

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review on Certain Frozen
Warmwater Shrimp from Ecuador

DATE: July 3, 2008

Summary

We have analyzed the comments of the interested parties on the preliminary results of the 2006-2007 administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Ecuador. As a result of our analysis, we have made changes in the margin calculations for Promarisco S.A. in the final results. We have made no changes to the margin calculation of OceanInvest S.A. in the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from the interested parties:

General Comments:

Comment 1: "Zeroing" Methodology in Administrative Reviews
Comment 2: Selection of Mandatory Respondents

Company-Specific Comments:

Promarisco

Comment 3: Adjustment to Promarisco's Net Financial Expense Ratio
Comment 4: Use of Entry Date for Determining Promarisco's POR sales

OceanInvest

Comment 5: Cost Reporting for Certain Value-Added Products
Comment 6: Acceptance of Billing Adjustment for Certain Third-Country Sales
Comment 7: Bonus Payment Adjustment Applicable to U.S. Sales

Background

On March 6, 2008, the Department published in the Federal Register the preliminary results of the 2006 - 2007 administrative review of the antidumping duty order on shrimp from Ecuador. See Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 72 FR 12115 (March 6, 2008) (Preliminary Results).

We invited parties to comment on the Preliminary Results. In April 2008, we received case briefs from the petitioner (i.e., the Ad Hoc Shrimp Trade Action Committee), the respondents Promarisco S.A. (Promarisco) and OceanInvest S.A. (OceanInvest), and the Louisiana Shrimp Association (the LSA), an interested party in this proceeding. Rebuttal briefs were received from the petitioner, OceanInvest, and Promarisco. Based on our analysis of the comments contained in these briefs, we have revised our calculation of the margin for Promarisco from the margin calculated in the Preliminary Results. We have made no changes to OceanInvest's margin calculation.

Margin Calculation

We calculated export price (EP) and normal value (NV) using the same methodology described in the Preliminary Results, except as follows below:

- For Promarisco, we revised the interest expense included in the calculation of the cost of production (COP) to exclude the interest income from a second affiliated shrimp farm (see Comment 3).
- We revised our analysis to include only those U.S. sales with entry dates within the POR for the purpose of calculating Promarisco's weighted-average margin and importer-specific assessment rate (see Comment 4).
- We corrected a rounding error in one of the importer-specific liquidation rates stated in the Department's draft liquidation instructions to the U.S. Customs and Border Protection (CBP) pertaining to POR entries of the subject merchandise produced by OceanInvest, as noted by OceanInvest in its April 7, 2008, brief.

Discussion of the Issues

General Comments

Comment 1: *“Zeroing” Methodology in Administrative Reviews*

Promarisco argues that the Department should not employ its practice of setting negative margins to zero (i.e., “zeroing”) in calculating the final results weighted-average dumping margin in administrative reviews, in accordance with findings of the Appellate Body (AB) of the World Trade Organization (WTO). In particular, Promarisco notes that, in January 2007, the WTO AB found that zeroing in administrative reviews is inconsistent with the WTO Antidumping Agreement, as discussed in United States - Measures Relating to Zeroing and Sunset Reviews, Appellate Body Report, WT/DS322/AB/R (January 9, 2007) (adopted January 23, 2007) (U.S.– Zeroing (Japan)). Thus, Promarisco argues that, because the WTO AB

has ruled zeroing in reviews contrary to U.S. obligations and the Department has already eliminated its practice of zeroing in original investigations, the Department should recalculate the margins in this review without incorporating the practice of zeroing in the final results.

The petitioner maintains that the Department should continue to employ its zeroing methodology for the final results. According to the petitioner, other than in antidumping investigations, where the average-to-average comparison methodology is used, the Department does not permit non-dumped sales to offset the amount of dumping with respect to dumped sales. This methodology and interpretation of the statute was upheld by the U.S. Court of Appeals for the Federal Circuit, which affirmed the Department's use of zeroing in administrative reviews until the Department itself officially abandons the practice. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77772 (December 27, 2006) (Zeroing Notice); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir., 2007) (NSK). According to the petitioner, the Department has already considered the claims in other proceedings that the decisions of the WTO AB require the Department to eliminate zeroing in administrative reviews, and determined that the AB's decisions to date have no bearing on whether the Department's zeroing practice is consistent with U.S. law, as stated in Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007), and accompanying Issues and Decision Memorandum at Comment 4. Therefore, the petitioner asserts that the Department should continue to employ zeroing in the final results of this administrative review.

Department's Position:

We disagree with Promarisco and have not revised our calculation of the weighted-average dumping margins for the final results of this review with respect to "zeroing."

Section 771(35)(A) of the Tariff Act of 1930, as amended (the Act), defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than export or constructed export price. As no dumping margins exist with respect to sales where NV is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has held that this is a reasonable interpretation of the statute. See e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (Timken); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied; 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) (Corus I).

Promarisco has cited WTO dispute-settlement reports (WTO reports) finding the denial of offsets by the United States to be inconsistent with the WTO Antidumping Agreement. As an initial matter, the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA). See Corus I, 395 F.3d at 1347-49;

accord Corus Staal BV v. United States, 502 F.3d, 1370, 1375 (Fed. Cir. 2007) (Corus II); NSK, 510 F.3d at 1375.

While the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations, the Department has not adopted any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Zeroing Notice, 71 FR at 77724.

With respect to Promarisco's reference to US-Zeroing (Japan), Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 USC 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 USC 3533(g); see, e.g., Zeroing Notice at 77722. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US-Zeroing (Japan), it is the position of the United States that appropriate steps have been taken in response to that report and those steps do not involve a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review. Furthermore, in response to US-Zeroing (Japan), the Federal Circuit has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus II, 502 F.3d at 1374-75; NSK, 510 F.3d at 1375.

For all these reasons, the various WTO Appellate Body reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed NV in this review.

For the foregoing reasons, we have not changed the methodology employed in calculating the respondents' weighted-average dumping margins for these final results.

Comment 2: *Selection of Mandatory Respondents*

In the Department's July 20, 2007, memorandum entitled "Selection of Respondents for Individual Review" (Respondent Selection Memo), the Department selected two mandatory respondents, OceanInvest and Promarisco, for which to calculate individual dumping margins. The remaining respondents were assigned a weighted average of the margins calculated for the mandatory respondents, excluding de minimis margins or margins based entirely on adverse facts available.

The LSA argues that the Department should calculate margins for more than two mandatory respondents, or provide substantial evidence to support the Department's conclusion to select only two mandatory respondents. The LSA points out that, according to section 777A(c) of the Act, if it is not practicable to calculate individual weighted-average dumping margins for each known exporter and producer of subject merchandise because of the large number of exporters or

producers involved in the review, the Department may make an exception and choose fewer mandatory respondents to calculate individual dumping margins. The LSA argues that this exception is dependent on the Department's resources. Thus, the LSA maintains, the Department should fully disclose for the record its resources available for the conduct of this review and explain why those resources were inadequate to examine more than two mandatory respondents, in order to allow the courts to determine whether the Department's decision to select only two mandatory respondents was appropriate and lawful. According to the LSA, the burden is on the Department, in its final results, to demonstrate on the record that it could not reasonably examine the exports of more than two respondents. If the Department cannot support this contention, then the LSA argues that the final results should include individual rates for the maximum practicable number of respondents, and the weighted-average rate for the responsive non-mandatory respondents should be adjusted accordingly.

Department's Position:

We disagree with the LSA. As explained in the Respondent Selection Memo at page 3, the Department considered its resources and concluded that it would not be practicable in this review to examine all producers/exporters of the subject merchandise for which it received a request for review.

In its Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand, 72 FR 17100 (April 6, 2007), the Department notified all interested parties that, due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request had been made, the Department was exercising its authority to limit the number of respondents selected for review, in accordance with section 777A(c)(2) of the Act, and that the Department intended to select the largest exporters/producers by U.S. sales/export volume for individual review. To that end, on June 13, 2007, the Department solicited comments from interested parties on the appropriate respondent selection methodology. No comments were submitted by the LSA on this issue at that time.

On July 20, 2007, we issued the Respondent Selection Memo, stating that by selecting the top two exporters/producers of the subject merchandise, *i.e.*, Promarisco, and OceanInvest, the Department would account for a sizeable percentage of the total quantity of exports reported by the respondent pool during the POR. As the Department's rationale for selecting only two firms, we pointed to the assigned office's reduced staffing level and heavy caseload. See Respondent Selection Memo at page 3. In a footnote to this section of the Respondent Selection Memo, the Department listed specific examples of the various proceedings for which AD/CVD Operations Office 2 was engaged.

Accordingly, there is substantial information on the record supporting the Department's decision to select only the top two producers/exporters by volume as the mandatory respondents in this administrative review. We note that the Department selected the mandatory respondents in the previous administrative review in the same manner. See Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 10658 (March 9, 2007). Furthermore, we note that the LSA did not propose that

the Department calculate margins for additional respondents in this review until after the Department published its Preliminary Results.

Based on the foregoing, we find that the Department's decision to select only two mandatory respondents is supported by substantial evidence on the record.

Promarisco

Comment 3: *Adjustment to Promarisco's Net Financial Expense Ratio*

In the Preliminary Results, the Department revised the financial expense used in calculating the COP for Promarisco by excluding the interest income from loans to affiliated farms. We disallowed this interest income offset because it relates to a long-term obligation. See Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Promarisco, S.A.," dated February 28, 2008. Promarisco argues that the Department should not exclude interest income generated from "loans" extended to two affiliated farms from its reported net financial expenses, as it did in the Preliminary Results. According to Promarisco, the Department erred in excluding the interest income because it was related to short-term financing. Promarisco claims that it obtained short-term loans from local banks at market rates and provided the borrowed capital to its affiliated farms. Moreover, Promarisco asserts that the financial expense ratio was calculated using the consolidated financial statements and, therefore, includes both the interest expense incurred on the loans and the interest income generated from the loans to its related farms. As a result, by including the interest expense and excluding the related income, Promarisco claims that the Department has inflated the numerator of the financial expense ratio. Finally, Promarisco adds, this adjustment was not made in previous segments, although the methodology for calculating financial expenses in this review is the same as in the less-than-fair-value investigation and in the previous administrative review.

The petitioner contends that the record evidence demonstrates that the interest income in question ties directly to Promarisco's long-term account receivables amounts in Promarisco's financial statements and, thus, the income is long-term in nature. Consequently, the petitioner asserts that, because the Department's practice is clear that only short-term interest income is allowed as an offset to financial expenses, the Department appropriately disallowed the interest income in this case because the interest income in question is associated with long-term assets. The petitioner refers to Promarisco's audited financial statement for 2006, which classifies the loan agreement between the farms and Promarisco as "Long-term Accounts Receivable".

Further, the petitioner argues that it is not relevant whether the Department classified interest income differently in prior segments of this proceeding. According to the petitioner, the interest income in question in this review is derived from long-term loans. Therefore, consistent with the Department's policy and practice of only allowing an offset for short-term interest income, the interest income at issue should not be used to offset financial expenses in this review.

Department's Position:

We agree with the petitioner and have continued to disallow the interest income generated from long-term receivables from affiliates as an offset to Promarisco's financial expense in the final results. In calculating COP and constructed value, it is the Department's practice to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from a respondent's short-term interest-bearing assets, *see e.g. Antifriction Bearing (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Results of Antidumping duty Administrative Review*, 56 FR 31734 (July 11, 1991). The U.S. Court of International Trade (CIT) has upheld the Department's approach to calculating the financial expense offset with only short-term interest income. *See, e.g., Gulf States Tube Division of Quanex Corp. v. United States*, 981 F. Supp. 630 (CIT 1997).

In this case, Promarisco claims that the account receivables from its affiliated farms were financed by short-term obligations with local banks. Promarisco contends that the interest income earned from its affiliates should also be considered short-term in nature. The Department's practice is to examine the underlying interest-bearing asset that generated the income to determine whether or not the interest income is considered short-term, as opposed to examining liabilities that may or may not be associated with the interest income earned due to the fungible nature of money. The record evidence shows that the interest income earned by Promarisco is the result of a long-term receivable from its affiliated farms (*i.e.*, the farms are not included in Promarisco's consolidated financial statement) (*see* Promarisco's August 24, 2007, response to Section A of the Department's questionnaire). Therefore, for the final results, the Department continued to disallow the claimed offset to the financial expenses. The Department notes that in the Preliminary Results, only the interest income derived from one farm was disallowed. For the final results, we have also excluded the interest income from the other affiliated farm. *See* Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results-Promarisco S.A.," dated July 3, 2008.

Comment 4: *Use of Entry Date for Determining Promarisco's POR sales*

All of Promarisco's sales to the United States during the POR were made on an EP basis. In the Preliminary Results, the Department relied on the reported date of sale to determine which EP sales reported in Promarisco's U.S. sales database should be included in the margin analysis for the POR. By doing so, the Department included in the margin calculations for Promarisco a number of U.S. sales with entry dates outside of the POR.

The petitioner argues that the Department should base its analysis of Promarisco's U.S. sales on sales with entry dates within the POR, regardless of when the sale date occurs, rather than on sales with dates of sale within the POR. Furthermore, the petitioner contends that it is only when the entry date for an EP sale is unknown that the Department should use the date of sale. Therefore, for the final results, the petitioner asserts that the Department should modify the margin calculation program to include only those sales from Promarisco's U.S. sales database with known entry dates within the POR, and that the remaining sales should be subject to the next administrative review.

Promarisco does not object to the petitioner's argument. Promarisco agrees that the Department's practice is to review each EP sale that entered during the POR if the date of entry is known.

Department's Position:

We agree with the petitioner and Promarisco. In this review, Promarisco has reported the entry dates for all of its U.S. sales. Therefore, for the final results, the Department has revised its analysis of Promarisco's U.S. sales to include only those sales with entry dates within the POR, consistent with its normal practice in cases where entry dates for EP sales are known (see e.g., Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 72 FR 17834 (April 10, 2007), and accompanying Issues and Decision Memorandum at Comment 3; and Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 72 FR 28659 (May 17, 2006), and accompanying Issues and Decision Memorandum at Comment 2. Accordingly, we have excluded from our margin analysis Promarisco's U.S. sales reported with entry dates outside the POR.

OceanInvest

Comment 5: Cost Reporting for Certain Value-Added Products

The petitioner claims that OceanInvest's reported costs for value-added products are flawed. Specifically, the petitioner points to record evidence for one unique product, as identified by product control number (CONNUM), that shows that the finished shrimp product produced does not appear to be attainable based on the raw material shrimp input size used. According to the petitioner, OceanInvest offers three explanations for how this situation could occur: 1) ranges in its shrimp count sizes; 2) losses in processing the shrimp; and 3) periodically purchasing shrimp under a "common purchasing practice"¹ in Ecuador (see business proprietary discussion in the memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – OceanInvest, S.A.," dated July 3, 2008 (OceanInvest COP Memo)). The petitioner contends that these explanations are without merit. First, the petitioner does not believe that the size ranging claimed by OceanInvest would be accepted by suppliers, or, if accepted, the petitioner claims it does not adequately explain the reasons for the situation. Second, the petitioner claims the explanation of the losses in the processing of the shrimp to be inconceivable. Lastly, the petitioner argues that OceanInvest's admission of its "common purchasing practice" in Ecuador further calls into question the validity and accuracy of all of OceanInvest's reported raw material costs for all of its value-added products. In summary, the petitioner contends that these explanations are all indicators that there are fundamental flaws and inconsistencies in OceanInvest's reported cost information for value-added products.

In addition, the petitioner alleges that OceanInvest's reported value-added shrimp yields are inherently flawed. The petitioner claims that OceanInvest's reported data is questionable because certain groups of shrimp raw material that enter the value-added process appear to differ

¹ See public version of the March 11, 2008, Supplemental Section D response at page 4.

markedly from the corresponding value-added shrimp product. The petitioner cites to data in OceanInvest's responses which show that, for two sets of CONNUMs, which differed only in container weight or presentation, OceanInvest reported differences in the count size of the shrimp raw material. The petitioner goes on to point to an additional set of CONNUMs, each of which used similar shrimp inputs, yet OceanInvest reported different yields for the similar finished products, a situation that the petitioner claims is inexplicable. The petitioner also claims that OceanInvest failed to respond to the Department's request to report shrimp yields for value-added products on a count-size-specific basis. Therefore, the petitioner argues that OceanInvest failed to respond to the Department's instructions and reported data that was blatantly inconsistent with the yield information OceanInvest had previously reported.

The petitioner concludes that OceanInvest has not explained the discrepancies in its reported value-added raw material costs. The petitioner also concludes that, because of OceanInvest's failure to provide complete explanations of its costs for the raw materials consumed for value-added shrimp products, OceanInvest has impeded the administrative review and has clearly failed to cooperate by not acting to the best of its ability. Therefore, the petitioner asserts that the Department should apply adverse facts available to OceanInvest's raw material cost information for value-added products by assigning the highest shrimp raw material cost (SHRIMP) reported for any value-added product as the SHRIMP cost for all value-added products.

OceanInvest responds by noting that the single value-added CONNUM for which the petitioner focuses its argument represents only a small portion of OceanInvest's total sales to the United States during the POR, and also represents only a small portion of OceanInvest's value-added product production. OceanInvest argues that the petitioner's contention that the Department should apply adverse facts available to all value-added shrimp products based on a single CONNUM representing a small quantity is overreaching.

Regarding the six additional value-added products for which the petitioner claims include flawed cost reporting because CONNUMs with similar characteristics were produced using different mixes of raw materials and resulted in different yields, OceanInvest argues that the petitioner does not understand the realities of raw shrimp purchasing. OceanInvest explains that shrimp are classified based on ranges of sizes, not precise measurements, and value-added products are produced using a mix of different sizes depending upon how the specific raw material is ranged, packed, and processed manually. OceanInvest cites to an example in the record where one CONNUM with a finished count size of 31-35 was produced primarily from raw shrimp of count size 26-30, while another finished product of the same finished count size was produced primarily using count size 31-35 raw shrimp. According to OceanInvest, the use of different mixes of shrimp raw material to produce the same output product is a regular occurrence, and that this mix is specifically tracked in OceanInvest's inventory system. OceanInvest asserts that it records its purchase prices in its inventory system with precision, and it computes the reported cost of its value-added products based on this inventory system that tracks the actual mix of raw material used to produce specific products. OceanInvest insists that it responded honestly and completely in describing its cost methodology, including its occasional use of the "common purchasing practice" in Ecuador. OceanInvest notes further that the Department verified this inventory system in the previous review.

Regarding the petitioner's allegation that there are unexplained differences in shell-on to peeled conversion yields between similar CONNUMs, OceanInvest explains that its yields differ between products because the products are produced separately and the raw material ranges and realities of manual labor inevitably result in different raw material compositions. OceanInvest insists that its reported data is correct, as it is derived from its inventory system and is maintained on a product-specific basis.

OceanInvest maintains that it has endeavored in good faith to respond completely to the Department's questions and requests, in spite of its limited resources. OceanInvest also believes that it has acted to the best of its ability to cooperate fully with the Department since the beginning of this administrative review. Therefore, OceanInvest asserts that the Department should not apply adverse facts available to OceanInvest's value-added products for the final results. However, should the Department determine it necessary to apply facts available, OceanInvest suggests that the Department apply neutral facts available only to the CONNUM at issue and not to all other value-added products.

Department's Position:

We disagree with the petitioner and continue to accept OceanInvest's reported costs for value-added products in the final results.

Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." The Department will rely on a company's normal books and records kept in accordance with the home country's generally accepted accounting principles and audited by independent accountants and auditors, unless distortive. See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003), and accompanying Issues and Decision Memorandum at Comment 13; Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (December 15, 2000), and accompanying Issues and Decision Memorandum at Comment 1, and Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14882 (March 29, 1999). Over the course of this administrative review, we sent OceanInvest three sets of supplemental questionnaires on its COP reporting. We reviewed the data from each of the questionnaire responses and gained an understanding of OceanInvest's inventory system used in the normal course of business. OceanInvest's inventory system specifically tracks the mix of actual shrimp inputs used to produce each finished product, thus the resulting yields reflect the actual processing experience for each product. As noted by OceanInvest, different mixes of shrimp count sizes used as inputs to produce the same value-added products (differing only in the weight of the container used to market the finished product) could result in different yields. Therefore, due to the mix of shrimp count sizes used to produce the end product, it is reasonable to accept OceanInvest's explanation that different yield rates could result for value-added products of the same finished count size, although a POR average cost is used for each raw shrimp input in calculating COP.

In addition, OceanInvest's use of a "common purchasing practice" in Ecuador does not invalidate OceanInvest's reported raw material costs for value-added products. See OceanInvest COP Memo. We find that OceanInvest's use of this purchasing practice is infrequent and represents a small percentage of OceanInvest's overall raw material purchases. More importantly, the costs captured in the reported costs are the amounts actually paid by OceanInvest for its raw shrimp inputs. In other words, the actual price paid for the shrimp in question was properly reflected and captured in the reported raw material costs. Specifically, all costs are tracked by product, and the prices paid for these inputs in question are reflected in the actual cost of the finished product. As a result, in accordance with section 773(f)(1)(A) of the Act, we have not adjusted OceanInvest's reported COP for the final results.

Comment 6: Acceptance of Billing Adjustment for Certain Third-Country Sales

The petitioner argues that the Department should exclude the billing adjustments claimed by OceanInvest on its third-country sales in calculating NV for the final results. The petitioner asserts that OceanInvest stated in its September 24, 2007, response to Section B of the Department's questionnaire (Section B response) and in its November 13, 2007, supplemental questionnaire response that OceanInvest did not incur any billing adjustments on its third-country market sales during the POR. However, the petitioner states that in OceanInvest's February 15, 2008, submission, OceanInvest reported for the first time that, in fact, it incurred billing adjustments on certain third-country sales during the POR. The petitioner contends that the Department should not allow OceanInvest's last statement on billing adjustments to trump its previous statements on the issue because to do so casts doubt on the validity of OceanInvest's previous statements on the issue, which were certified as accurate by OceanInvest. For the final results, the petitioner argues that the Department should deny any billing adjustments applicable to OceanInvest's third-country sales.

OceanInvest responds that the Department should accept its claim for billing adjustments relevant to certain third-country sales, as it did in the Preliminary Results, because OceanInvest has always included the billing adjustments in question in its third-country sales database, and has corrected the narrative reporting in its questionnaire responses to be consistent with the database. OceanInvest points out that it included all the claimed third-country sales billing adjustments in its third-country sales database submitted with the Section B response. Thus, while OceanInvest acknowledges that it may not have identified the billing adjustments properly in the narrative portion of its initial questionnaire responses, it asserts that these adjustments have been included consistently in its third-country sales database.

Department's Position:

We agree with OceanInvest and continue to accept its billing adjustment claim for certain third-country sales in the final results. While OceanInvest reported the claimed billing adjustments in its third-country sales database submitted with its Section B response, it stated in the narrative portion of the Section B response (and a subsequent supplemental questionnaire response) that no billing adjustments were applicable to its third-country sales. However, on February 15, 2008, in response to the Department's specific request for clarification, OceanInvest confirmed that billing adjustments were applicable to its third-country sales during the POR, consistent with

its reporting in the database. Accordingly, OceanInvest clarified its narrative reporting of the billing adjustments in a timely manner. Therefore, we made no change to our calculation of NV in the final results.

Comment 7: Bonus Payment Adjustment Applicable to U.S. Sales

OceanInvest claimed that it entered into an agreement with one of its U.S. customers during the POR to share the profits from certain downstream sales made by the customer. According to OceanInvest, the customer would share a portion of the profits in the form of bonus payments to OceanInvest (*i.e.*, an upward adjustment to U.S. price). In the Preliminary Results, the Department denied this post-sale bonus payment adjustment to OceanInvest's U.S. sales prices. The Department stated in the Preliminary Results that OceanInvest had not established the legitimacy of such an adjustment and that the bonus payments could not be tied to specific sales. Furthermore, the Department stated that OceanInvest had failed to demonstrate adequately that the post-sale bonus payments were made in a manner consistent with the terms indicated in the submitted agreement. See Preliminary Results, 72 FR at 12117-18.

The LSA agrees with the Department's decision and reasoning in the Preliminary Results, and argues that the adjustment cannot be considered a bona fide adjustment made in the ordinary course of business. Therefore, the LSA asserts that the Department should continue to deny OceanInvest's bonus adjustment claim in the final results.

OceanInvest did not comment on this issue.

Department's Position:

For the reasons outlined in the Preliminary Results, we continue to disallow OceanInvest's claimed bonus payment adjustment to U.S. prices. Accordingly, we have made no change to our calculation of EP in the final results.

Recommendation

Based on our analysis of the comments contained in the briefs received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree ____

Disagree ____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)