

A-351-838
Administrative Review
POR: 2/1/06 - 1/31/07
Public Document
AD/CVD/IA/2: KJ/RT

DATE: July 3, 2008

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 Antidumping Duty
Administrative Review on Certain Frozen Warmwater Shrimp from
Brazil – February 1, 2006, through January 31, 2007

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 covering certain frozen warmwater shrimp (shrimp) from Brazil. As a result of our analysis, we have made changes in the margin calculations as discussed in the “Margin Calculations” section of this memorandum. 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:

1. Selection of Adverse Facts Available Rate (AFA)
2. Consideration of Grade as a Matching Criterion
3. Date of Sale for Sales to Kenkoh
4. Sales to Employees
5. Calculation of Variable and Total Costs of Manufacturing (VCOM and TOTCOM)
6. Corrections Presented at Cost Verification
7. Adjustments to Costs for Reconciling Differences
8. Adjustments to AMASA’s General and Administrative (G&A) Expense Ratio
9. Financial Expense Ratio

Background

On March 6, 2008, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on shrimp from Brazil. See Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 12081 (March 6, 2008) (Preliminary Results). The period of review (POR) is February 1, 2006, through January 31, 2007.

We invited interested parties to comment on our preliminary results of review. Based on our analysis of the comments received, we have changed the results from those presented in the Preliminary Results.

Margin Calculations

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

1. We recalculated imputed credit expenses for those U.S. sales made by AMASA for which payment is still outstanding, using a payment date of June 12, 2008 (i.e., the date of the last response from AMASA on this issue).
2. As a result of our findings at verification, we made adjustments to Amasa's reported costs for returns of purchased shrimp and of subject merchandise. We also revised Amasa's reported G&A and financial expense rates to include packaging costs and an offset for short-term interest income, respectively. All cost changes are discussed in detail in the July 3, 2008, Memorandum to Neal Halper from LaVonne Clark Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Amazonas Industrias Alimenticias S.A.

Discussion of the Issues

Comment 1: Selection of Adverse Facts Available Rate (AFA)

The Louisiana Shrimp Association ("LSA"), an interested party in this proceeding, argues that, although the use of AFA is appropriate in this case, the Department improperly declined to use the highest petition margin (i.e., 349 percent) for purposes of determining AFA. The LSA maintains that it is incorrect to reject all other information, including certified factual information from a petition, in the search for probative evidence reasonably at the Department's disposal regarding margins of dumping. The LSA argues that, by doing so, the Department puts itself in the peculiar position of finding petition margins probative enough to meet the requirements of the statute and of the World Trade Organization for initiating an investigation, yet not probative enough for AFA rate assignment purposes. Accordingly, for purposes of the final results, the LSA contends that the Department should either use the highest rate from the petition as the AFA rate or provide a better explanation of its reasons for declining to do so.

No other party commented on this issue.

The Department's Position:

We disagree with the LSA that we should use the highest petition margin as the AFA rate in this review, as we determined that this rate did not corroborate pursuant to section 776(c) of the Act.

For purposes of the preliminary results, we applied as AFA a margin of 68.15 percent, the preliminary results margin calculated for AMASA, which, at the time, was the highest rate calculated for any respondent in any segment of the proceeding (*i.e.*, the less-than-fair-value (LTFV) investigation, the 2004-2006 administrative review, or the instant review). As stated in the Preliminary Results at 12084, *inter alia*, we did not use either of the two highest of the three petition rates (*i.e.*, 320 percent and 349 percent) because we found that these rates did not have probative value for purposes of this review.

Section 776(c) of the Act requires that when the Department relies on secondary information in selecting an AFA rate, such as information from the petition, the Department must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. Section 351.308(d) of the Department's regulations provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. In so doing, the Department will examine the reliability and relevance of that secondary information. The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has interpreted "relevant" to mean relevant with respect to the particular segment at issue. See *Filli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1034 (Fed. Cir. 2000). For the preliminary results in this case, we could state that the petition rates were reliable, based on our review of the margins at the initiation stage of the LTFV investigation. However, we could not state that the petition margins were relevant with respect to the POR, when comparing them to the transaction-specific margins calculated for AMASA, the sole participating respondent in this review. Accordingly, we were unable to corroborate the highest petition rates with independent information reasonably at our disposal. For purposes of the final results, we are similarly unable to corroborate the highest petition margins using the transaction-specific margins calculated for AMASA.

With respect to the LSA's argument that margins that are sufficiently probative for the initiation of an investigation should likewise be probative enough for use as AFA, we note that the standard for corroborating secondary information used as AFA is different from the standard for initiating an investigation. In order to initiate an investigation, we rely on information that is reasonably available to the petitioner pursuant to section 732(b)(1) of the Act. With respect to an AFA-based preliminary or final finding relevant to an uncooperative respondent, the Department's longstanding practice is to assign the highest rate from an LTFV investigation or any administrative review which can be corroborated under section 776(c) of the Act. This practice has been upheld by the courts. See e.g., *Koyo Seiko Co., Ltd. v. United States*, 92 F. 3d 1162, 1167 (Fed. Cir. 1996); and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1331-35 (CIT 2004). Accordingly, we rely on the highest rates from the petition if we can corroborate those rates pursuant to section 776(c) of the Act, as discussed above. As noted, we were unable to do so in this case.

For purposes of the final results, we have assigned a rate of 67.80 percent as AFA, which is the highest margin determined for any respondent in any segment of the proceeding (*i.e.*, the LTFV investigation). For discussion of the Department's selection of the AFA rate for the final results, see the Federal Register notice which this decision memorandum accompanies.

Comment 2: Consideration of Raw Material Grade (RMGRADE) as a Matching Criterion

AMASA argues that, because the grade of the raw shrimp input has a significant impact on the costs and prices of the subject merchandise, RMGRADE should be considered as a matching criterion, and for the purposes of cost differentiation. AMASA states that it purchases two grades of shrimp from boat owners in the normal course of business: (1) the highest quality shrimp, for which AMASA pays a consistent premium and which it then sells and delivers to its parent company, Nichirei Fresh, in Japan; and (2) all other shrimp, which AMASA sells locally and to countries other than Japan. AMASA claims that at verification the Department examined the physical differences between these two grades of shrimp as well as raw material purchase and final product sales data which clearly demonstrated significant price and cost differences between the two grades of shrimp. AMASA cites verification exhibits which it claims show that AMASA paid a premium for Nichirei quality shrimp and that, for the same sizes, the Nichirei products carry an average cost premium.

AMASA further argues that including RMGRADE as a product characteristic in the control number (CONNUM) is consistent with prior practice and will avoid the distortion caused by mixing two different grades of shrimp when conducting product matching and in calculating margins. AMASA asserts that, in the LTFV Investigation of Shrimp from Ecuador,¹ after conducting both the sales and cost verifications, the Department agreed with respondent Exportadora de Alimentos, S.A. (Expalsa) that "Expalsa purchases, processes, and markets shrimp by grade in its normal course of business consistent with its internal grading." See LTFV Investigation of Shrimp from Ecuador and Ecuador I&D Memo at Comment 8. Moreover, AMASA adds, the Department found that it was not necessary for Expalsa to establish that its own internal grading standards conformed to an industry-wide standard, and the Department ultimately added a model-matching criterion for grade to its analysis. AMASA argues that it has made the same showing here as Expalsa did in the LTFV Investigation of Shrimp from Ecuador. In conclusion, AMASA maintains that, where a respondent has established a consistent grade difference, the Department should, as it has in the past, include grade as a matching criterion in the CONNUM, and should then consider grade in determining the cost of each product.

The petitioner argues that the Department should not include RMGRADE in the model-matching hierarchy or the CONNUM designation, as AMASA can point to no record evidence that the selling prices or costs of various products were affected by the grade characteristic. The petitioner points out that, notwithstanding AMASA's claim that grade is a critically important physical characteristic, AMASA failed to include RMGRADE in either its sales or cost datasets until two weeks prior to the Preliminary Results and after the completion of the sales verification. Moreover, there is no discussion of this issue in the sales verification report, suggesting that the

¹ Notice of Final Determination of Sales at Less-Than-Fair-Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004) (LTFV Investigation of Shrimp from Ecuador), and accompanying Issues and Decision Memorandum (Ecuador I&D Memo).

sales-related grade information was not examined at verification and, therefore, all of AMASA's assertions with respect to the importance of grade in the sales and product-matching processes are entirely unverified. With respect to costs, the petitioner cites the "Memorandum to the File from LaVonne Clark through Neal Halper, Verification of the Cost Response of Amazonas Industrias Alimenticias S.A. in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil" dated March 27, 2008 (Cost Verification Report) in support of its belief that the record evidence with respect to the purchase cost differences between RMGRADES 1 and 2 raw shrimp is ambiguous at best.

The petitioner cites several cases² in support of its argument that typically, grade is only part of the product-matching hierarchy when there are consistent industry-wide grading standards. In this case, the petitioner argues, no such industry-wide grading standards exist, and certainly none established by an independent entity.

While AMASA points to the example of Expalsa in the LTFV Investigation of Shrimp from Ecuador, the petitioner argues, AMASA fails to mention that the facts with respect to Promarisco S.A. (Promarisco), an Ecuadorian respondent in the concurrent administrative review of certain frozen warmwater shrimp from Ecuador, are very similar to those presented here for AMASA, yet the Department has not included grade in the product-matching hierarchy for Promarisco. Given the similarity between AMASA and Promarisco with respect to the prices paid for different grades of raw shrimp, internal accounting of raw shrimp purchases by grade, and pricing and invoicing of processed shrimp based on the grade of the raw shrimp input, the petitioner argues that there is no apparent reason why AMASA's facts warrant the inclusion of grade in the product-matching hierarchy, but Promarisco's facts do not. Finally, the petitioner suggests that the Department should be extremely wary of accepting grade as a product-matching characteristic because this could allow a respondent to manipulate the matching process to its advantage. Therefore, for the final results, the petitioner argues that the Department should continue to exclude RMGRADE from the product-matching hierarchy and from AMASA's CONNUM designation.

Department's Position:

We have not included RMGRADE in the product-matching hierarchy or the CONNUM designation, as the limited information on the record of this review with respect to grade does not substantiate AMASA's claim that the grade of the raw shrimp input has a significant impact on production costs and sales prices. AMASA did not raise this issue until after the completion of the sales verification, and shortly before the Preliminary Results. In so doing, it did not provide any documentation or quantitative analytical support to demonstrate the impact of grade differences on production costs and sales prices. Thus, in the Preliminary Results, we stated that AMASA had not provided sufficient evidence to warrant a change to the established product-comparison criteria in this proceeding, which has never distinguished shrimp by grade.³ During

² See Issues and Decision Memorandum accompanying the Final Determination of Sales at Less Than Fair Value; Certain Softwood Lumber from Canada, 67 FR 15539 (April 2, 2002), and Issues and Decision Memorandum accompanying the Final Determination of Sales at Less Than Fair Value; Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003)

³ See 73 FR at 12085.

AMASA's cost of production (COP) verification, which took place shortly after the completion of the Preliminary Results, AMASA attempted to present information to the Department to substantiate its claim that RMGRADE should be included as a product-matching criterion. Due to the limited information on the record with respect to this issue, the Department did not conduct a full examination of the alleged differences in production costs associated with differences in grade.

Our normal practice is to consider proposed changes to product-matching criteria in the very early stages of a proceeding, to allow adequate time for all parties to comment on such proposed changes and for the Department to properly analyze them before making a determination. Furthermore, the Department does not change or alter the established product-matching methodology in a proceeding unless compelling reasons exist. See Koyo Seiko Co., Ltd. et al. v. United States, 516 F. Supp. 2d 1323, 1330-31 (CIT 2007); SKF USA Inc., et al v. United States, 491 F. Supp. 2d 1354, 1363 (CIT 2007). In the LTFV Investigation of Shrimp from Ecuador, the issue of grade was raised at the beginning of the investigation, allowing a full vetting and analysis. We added grade as a product-matching criterion for one respondent, Expalsa, after a thorough verification of the claimed significant physical differences between the two reported grades of shrimp and their impact on sales prices and production costs. This information was clearly documented and verified in Expalsa's purchasing, processing, marketing and sales records.⁴

Therefore, based on the lack of record evidence, we do not find that AMASA has provided compelling reasons to include RMGRADE as a product-matching criterion in this review. Accordingly, we have not changed the product-matching characteristics to include RMGRADE in the final results.

Comment 3: Shipment Date for Sales to Kenkoh

AMASA argues that the Department should recalculate imputed home market credit expenses for sales to one home market customer, Kenkoh, because using the reported shipment date in the credit expense calculation does not take into account the entire credit period for those sales. AMASA asserts that the Department learned the following details of AMASA's sales process with respect to Kenkoh, at the sales verification. On August 16, 2006, AMASA shipped one container of various shrimp products from its plant in Belem to a third party warehouse designated by Kenkoh. Kenkoh then periodically sold the warehoused shrimp to its own customers. Each time Kenkoh made a sale from the warehouse, the warehouse operator would inform AMASA of the sale, and AMASA would then issue a sales invoice to Kenkoh for a quantity matching the quantity of shrimp that Kenkoh sold to its own customer. Thus, AMASA argues, although the delivery into Kenkoh's warehouse occurred immediately, AMASA was not paid until the subsequent delivery of subject merchandise to Kenkoh's customer. Accordingly, the credit period for home market credit expenses should begin on the date that AMASA shipped the product to the warehouse (August 16, 2006), rather than on the date of its invoice to Kenkoh.

⁴ See Ecuador I&D Memo, at Comment 8.

The petitioner argues that it is surprising that AMASA suggests that the shipment dates that AMASA itself reported for sales to Kenkoh are incorrect and should be modified by the Department. The petitioner maintains that AMASA's statements are not supported by any record evidence, as AMASA fails to provide any citation to the Department's sales verification report with respect to this issue. The petitioner adds that it is evident from AMASA's own description of events that the merchandise was shipped to a third party warehouse prior to being sold to Kenkoh, but it is not evident from the record that Kenkoh took title to the merchandise prior to removing it from the warehouse. Accordingly, the petitioner argues that the Department should continue to use the reported shipment dates for all sales to Kenkoh.

Department's Position:

We agree with the petitioner that we have no basis upon which to change the shipment date AMASA reported for its sales to Kenkoh. This issue was first raised one week prior to the preliminary results and approximately one month after the sales verification took place. Therefore, there was no opportunity for the Department to review this claim at the sales verification. Moreover, the Kenkoh sales were not among the selected transactions the Department's verifiers examined in detail at verification. Therefore, we do not have supporting documentation on the record to substantiate AMASA's claim that the shipment dates reported for sales to Kenkoh should be revised, nor is the specific date that AMASA now proposes included in the home market sales database it submitted in this review, which is being used to calculate its final results margin. Accordingly, we have continued to use the reported shipment dates for the final results.

Comment 4: Sales to Employees

AMASA explains that following the sales verification, the Department requested that AMASA update its home market sales database by using the customer relationship field (CUSRELH) to identify all sales made to employees. However, AMASA claims, when the Department applied the arm's-length test in the preliminary results comparison market program to determine whether to disregard the employee sales, the Department mistakenly treated all sales to a particular customer (CUSCODH 1.1.2.02.04.0004, listed as "Diversos" or "others") as employee sales. According to AMASA, this "others" customer code also includes unaffiliated customers. As a result, AMASA argues, the Department's comparison market program erroneously dropped all sales of this particular customer code, *i.e.*, both the affiliated employee sales and the unaffiliated non-employee sales that AMASA made to "others," because they did not pass the arms-length test. AMASA provides revised SAS coding to remedy this alleged error.

The petitioner did not comment on this issue.

Department's Position

We agree with AMASA in part. The problem AMASA describes was not with the Department's computer program, but resulted from AMASA's assignment of a single code to a general category of customer ("others") which included both affiliated and unaffiliated customers in the home market database. We have corrected the database by assigning a different customer code to the sales in this general customer category that were coded as affiliated (CUSRELH = 2). After

recoding the employee sales, the computer program treats only those sales that were made to employees as affiliated-party transactions in the arm's-length test.

Comment 5: Calculation of Variable and Total Costs of Manufacturing (VCOM and TOTCOM)

AMASA claims that the Department's computer program is inconsistent with the preliminary Cost Calculation Memorandum describing the programming code the Department intended to use to adjust AMASA's reported total COM, fixed overhead, and variable COM (TOTCOM, FOH, and VCOM, respectively). Specifically, AMASA contends, the Department omitted the suggested code for revising FOH and VCOM, resulting in the substantial overstatement of VCOM and TOTCOM. Although the preliminary program contains this error, AMASA submits that the specific adjustments performed by the Department in the Preliminary Results are no longer warranted, based on the Department's verification of AMASA's COP data.

The petitioner did not comment on this issue.

Department's Position:

For the final results, we have corrected the computer program, as AMASA suggests, while incorporating the cost changes discussed in the comments below.

Comment 6: Corrections Presented at Cost Verification

The petitioner contends that the Department should not have accepted AMASA's corrections to its raw material costs presented at the beginning of the cost verification because those corrections were not minor. According to the petitioner, the Department's practice is to accept untimely submitted factual information prior to verification (*i.e.*, minor corrections) only if such information is insignificant in magnitude or, if the minor correction is significant in magnitude with respect to a particular variable, has an insignificant impact on the respondent's total COP or constructed value (CV). See *e.g.* Final Results of Antidumping Duty Administrative Review: Persulfates from the People's Republic of China, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum at Comment 9 (Persulfates from China); Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China, 68 FR 13264 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 3 (Candles from China); Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from Taiwan, 62 FR 1726, 1729 (January 13, 1997), at Comment 2 (Dinnerware from Taiwan); Notice of Sales at Less Than Fair Value: Nitromethane from the People's Republic of China, 59 FR 14834, 14835 (March 30, 1994) (Nitromethane from China); and Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan, 56 FR 65228 (December 16, 1991), at Comment 47 (Tapered Roller Bearings from Japan).

The petitioner asserts that the minor corrections accepted by the Department in the instant case

were not insignificant on their face or in comparison to the corrections deemed by the Department to be minor in Persulfates from China. Further, the petitioner argues that the significance of the minor corrections presented by AMASA call into question the reliability of AMASA's response overall. See id. The petitioner asserts that the Department stated in Tapered Roller Bearings from Japan that the "purpose of a verification is to ascertain the accuracy and completeness of the information submitted," not to "allow wholesale revision" of a respondent's deficient response. In the instant case, the petitioner argues that the Department has acquiesced to the substantial revision of AMASA's deficient and erroneous response by accepting the minor corrections in question.

Moreover, the petitioner contends that the Department did not provide any reasons for its acceptance of the significant revisions from AMASA. In support of its contention, the petitioner cites to Magnesium Corp v. United States, 90 F. Supp. 870 (1996) (Magnesium Corp.), where the CIT stated that "it is necessary for the administrative agency to cite the reasons for its decision on the record;" and to Consolidated Bearings Co. v. United States, 348 F.3d 997 (Fed Cir 2003) (Consolidated Bearings), where the Federal Circuit has held that "an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently."

The petitioner concludes that given the significance in both the magnitude and impact of the minor corrections provided by AMASA at the outset of verification and the Department's past practice, the Department should reject AMASA's corrections for purposes of the final results.

AMASA argues that its minor corrections satisfy all of the requirements set forth by the statute, in sections 782(d) and (e) of the Act, and cited in the Department's verification agenda as acceptable corrections presented at verification (i.e., the correction of errors resulting from mistakes in arithmetic function, minor data entry errors, clerical errors, errors in duplication, and minor classification errors). AMASA contends that the minor corrections presented at verification relate to errors that were clerical in nature and involved arithmetic and data entry mistakes.

Regarding the petitioner's argument concerning the magnitude of the minor corrections, AMASA argues that the Department has never established a bright-line test for evaluating whether a particular minor correction has such an impact on the reported costs that the error cannot be considered. Instead, according to AMASA, the Department's practice is to evaluate each minor correction based on the relevant facts and circumstances surrounding the proceeding. In support of its argument, AMASA points to The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, 44 F. Supp 2d 229, 236 (CIT 1999) (Drum and Rotor), where the CIT held that "the issue is not the value of the errors as a percentage of total sales, or the number of instances of errors. Rather the issue is the nature of the errors and the effect on the validity of the submission." Accordingly, AMASA asserts that in this case, the issue is not the magnitude of the minor corrections, but the nature of the errors and their effect on the validity of the company's prior submissions. Further, AMASA asserts that the number of corrections and their impact on the reported costs, while arguably relevant, are by no means dispositive.

AMASA refutes several of the petitioner's citations to past Department decisions as being inapposite to its case. According to AMASA, the Department never stated in Persulfates from

China that its quantification of the percentage change in costs was an exclusive test of whether a change was minor or that it constituted a ceiling on the Department's definition of a minor change to reported costs. AMASA notes that the Department's decision in Persulfates from China relied on the Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 15 (Violet Pigment from China). In Violet Pigment from China, AMASA argues, the Department declined to use AFA where a respondent initially failed to report or under-reported raw material inputs because the necessary information to correct the mistake was collected at verification, was on the record, and the respondent did not withhold information requested by the Department. Further, the Department stated that the existence of the mistakes in question did not significantly impede the proceeding and that the submissions prior to the corrections were not so incomplete that they could not be used. AMASA asserts that these same circumstances exist in the instant case and, as such, the petitioner's reliance on Persulfates from China is misplaced.

Furthermore, AMASA contends that in Candles from China, the Department rejected a correction not because it would reduce the reported costs by a particular percentage, but because the Department found that the respondents in that case did not take sufficient care in preparing their response and the information was never verified. AMASA alleges that in Dinnerware from Taiwan, the Department, contrary to the petitioner's arguments, actually accepted certain corrections which the petitioner argued were extensive, fundamental changes. AMASA notes that in that case, the Department did not establish a ceiling for the magnitude of the accepted changes, the respondent had not changed its reporting methodology, and the changes were verified. Further, according to AMASA, the Department relied on section 782(e) of the Act in that case to determine if the corrections presented were acceptable. Because the corrections presented by AMASA meet the requirements of section 782(e) of the Act, AMASA concludes that such corrections are minor in nature.

Moreover, AMASA alleges that the Nitromethane from China case is easily distinguishable from the instant case because in that case the Department found that the respondent deliberately failed to report certain inputs used in the manufacturing process and that the respondent's submissions were unverifiable to the point of being totally unusable. AMASA notes that the Department did not make its decision in that case based on the quantitative effect of the minor corrections but rather on the respondent's failure to identify and report inputs used in the production process. AMASA also alleges that the facts in Tapered Roller Bearings from Japan are not relevant to the instant case because in that case the Department rejected the respondent's attempt to submit a revised comparison market database after verification because the database contained new information that could not be verified. In addition, AMASA points to Maui Pineapple Company v. United States, 264 F. Supp 2d 1244 (CIT 2003), where the CIT upheld the Department's decision to accept at verification the respondent's reporting of certain previously unreported sales which were not deemed to be significant in number or impact. Because the information was verified, the CIT held that the requirements of section 782(e) of the Act had been met. According to AMASA, the court considered the nature of the corrections and their effect on the validity of the submission to be the criteria that properly govern the Department's exercise of discretion in the acceptance of error corrections.

Department's Position:

For purposes of these final results, we have continued to accept the minor corrections presented by AMASA at the beginning of the Department's cost verification, and have taken them into account in the Department's margin analysis.

In the instant case, the Department's cost verification agenda (see Letter from Theresa C. Deeley to AMASA dated February 21, 2008) instructed AMASA to present any corrections of minor errors in its previously submitted filings, found during preparation for verification, at the start of verification. The Department's agenda defined minor errors as minor mistakes in addition, subtraction, or other arithmetic function, minor data entry mistakes, clerical errors resulting from inaccurate copying, duplication, or the like, and minor classification errors. Further, the Department stated that minor errors do not include items such as methodological changes. As noted in the Cost Verification Report, AMASA presented a list of minor corrections to errors found in AMASA's previously submitted filings. See Cost Verification Report at 4-5. The errors in question relate to raw materials costs and include the double-counting of certain processing fees, the calculation of a simple-average raw material cost for each reported CONNUM rather than a weighted-average raw material cost, and the omission of certain revenues received for sales of packaging materials in the calculation of the reported packaging material costs.

The Department accepted at verification, and continues to accept for purposes of these final results, the corrections at issue because the information meets the criteria set forth in section 782(e) of the Act. Pursuant to section 782(e) of the Act, the Department shall not refuse "to consider information that is submitted by an interested party and is necessary to the determination but does not meet all of the applicable requirements established" by the Department "if

- (1) the information is submitted by the deadline established for its submission,
- (2) the information can be verified,
- (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,
- (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by [the Department] with respect to the information, and
- (5) the information can be used without undue difficulties."

Specifically in this case, the corrections were submitted by the deadline established by the verification agenda and, as a result, were not untimely. The Department verified the information as accurate and complete. There was no evidence at verification that AMASA did not cooperate to the best of its ability, and the information can be used without difficulty.

Furthermore, we find that the corrections at issue meet the definition of acceptable minor corrections outlined in the Department's verification agenda (i.e., these errors did not represent changes in reporting methodology). Specifically, we find that the double-counting of processing fees and the omission of sales revenues generated from the sales of packing materials are minor classification errors in the calculation of AMASA's reported costs. The revenues related to the processing fees and sales of packing materials are recorded in accounts separate from cost of sales

(COS) in AMASA's accounting system. AMASA based its originally reported costs on COS which did not include these revenues. In preparation for the cost verification, AMASA discovered that the revenues, which are appropriate offsets to the COS for reporting purposes, were not included in the reported costs. See Cost Verification Report at 21. We also find that the correction related to the calculation of AMASA's weighted-average shrimp costs was a calculation error. See id. at 17-18. Moreover, we verified that AMASA did not omit any costs related to the production of the merchandise under consideration. Because the corrections in question relate to the correction of classification or calculation errors, and because we find that the underlying errors do not render AMASA's reported costs unreliable, we continue to accept these corrections as minor corrections for the purposes of these final results.

The petitioner focuses its arguments on the magnitude of the minor corrections in comparison to AMASA's reported costs. The petitioner then compares the magnitude of AMASA's minor corrections to those in other proceedings where the Department had disallowed minor corrections that were allegedly less significant than the minor corrections in AMASA's case. Accordingly, the petitioner asserts that the Department should disregard AMASA's minor corrections solely because of the magnitude of the corrections in comparison to those in other cases. We disagree with the petitioner's interpretation of the Department's practice with respect to the acceptance or rejection of minor corrections. The Department's practice is to evaluate each minor correction in a proceeding based on the relevant facts and circumstances surrounding that proceeding, and to examine the nature of the underlying errors and the effect of the errors on the validity of the submissions. As correctly noted by AMASA, the Department's practice has been upheld by the CIT in Drum and Rotor.

Furthermore, we disagree with the petitioner's interpretation of the Department's decisions in the cases it cited in support of its contentions and its representation that the facts in those cases are similar to the facts in this case. Specifically, in regard to the petitioner's reliance on Persulfates from China, we note that the Department did not establish a bright-line test as to what constitutes a minor correction based exclusively on the value of the correction in comparison to the reported data. As a result, we find that the petitioner's argument that the Department should reject AMASA's minor corrections simply because they are more significant than those in Persulfates from China to be misplaced. We note that AMASA's case differs from Candles from China in that the corrections rejected by the Department in the latter case were deemed significant and caused the Department to question other elements of the response. Here, the corrections do not cause the Department to question other elements of the response. In Dinnerware from Taiwan, we note that the Department accepted the corrections presented by the respondent because the corrections were deemed insignificant and did not reflect a change in reporting methodology. We note that the Department considered other aspects surrounding that case in accepting the corrections and did not exclusively rely on the significance of the impact of the corrections on the reported costs. We also note that this case differs from Nitromethane from China where the respondents failed to identify materials used in the production of the subject merchandise. In that case, the Department determined that the materials in question were not presented as minor corrections, but were instead discovered by the Department during the course of the verification. Here, AMASA did not fail to report any previously unidentified materials and the minor corrections were presented in a timely manner. The facts in Tapered Roller Bearings from Japan also differ from those in this case because in that case the data in question was not verified by the

Department. Finally, we note that the petitioner's arguments regarding Magnesium Corp. and Consolidated Bearings focus on the courts' determinations that the Department acted arbitrarily and did not explain its decisions in those cases. Here, we note that the Department's acceptance of AMASA's minor corrections is not arbitrary, and the Department has explained its reasons for acceptance of the information, as discussed above.

Comment 7: Adjustments to Costs for Reconciling Differences

AMASA asserts that the reconciling differences between its total cost of manufacturing (COM) for the POR in its accounting system and the total COM reported to the Department are appropriate and properly calculated. As such, AMASA concludes that the Department should accept those differences as reported for purposes of these final results. The reconciling differences in question relate to PIS/COFINS taxes, certain purchase returns, and a certain sales return.

AMASA argues that it appropriately reduced its raw material costs and home market sales prices for PIS/COFINS taxes in order to report the COP and home market prices on a tax-neutral basis. AMASA asserts that its reported treatment of PIS/COFINS taxes is consistent with the Department's practice. See Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (Silicon Metal from Brazil). The petitioner did not comment on the PIS/COFINS reconciliation difference.

AMASA states that the reconciling difference related to purchase returns involves the return of shrimp purchased from suppliers. According to AMASA, when the shrimp was originally purchased from suppliers, the company appropriately increased the value of shrimp inventory in its accounting system. When the shrimp was subsequently returned, AMASA decreased the value of its shrimp inventory. AMASA asserts that when the shrimp was repurchased, the value of shrimp inventory was again increased and the offsetting credit was accounted for only when determining COS. AMASA argues that in calculating its reported shrimp costs, AMASA considered only the original purchase of the merchandise (i.e., the original increase to finished goods inventory) and excluded the re-purchase increase to shrimp inventory. To calculate the total COM for the POR in its accounting system, AMASA subtracted the value of the beginning finished goods inventory from its COS and then added the value of the ending finished goods inventory. AMASA contends that because the finished goods inventory value includes both the value of the original purchase and the value of the repurchase, it is necessary to eliminate the repurchases in order to avoid double-counting.

AMASA asserts that the reconciling difference related to the return of shrimp from a customer is similar to the return of shrimp purchases. Like the return of shrimp purchases, AMASA argues that because the offsetting credit for the resale of the shrimp is accounted for only when determining COS, it is necessary to eliminate the double-counting of the returned shrimp in COM.

The petitioner argues that the Department should exclude AMASA's adjustment related to the returns of purchased shrimp because the cost of the shrimp was not included in AMASA's

calculation of its COM. The petitioner alleges that exclusion of these returns from the COM would effectively double-count the return because the originating purchase was not reported in the COM. Therefore, the petitioner concludes that the Department should disallow this adjustment and increase AMASA's reported per-unit COM by this amount. The petitioner also asserts that the Department should increase AMASA's reported costs for its claimed adjustment related to the return of shrimp sold. The petitioner alleges that because AMASA did not increase the COS corresponding to the sale of this merchandise, an adjustment to shrimp inventory is not warranted.

AMASA contends that the petitioner is incorrect in concluding that the reconciling adjustment for certain returned purchases of shrimp results in the double-counting of the return. AMASA argues that because the returns are included in the ending period finished goods inventory, the total COM includes the cost of the original shrimp purchases recorded in the COS as well as in the finished goods inventory. Therefore, according to AMASA, the adjustment in question is necessary to reconcile the COS to COM and to the reported costs and, as such, the petitioner's proposed increase to AMASA's reported costs is not warranted. Likewise, AMASA argues that the petitioner is incorrect in its conclusion regarding the return of shrimp sold. AMASA alleges that similar to the return of purchased shrimp, the return of the shrimp sold resulted in an increase to finished goods inventory and COS. As a result, to avoid double-counting, AMASA asserts that it appropriately identified the return as necessary to reconcile COS to COM and the reported costs, and that no adjustment is warranted.

Department's Position:

We agree with AMASA that the Department's past practice has been to exclude recovered PIS/COFINS taxes from a Brazilian respondent's COM. See Silicon Metal from Brazil. Therefore, for purposes of these final results, we have accepted AMASA's reconciling difference related to PIS/COFINS taxes. However, for the reasons explained below, we have not accepted the reconciling differences related to the returns of shrimp purchases and the return of shrimp from customers.

To calculate COM, beginning inventory is deducted from the COS and ending inventory is added to COS. In an accounting system such as AMASA's, shrimp inventories are increased when shrimp is purchased. When the shrimp is sold, the shrimp is transferred out of inventory and charged to COS. In the instant case, AMASA has stated on the record that when the shrimp was purchased, finished goods inventory was increased. AMASA also confirmed that when the shrimp was returned, finished goods inventory was decreased. As a result of these transactions, finished goods inventory did not include this shrimp because the transactions cancelled each other out. AMASA has stated that when the shrimp was repurchased, finished goods inventory was increased for the shrimp in question. In its calculation of its reported POR COM, AMASA included the value of finished goods inventory (i.e. COS less beginning inventory plus ending inventory). As a result, the value of the shrimp in question was included in the calculation of COM only once, not twice as AMASA has alleged. AMASA argues that because the offsetting credit for the repurchase of shrimp was accounted for only when determining the COS, an adjustment is necessary to avoid double-counting of the shrimp purchase in question. However, we note that AMASA has stated, as verified by the Department, that the return of the original

purchase was credited to finished goods inventory. As such, the credit for the return of the purchase offset the original purchase of shrimp, and the finished goods inventory balance used to calculate AMASA's COM only included the value of the shrimp repurchased. Therefore, for purposes of these final results, the Department has not accepted AMASA's reconciliation difference between its accounting system and the reported costs related to the returns of purchased shrimp. As such, we have increased AMASA's reported COM by the value of the returned shrimp so that the reported costs reflect AMASA's costs in its accounting system.

AMASA's arguments related to the reconciling difference resulting from the return of shrimp sold are similar to those AMASA presented for the returns of purchased shrimp. AMASA increased the COS and decreased finished goods inventory when the invoice was originally issued. When the related credit invoice was issued, finished goods inventory was increased and the COS was decreased. These transactions occurred within the POR. When the second invoice was issued for the resale subsequent to the POR, AMASA reduced the finished goods inventory and increased COS. In its reconciliation of the total COM in its accounting system to the total COM reported, AMASA reduced the total COM from the accounting system by the value of the transaction because the company considered finished goods to be overstated (*i.e.*, the goods were not physically returned and were ultimately sold). However, because AMASA considers the shrimp in question to be sold, rather than remaining in inventory, AMASA's COS should include the costs related to the sale. As noted in the Department's Cost Verification Report at 3, the resale of the shrimp in question occurred subsequent to the POR. Therefore, the accounting entry that would decrease finished goods inventory and increase COS did not affect the finished goods inventory or COS accounts during the POR. If AMASA considers the shrimp in question to be sold during the POR, then in accordance with AMASA's normal accounting methodology, a decrease in finished goods inventory must be accompanied by an increase in COS. As noted in the Cost Verification Report at 3, the cost of this sale is not included in the COS used to calculate the POR COM. Therefore, for purposes of these final results, we have increased AMASA's total reported COM to include the cost of this sale (*i.e.*, the value of the reconciling difference).

Comment 8: Adjustments to AMASA's General and Administrative (G&A) Expense Ratio

For purposes of the preliminary results, the Department adjusted the numerator of AMASA's G&A expense ratio (*i.e.*, G&A expenses) to include other operating expenses reflected on AMASA's financial statements. AMASA argues that because the company demonstrated that the other operating expenses relate to a customer's complaint on a sale, these expenses were properly excluded by AMASA in calculating its G&A expense ratio.

AMASA also asserts that for purposes of the final results, the Department should revise AMASA's calculation of its G&A expense ratio by adding its reported packaging costs to the denominator of the ratio (*i.e.*, COS). AMASA contends that in responding to the Department's request to exclude packing costs from the denominator, the company inadvertently excluded packing and packaging costs rather than just packing costs. Because the G&A expense ratio is applied to the total COM which includes packaging costs, AMASA asserts that it is appropriate to include packaging costs in the denominator of the G&A ratio.

The petitioner argues that the Department should revise AMASA's G&A expense ratio to exclude

processing fee revenues collected by AMASA in FY 2006 from the denominator of the ratio. Because AMASA reduced its reported costs for these revenues, the petitioner alleges that the G&A expense ratio, which is applied to the reported costs, should also exclude these revenues.

AMASA objects to the petitioner's arguments, asserting that if the Department rejects the processing fee revenues offset as a minor correction to the reported costs, then the exclusion of these revenues from the denominator of the G&A ratio would incorrectly result in the application of a G&A ratio that includes these revenues applied to costs that do not include these revenues.

Department's Position:

We agree with AMASA in regard to other operating expenses and packaging expenses. Record evidence confirms that the other expenses at issue are more appropriately considered selling expenses rather than G&A expenses. In addition, the reported COMs include product-specific packaging costs. As such, we have revised the calculation of AMASA's G&A expense ratio to exclude other operating expenses from the numerator of the ratio and have included packaging expenses in the denominator of the ratio.

We also agree with the petitioner with respect to processing fee revenues, and have revised AMASA's G&A expense ratio to exclude the processing fee revenues collected by AMASA in FY 2006 from the denominator of that ratio. As noted in the Department's Cost Verification Report at page 4, AMASA reduced its per-unit costs to account for processing fee revenues received for the processing of shrimp that AMASA subsequently purchased. As such, AMASA also reduced its POR COM for these processing revenues in its overall reconciliation. However, AMASA did not likewise reduce the COS used in determining AMASA's G&A expense rate. Because we are applying the G&A ratio to the reported per-unit costs, we have deducted these revenues from the denominator of the G&A expense ratio so that the G&A expense ratio is on the same basis as the reported per-unit costs.

Comment 9: Financial Expense Ratio

AMASA states that the company did not consider its parent company's foreign exchange gains and losses in the calculation of its reported financial expense ratio. However, for purposes of the final results, AMASA asserts that the Department should, consistent with its practice, include the offset for the verified net foreign exchange gains in the numerator of its financial expense ratio. See e.g., Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045 (March 7, 2003) (Mushrooms from India). AMASA also contends that the Department should allow the offset to its financial expenses for short-term interest income. AMASA notes that it was not able to provide copies of original documentation from its parent company that showed that the income in question was related to short-term interest-bearing assets. However, AMASA submits that absent any evidence stating otherwise, the email documentation from the parent company's accounting chief indicating the share of interest income attributable to such assets is adequate documentation to support such an adjustment.

The petitioner did not comment on this issue.

Department's Position:

We agree with AMASA that the foreign exchange gains and losses of its parent company should be included in the calculation of AMASA's financial expense ratio. Consistent with the Department's practice, we have recalculated AMASA's financial expense ratio accordingly for the final results. See e.g., Mushrooms from India.

In regard to AMASA's claimed short-term interest income offset, we have, for purposes of these final results, allowed an offset for only the income that we could identify as being related to short-term interest-bearing assets. In calculating COP and CV, it is the Department's practice to allow a respondent to offset (i.e., reduce) financial expenses with short-term interest income earned from its working capital accounts. See e.g., Antifriction Bearings (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 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). Further, we note that the burden of proof to substantiate and document this adjustment is on the respondent making a claim for the offset. See e.g., Timken Company v. United States, 673 F. Supp. 495, 513 (CIT 1987) (Timken); and Grey Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review, 60 FR 43761, 43767 (August 23, 1995).

In this review, the Department requested that AMASA provide documentation supporting the interest income offset the company included in its calculation of its reported financial expense ratio. In response, AMASA provided a list of its parent company's interest income accounts and the related values of those accounts. These accounts included interest on deposits, interest on securities, interest earned on loans, and other receipts of interest. Further, AMASA provided a copy of an email from the parent company that stated that the parent company was not able to identify interest income as short-term or long-term in nature. As an alternative, the email disclosed an estimate of the long-term interest income made by an official of the parent company. However, the email noted that the estimate was "not exact data."

AMASA argues that the Department should accept the parent company's estimate of its short-term interest income as adequate evidence because there is no record evidence stating otherwise. However, as noted in Timken, the burden of proof to substantiate and document the interest income offset adjustment is on the respondent making such a claim. As such, it is AMASA's responsibility to provide documentation proving the positive (i.e., that the interest income in question related to short-term interest-bearing assets) rather than assuming the positive because there is no conflicting record evidence. We find that the estimate from the parent company official is not adequate documentation because the comment made by the parent company official calls into question the reliability of the estimate.

For purposes of these final results, we have relied on the parent company's financial statements and the list of interest income accounts provided by AMASA to determine AMASA's short-term interest income offset. Based on our analysis, we have determined that an interest income offset

for interest earned on deposits is warranted. However, we have disallowed the offset for interest income on securities, interest income earned on loans, and other interest income based on our examination of the assets shown on the consolidated financial statements of AMASA's parent company. These financial statements present cash and cash equivalents as well as notes and trade accounts receivables as current (short-term) assets. Long-term interest-bearing assets include investments in securities and investments in affiliates. As such, we find it reasonable to conclude that the interest earned on deposits relates to cash and cash equivalents, the only assets listed on the balance sheet that are normally placed in deposits. Therefore, we have allowed the offset for the interest earned on deposits due to the short-term nature of the related assets. We also find it reasonable to conclude that the interest income from securities and interest income earned on loans relate to the investment in securities and investments in affiliates noted as long-term interest-bearing assets on the consolidated financial statements. Because the security and loan interest income appear to be related to long-term assets rather than short-term assets, we have excluded this interest income from AMASA's claimed interest income offset. Finally, we find it reasonable to conclude that the other interest income claimed by AMASA relates to trade notes and receivables because there do not appear to be any other interest-bearing assets listed in the financial statements from which this income could have been earned. We have disallowed this interest income as an offset to AMASA's financial expenses because the Department typically treats this interest income as a sales adjustment. See Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 2909 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 9, where the Department stated that we treat interest income earned on accounts receivable as an adjustment to the selling prices rather than COP.

Recommendation:

Based on our analysis of the comments 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)