

DEPARTMENT OF COMMERCE**International Trade Administration****Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation**

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

SUMMARY: The Department of Commerce ("the Department") is requesting comments regarding the calculation of the weighted average dumping margin in an antidumping duty investigation. Currently, the Department usually makes comparisons between average export prices and average normal values and does not offset any dumping that is found with the results of comparisons for which the average export price exceeds the average normal value. A recent WTO dispute settlement report has found that the United States application of this methodology was inconsistent with our WTO obligations. In response to this report, the Department will abandon the use of average-to-average comparisons without such offsets. The Department seeks comment on the alternative approach(s) that may be appropriate in future investigations.

EFFECTIVE DATE: March 6, 2006.

DATES: To be assured of consideration, written comments must be received no later than 30 days after the date of publication in the **Federal Register**. Rebuttal comments must be received no later than 45 days after the publication date.

ADDRESS: Submit comments to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Weighted Average Dumping Margin.

FOR FURTHER INFORMATION CONTACT: Michael Rill at (202) 482-3058, Mark Barnett at (202) 482-2866, or William Kovatch at (202) 482-5052.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to section 777A(d)(1)(A) of the Tariff Act of 1930, in an investigation, the Department may determine whether the subject merchandise is being sold at less than fair value either by comparing weighted average normal values to weighted average export prices of comparable merchandise (the average-to-average comparison methodology), or by

comparing normal values of individual transactions to the export prices¹ of individual transactions for comparable merchandise (the transaction-to-transaction comparison methodology). The Department's regulations state that the Department will normally use the average-to-average comparison methodology in an investigation. 19 C.F.R. 351.414(c)(1).

In applying the average-to-average methodology during an investigation, the Department usually divides the export transactions into groups by model and level of trade ("averaging groups"), and compares an average of the export price of transactions within one group to an average normal value for the same or similar model of the foreign like product at the same or most similar level of trade. When aggregating the results of the comparisons of averaging groups in order to determine the weighted average dumping margin, the Department has not allowed the results of averaging groups for which export price exceeds normal value to offset the results of averaging groups for which export price is less than normal value.²

The European Communities ("EC") challenged the denial of offsets, both "as such," and "as applied" in certain administrative determinations, as being inconsistent with the World Trade Organization ("WTO") Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement") before a dispute settlement panel. The panel circulated its report on October 31, 2005, finding, with respect to the specific antidumping duty investigations subject to the EC's challenge, that the Department's denial of offsets when using the average-to-average comparison methodology in an investigation is inconsistent with Article 2.4.2 of the Antidumping Agreement.³ The United States has not appealed this aspect of the panel's report.

¹ The Department may also use constructed export prices, if appropriate. Because the use of export prices or constructed export prices is not relevant to the substance of this notice, the Department refers only to export prices hereafter.

² Section 771(35)(A) of the Act defines the dumping margin as the amount by which normal value "exceeds" export or constructed export price. Section 771(35)(B) defines the weighted average dumping margin as the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export or constructed export price of that exporter or producer.

³ Panel Report, *United States - Laws, Regulations and Methodology for Calculating Dumping Margins* ("US - Zeroing"), WT/DS294/R, para. 7.32, circulated October 31, 2005 ("Zeroing").

Proposal for Calculating the Weighted Average Dumping Margin in an Antidumping Investigation and Request for Comments

Pursuant to section 123(g)(1) of the Uruguay Round Agreements Act ("the URAA"), "[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements," certain requirements must be met before "that regulation or practice" may be "amended, rescinded, or otherwise modified . . ." Section 123(g)(1)(C) of the URAA requires that the Department provide opportunity for public comment by publishing "the proposed modifications and the explanation of the modification" in the **Federal Register**.

The WTO panel in *US - Zeroing* has found the denial of offsets in certain antidumping duty investigations, when using the average-to-average comparison methodology, to be inconsistent with Article 2.4.2 of the Antidumping Agreement.⁴ Accordingly, the Department proposes that it will no longer make average-to-average comparisons without providing offsets for non-dumped comparisons.

The Department is soliciting comments pertaining to this proposal and appropriate methodologies to be applied in future antidumping duty investigations in light of the panel's report in *US - Zeroing*.

Timetable

After considering all comments received, the Department intends to publish in the **Federal Register** a final notice regarding the calculation of the weighted average dumping margin using the average-to-average comparison methodology in an investigation. See section 123(g)(1)(F) of the URAA (19 U.S.C. 3533(g)(1)(F)). Any changes in methodology will be applied in all investigations initiated on the basis of petitions received on or after the first day of the month following the date of publication of the Department's final notice of the new weighted average dumping margin calculation methodology.

Comments - Format

Parties wishing to comment should submit a signed original and six copies of each set of comments, including reasons for any recommendations, along with a cover letter identifying the commenter's name and address. To help simplify the processing and distribution

⁴ *US - Zeroing*, para. 7.32.

of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on CD-ROM in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect.

Comments received on CD-ROM will be made available to the public on the Web at the following address: <http://ia.ita.doc.gov/>. In addition, upon request, the Department will make comments filed in electronic form available to the public on CD-ROMs (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482-0866 or via e-mail at andrew.beller@mail.doc.gov.

Dated: February 28, 2006.

David M. Spooner,
Assistant Secretary for Import
Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022806D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held March 20 – 23, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, AL 36602.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, March 22, 2006

1:30 p.m. – Convene.

1:45 p.m. – 2:30 p.m. – Hear a Monitoring Report on the Madison/Swanson Marine Reserves.

2:30 p.m. – 4:30 p.m. – Receive public testimony on (a) Final Reef Fish Amendment 26 [Red Snapper Individual Fishing Quota (IFQ)]; and (b) Exempted fishing permits (if any).

4:30 p.m. – 5:30 p.m. – Open public comment period regarding any fishery issue or concern.

6:30 p.m. – 8:30 p.m. – NOAA Fisheries Service will hold a public workshop to provide a general demonstration of the on-line capabilities to implement the Red Snapper Individual Fishing Quota (IFQ) System. This presentation is solely for the purpose of soliciting input from the Council and potential users of the system in an effort to make the tool user friendly, concise and responsive to Reef Fish Amendment 26.

Thursday, March 23, 2006

8:30 a.m. – 9 a.m. – Receive the Scientific and Statistical Committee (SSC) Selection Committee Report on appointment of shrimp effort working group (CLOSED SESSION).

9 a.m. – 11:15 a.m. – Receive the joint Reef Fish/Shrimp Management Committees Report.

11:15 a.m. – 12 noon – Receive the Administrative Policy Committee Report.

1:30 p.m. – 1:45 p.m. – Report the Council action on the SSC Selection Committee Report.

1:45 p.m. – 3:45 p.m. – Receive the Reef Fish Management Committee Report.

3:45 p.m. – 4 p.m. – Receive the Council Chairs Budget Meeting Report.

4 p.m. – 5 p.m. – Other Business (Includes miscellaneous reports filed under Tabs O, P, Q, and R of briefing book).

Committee

Monday, March 20, 2006

1 p.m. – 3 p.m. – The Standing SSC will meet to discuss and take action on attendance/operations issues. The Standing SSC will then review and take action on the Socioeconomic Panel (SEP) Report on grouper allocation issues.

3 p.m. – 4:30 p.m. – The Administrative Policy Committee will meet jointly with the Standing SSC to review the Statement of Organization Practices and Procedures (SOPPs) provisions on SSC operations.

4:30 p.m. – 5:30 p.m. – The joint Reef Fish/Shrimp Management Committees will meet with the Standing SSC to review an options paper for Joint Draft Amendment Reef Fish 27/Shrimp 14 to consider changes to regulations for the directed red snapper fishery and shrimp trawl fishery for reducing bycatch in the directed red snapper fishery and shrimp fishery; and effort limitation alternatives for the shrimp fishery. The Committees and the SSC will also review a scoping document for a Draft Shrimp Amendment 15 that considers limits on trawling gear, restrictions on the transfer of vessel permits, bycatch quotas, and possible area closures. Public comments from the scoping meetings will be reviewed for both proposed amendments. The SSC will provide their review, and the Committees will make recommendations for Council.

Tuesday, March 21, 2006

8:30 a.m. – 12 noon – The joint Reef Fish/Shrimp Management Committees will reconvene with the Standing SSC to continue their work.

1:30 p.m. – 5:30 p.m. – The joint Reef Fish/Shrimp Management Committees will convene without the Standing SSC to continue their discussions.

Wednesday, March 22, 2006

8:30 a.m. – 12 p.m. – After an update on the red snapper IFQ referendum, the Reef Fish Management Committee will take final action on Reef Fish Amendment 26 for a Red Snapper IFQ program. They will then review public comments/letters and develop committee recommendations. The Committee will then discuss issues pertaining to the Grouper IFQ Amendment and review recommendations of the Ad Hoc Grouper IFQ Advisory Panel and make recommendations to Council. Finally, the Committee will review the SEP report and the SSC Recommendations on Grouper Allocation Amendment issues and make recommendations to Council.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's