the information submitted with respect to Songa's cross-owned farming companies and Promarisco's self-produced shrimp. Specifically, we have calculated a rate of fresh shrimp subsidization measured in U.S. dollars/pound based on the subsidies received by Songa's cross-owned farming companies and Promarisco's farming operations, and the volume of fresh shrimp obtained from them. We then computed a simple average of these rates of fresh shrimp subsidization and multiplied the result by the total volume of fresh shrimp purchased from Songa's and Promarisco's remaining suppliers. The resulting subsidy amounts were attributed to the total sales of each company. The subsidies Songa received from its cross-owned farming companies and the subsidies Promarisco received from its own farming operations were attributed in accordance with the allocation rules prescribed by 19 CFR 351.525(b)(6)(iv).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Preliminary Calculation Memoranda" prepared for this investigation.⁵⁴

VII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

A. Programs Preliminarily Determined To Be Countervailable

1. Preferential and Exempted Land-Use Fees for Shrimp Farmers⁵⁵

According to the GOE, all inter-tidal land in Ecuador is owned by the state.⁵⁶ Pursuant to Decree No. 482, in 1975 the GOE began granting concessions of GOE-owned inter-tidal land for

⁵³ See GQR at 7.

⁵⁴ See Promarisco Preliminary Calculation Memorandum and Songa Preliminary Calculation Memorandum.

⁵⁵ This subsidy program title refers to the originally alleged land fee exemption program as well as the new subsidy allegation pertaining to preferential land fees. See NSA Initiation Memorandum. In addition, the Initiation Checklist inadvertently, and incorrectly, included the words "and Processors" in the title for this program. However, because this program is limited to the aquaculture industry, *i.e.*, shrimp farmers, we have removed "and Processors" from the title.

⁵⁶ See GQR at Attachment B, page 2.

shrimp farm use.⁵⁷ As described in Article 82 of the Bylaws of Fisheries and Fisheries Development Act, concessions for GOE-owned inter-tidal land are granted for a period of ten years and are renewable for additional ten-year periods upon request.⁵⁸

The prices for inter-tidal land in Ecuador are set by the GOE. In 2006, the GOE issued Resolution 448: *Regulations on Fees for Services Rendered by the Directorate General of the Merchant Marine and Littoral and Harbormasters of the Republic* (“Resolution 448”),⁵⁹ establishing the following prices for three distinct uses of inter-tidal land:

- commercial purposes- \$0.07 per square meter;
- non-commercial purposes- \$0.03 per square meter; and
- breeding and cultivating bioaquatic species and short cycle agricultural crops- \$2.16 per hectare.⁶⁰

Resolution 448 lists the prices for commercial and non-commercial purposes in square meters, but the prices pertaining to aquaculture purposes are listed in hectares. Using the standard conversion rate of 1 square meter = 0.001 hectares, the prices for commercial and non-commercial purposes are \$700 and \$300 per hectare, respectively.

In 2008, the GOE amended the price of land for the “farming and breeding bioaquatic species and short cycle agricultural crops” category with the issuance of Presidential Decree 1391 (“Decree 1391”). Specifically, it raised this price from \$2.16 to \$25 per hectare for each hectare beyond the first ten.⁶¹ With the issuance of Decree 1391, the GOE also exempted this category of users from fees on the first ten hectares of inter-tidal land.⁶² The GOE reported that the categories “breeding and cultivating bioaquatic species” and “farming and breeding bioaquatic species” include shrimp farms.⁶³

In addition to establishing land-use fees and exemptions for inter-tidal lands used by the aquaculture industry, Decree 1391 announced the GOE’s intent to require entities illegally occupying public lands in inter-tidal zones (*i.e.*, occupying GOE inter-tidal land without the appropriate registration or payment) to begin registering their land concessions and making payments to gain legal land-use rights. The petitioner contends that many shrimp farms have not made these required payments and that some payments for land-use fees may have been forgiven by the GOE.⁶⁴ In investigating this allegation, we requested documentation from the National Directorate of Aquatic Species (the GOE entity responsible for controlling the use of the GOE’s inter-tidal land concessions⁶⁵) identifying firms that had outstanding land-use fees and firms that were forgiven of those fees. The documentation provided by the GOE⁶⁶ showed that neither the

⁵⁷ *Id.*

⁵⁸ *Id.* at Exhibit 9.

⁵⁹ *Id.* at Exhibit 11, Article 60.

⁶⁰ *Id.*

⁶¹ *See* GQR at Exhibit 13.

⁶² *Id.*

⁶³ *Id.* at Attachment B, pages 2-3.

⁶⁴ *See* NSA Initiation Memorandum at 3-4.

⁶⁵ *See* GQR at Attachment B, page 4.

⁶⁶ *Id.* at Exhibit 18.

respondents nor their cross-owned companies were listed as “owing,” and the GOE reported that neither the respondents, nor any of their cross-owned companies, were forgiven of any land-use fees beyond the first ten hectares. Therefore, we preliminarily determine that the GOE did not confer a subsidy on the respondents through the forgiveness of land-use fees that are otherwise owed.

Promarisco held one inter-tidal land concession during the POI, as did one of its cross-owned affiliates.⁶⁷ Songa, did not hold any inter-tidal land concessions during the POI; however, certain of its cross-owned affiliates did.⁶⁸

We preliminarily determine that Promarisco and Songa received countervailable subsidies as described by section 771(5)(B) of the Act, under this program through both the exemption of land-use fees on the first ten hectares of land, as well as through the reduced land-use fees for land beyond the first ten hectares. In accordance with section 771(5)(D)(ii) of the Act, the exemptions and reductions are revenue forgone, and they confer a benefit in the amount of the forgone revenue, as explained further below. Also, we preliminarily determine this program is specific under section 771(5A)(D)(i) of the Act, because it is limited by law to a group of enterprises or industries, namely the aquaculture and short-cycle agriculture industries.

As explained above, the law that establishes the rules and prices governing all inter-tidal lands in Ecuador explicitly creates three categories of land-use and their respective prices, including the specific differentiation of land used for “aquaculture and short-cycle agriculture” and land use for all other commercial purposes. Based on this pricing scale, we have preliminarily relied upon the \$700/hectare land-fee price⁶⁹ established for all other commercial uses of this land to measure the benefit received by the respondents. Use of this benchmark reflects the revenue that the GOE foregoes when it provides land to aquacultural producers, rather than to other users.

Because the land payments for Ecuador’s inter-tidal land concessions are made on an annual basis and the concessions essentially operate as a lease, we are treating the benefits as recurring, consistent with 19 CFR 351.524(c)(1), and are allocating the benefits to the year in which they were received.

As explained above under the “Subsidies Valuation/Attribution of Subsidies/Subsidies to Fresh Shrimp” sections, we have calculated an average rate of fresh shrimp subsidization under this program, and have used that rate to calculate the value of the subsidies attributable to the respondents on their purchases from non-cross-owned suppliers. Subsidies to cross-owned suppliers of fresh shrimp have been attributed in accordance with the allocation rules prescribed by 19 CFR 351.525(b)(6)(iv).

On this basis, we have determined that Promarisco received a subsidy of 0.39 percent *ad valorem* and that Songa received a subsidy of 0.70 percent *ad valorem*.⁷⁰

⁶⁷ *Id.* at Attachment A, page 3; *see also* PQR at 14-15 and Exhibit 10.

⁶⁸ *See* GQR at 2-3 and SQR at 18-22.

⁶⁹ One square meter = 0.001 hectares, *see* footnote 57 above.

⁷⁰ *See* Promarisco Preliminary Calculation Memorandum and Songa Preliminary Calculation Memorandum, respectively.

B. Programs Preliminarily Determined To Be Not Used During the POI

1. Tax Exemptions for Fishing, Aquaculture, Processing, and Trading Firms

Under the Fisheries Act, three categories of fishery enterprises were established, “A,” “B,” and “Special.” The Fisheries Act at Articles 61 through 63 describes various tax benefits available to companies within these categories.⁷¹ However, the GOE reported that the Law for the Reform of the Public Finances (“the Reform Law”),⁷² promulgated in 1999, declared these benefits to be inapplicable.⁷³ Thus, while the GOE maintains that the alleged benefits were still included in the 2005 revision of the Fisheries Act, they were superseded by the Reform Law, and thereby not available.⁷⁴ According to the GOE, companies apply for, and obtain, these classifications as a requirement to export their goods, not to receive tax benefits.⁷⁵

Moreover, the GOE stated that no Ecuadorian law imposes duties or taxes on: 1) the acts of corporations or companies engaged in fishing and aquaculture; 2) transactions executed with credits granted to companies for integration or capital increase; 3) contracts entered into for investments financed through credit—the specific actions exempted from taxation through the above-referenced classification scheme.⁷⁶ Finally, the GOE reported that neither Promarisco, Songa, nor any of their “cross-owned” companies applied for, used, or benefited from this program during the POI.⁷⁷

Therefore, while the Fisheries Act does outline the incentives under this program, based on the GOE’s explanations, and because the record does not show that any of the respondents received benefits under this program, we preliminarily determine that it was not used.

2. Tax Incentives for Priority Sectors Under the 2010 Organic Production Code
3. Preferential Loans from the National Finance Corporation (“CFN”) and the National Development Bank
4. Export Credits from CFN

C. Programs Preliminarily Determined Not To Exist

1. Funding Under the National Agro-Industrial Development Plan (“NAIDP”)

Created in 2009 by the GOE’s Ministry of Agriculture, Livestock, Aquaculture, and Fisheries, the NAIDP’s objective was to provide grants to assist the development of twenty agro-industrial

⁷¹ See GQR at 17-21; last revised in 2005, and submitted as Exhibit 9 of the GQR.

⁷² See GSQR at Exhibit 8.

⁷³ See GQR at Exhibit 6, section 33.

⁷⁴ See GSQR at 11.

⁷⁵ Article 40 of the Fisheries Act provides that only classified companies can export fishery products. See GSQR at 12-13 and GQR at Exhibit 8.

⁷⁶ See GQR at 19-21.

⁷⁷ See GSQR at 13, PQR at 18, and SQR at 25.

value chains, including the frozen shrimp export chain.⁷⁸ The GOE submits that the grant portion of the plan was never implemented,⁷⁹ and, thus, the GOE did not provide grants to anyone under this program during the POI.⁸⁰ As such, the GOE maintains that neither Promarisco, Songa, nor any of their “cross-owned” companies, nor any other company in the shrimp business applied for, used, or benefited from the NAIDP program during the POI because this program was not implemented.⁸¹ Therefore, we preliminarily determine that this program does not exist.

2. Export Restraints on Raw and Unprocessed Shrimp

The petitioner alleged that during the POI, the GOE had policies in place to limit exports of raw, unprocessed shrimp, thereby keeping the price of the raw, unprocessed shrimp below world market prices and conferring a subsidy on shrimp processors.⁸² Specifically, the petitioner identified the following policies: 1) the GOE’s prohibition on exports of shrimp caught or harvested by foreign firms; 2) the GOE’s mandate that domestic demand be met at fixed quotas established by the GOE prior to firms being eligible to export; and, 3) the imposition of minimum reference prices on exports of raw, unprocessed shrimp.⁸³

The GOE submits that while foreign vessels are not authorized to catch shrimp in Ecuadorian waters,⁸⁴ there is no law stating that foreign processors cannot export their shrimp.⁸⁵ The GOE supports its assertion pointing to the fact that one of the respondents, Promarisco, is 100 percent foreign-owned,⁸⁶ and exports shrimp that it harvests itself.⁸⁷ Further, the GOE contends that because only “two to three percent” of Ecuadorian shrimp is wild caught,⁸⁸ the prohibition of foreign vessels from shrimping is relatively insignificant.⁸⁹

Next, the GOE submits that the quotas established as part of the Fisheries Act,⁹⁰ were repealed with the issuance of the Fishery Bylaws.⁹¹ The Fishery Bylaws, which integrate and update all existing rules for that sector, do not include any quotas or other form of export restraint.⁹² As such, the GOE maintains that while it did have the legal authority to establish quotas, it never needed to, and thus did not establish any restrictions on the volume of processed shrimp that can be exported.⁹³

⁷⁸ See GQR at 10-12.

⁷⁹ *Id.* at 11; *see also* GSQR at 1-2 and Exhibit 2.

⁸⁰ *Id.*

⁸¹ See GQR at 11, PQR at 14, and SQR at 17.

⁸² See Initiation Checklist at 14.

⁸³ *Id.* at 14-15.

⁸⁴ See GQR at 23 and Exhibit 9; *see also* GSQR at 14.

⁸⁵ *Id.* at 23.

⁸⁶ See “Attribution of Subsidies – Promarisco” above.

⁸⁷ *Id.*

⁸⁸ See GQR at 5.

⁸⁹ *Id.* at 23.

⁹⁰ *Id.* at Exhibit 8.

⁹¹ *Id.* at Exhibit 9.

⁹² *Id.*

⁹³ See GSQR at 17.

Finally, the GOE clarifies that the reference prices the petitioner included in its allegation are minimum “free-on-board” prices for exporting *processed* shrimp.⁹⁴ The GOE explains that there are no minimum reference prices on “raw, unprocessed” shrimp because this type of shrimp is rarely, if ever, exported due to risk of spoilage.⁹⁵

Based on the above, we preliminarily determine that this program does not exist. The record now shows that the policies which formed the basis of the petitioner’s allegation either never existed or were eliminated from the law prior to the POI.

VIII. ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

IX. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.⁹⁶ Case briefs or other written comments for all non-scope issues may be submitted to Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.⁹⁷ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the Federal Register, and rebuttal briefs, limited to issues raised in the case briefs, maybe submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the seven concurrent countervailing duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁹⁸ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so

⁹⁴ *Id.* at 15-16.

⁹⁵ See GQR at 5; see also GSQR at 15.

⁹⁶ See 19 CFR 351.224(b).

⁹⁷ See 19 CFR 351.309.

⁹⁸ See 19 CFR 351.309(c)(2) and (d)(2).

in writing within 30 days after the publication of this preliminary determination in the Federal Register.⁹⁹ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the IA ACCESS.¹⁰⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁰¹ on the due dates established above.

X. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XI. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

(Date)

⁹⁹ See 19 CFR 351.310(c).

¹⁰⁰ See 19 CFR 351.303(b)(2)(i).

¹⁰¹ See 19 CFR 351.03(b)(1).