

DATE: July 13, 2010

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

FROM: Edward C. Yang  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Administrative Review on Certain Frozen Warmwater Shrimp  
from India – February 1, 2008, through January 31, 2009

### Summary

We have received comments from interested parties in the 2008-2009 administrative review of the antidumping duty order covering certain frozen warmwater shrimp (shrimp) from India. After analyzing these comments, we have made no changes in the margin calculations from the preliminary 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 parties:

### General Issues

1. Offsetting of Negative Margins
2. Using U.S. Customs and Border Protection (CBP) Data for Respondent Selection

### Company-Specific Issues

3. Revocation of Devi Sea Foods Ltd. (Devi)
4. Calculation of the U.S. Indirect Selling Expense Ratio for Devi Sea Foods Inc. (Devi USA)
5. Treatment of a Sales Write-Off for the Liberty Group
6. Calculation of Devi’s General and Administrative (G&A) Expense Ratio
7. Calculation of Devi’s Financial Expense Ratio

## Background

On March 15, 2010, the Department of Commerce (the Department) published the preliminary results of the 2008-2009 administrative review of the antidumping duty order on shrimp from India. See Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Notice of Intent to Rescind Review in Part, and Notice of Intent to Revoke Order in Part, 75 FR 12175 (Mar. 15, 2010) (Preliminary Results). The period of review (POR) is February 1, 2008, through January 31, 2009.

We invited parties to comment on the Preliminary Results. We received case briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association and the Louisiana Shrimp Association (collectively, “the processors”), and the Liberty Group<sup>1</sup> (a respondent). We received rebuttal briefs from the petitioner, the processors, and another respondent, Devi. After analyzing the comments received, we have not changed the results from those presented in the Preliminary Results.

## Margin Calculations

For the final results we have calculated constructed export price (CEP), export price (EP) and normal value (NV) using the same methodology stated in the Preliminary Results. See Preliminary Results, 75 FR at 12180.

## Discussion of the Issues

### General Issues

#### Comment 1: *Offsetting of Negative Margins*

In the Preliminary Results, we followed our standard methodology of not using non-dumped comparisons to offset or reduce the dumping found on other comparisons (commonly known as “zeroing”).

The Liberty Group argues that section 771(35)(A) of the Tariff Act of 1930, as amended (the Act) defines the dumping margin with specific reference to the subject merchandise. Further, the Liberty Group claims that the definition of subject merchandise under section 771(25) of the Act makes it clear that it is the merchandise in totality which is alleged to be dumped, rather than individual imports, transactions, or models of such merchandise. The Liberty Group contrasts the language in the sections of the Act referenced above with that in sections 777A(d)(1)(A)(i) and (ii) of the Act, which mandate the comparison of weighted-average NVs to the weighted-average EPs of “comparable merchandise.” Moreover, the Liberty Group states that section 777A(d)(2) of the Act, which relates to administrative reviews, refers to the EPs (or CEPs) of “individual transactions,” rather than subject merchandise. According to the Liberty Group, this

---

<sup>1</sup> The Liberty Group consists of: Devi Marine Food Exports Private Limited, Kader Exports Private Limited, Kader Investment and Trading Company Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Ltd., Premier Marine Products, and Universal Cold Storage Private Limited.

means that the Act distinguishes between models created for comparison purposes and the individual sales transactions, versus the subject merchandise itself. Therefore, the Liberty Group argues that the definition of the dumping margin in section 771(35)(A) of the Act can only mean that the dumping margin is the difference between NV and EP calculated in relation to the subject merchandise, and not for individual transactions, models, or imports. As a result, the Liberty Group claims that the dumping margin for the subject merchandise can only be determined when all NVs and EPs are aggregated and the overall difference is ascertained.

Finally, the Liberty Group asserts that section 771(35) of the Act requires the Department to calculate separate dumping margins for EP and CEP. The Liberty Group states that, because of these separate margins, section 771(35)(B) of the Act requires that the Department aggregate these margins when calculating the weighted-average dumping margin. Similarly, the Liberty Group states that the denominator of the weighted-average dumping margin is the aggregate of the EPs and CEPs. According to the Liberty Group, the plain language of the Act, requiring that the Department aggregate the dumping margins calculated on individual sales, does not instruct the Department to zero out negative margins from its calculations. Thus, the Liberty Group argues that the Department should refrain from “zeroing” in its calculations for the final results. The Liberty Group maintains that such an approach would be consistent with both the Department’s current methodology in investigations, where it does not practice zeroing, and the provisions of section 731 of the Act, which is the foundation of the antidumping duty law.

The petitioner and the processors maintain that the Department should continue its practice of “zeroing” for the final results of this proceeding. The petitioner and the processors assert that the Court of Appeals for the Federal Circuit (CAFC) has held that the Department’s practice of “zeroing” in administrative reviews is a reasonable interpretation of the Act. As support for this assertion, they cite Koyo Seiko Co. v. United States, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (Timken); and Corus Staal BV v. Dep’t of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (2006) (Corus I). According to the petitioner and the processors, the Department has modified its calculation of the weighted-average dumping margin only when making average-to-average comparisons in investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77724 (Dec. 27, 2006) (Zeroing Notice). Further, the petitioner and the processors assert that the Department has repeatedly declined to modify its “zeroing” methodology in any proceeding other than an investigation, including administrative reviews,<sup>2</sup> and it has repeatedly

---

<sup>2</sup> In support of this assertion the petitioner cites the following: Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 73 FR 15132 (Mar. 21, 2008), and accompanying Issues and Decision Memorandum at Comment 2; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (Mar. 17, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 13532 (Mar. 13, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 73 FR 7710 (Feb. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 2; Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (Jan. 2, 2008), and accompanying Issues and Decision Memorandum at Comment 18; and Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final

rejected arguments similar to those of the Liberty Group in numerous recent administrative reviews.<sup>3</sup> The petitioner and the processors additionally maintain that the CAFC recently affirmed the Department's use of "zeroing" in administrative reviews, citing Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (Corus II); and NSK Ltd. v. United States, 510 F.3d 1375, 1380 (Fed. Cir. 2007) (NSK). Finally, citing Alexander Murray v. Schooner Charming Betsey, 6 U.S. 64, 118 (1804), the processors note that Congress has enacted a process to adopt WTO decisions, and there has not yet been any decision at the Congressional level to adopt the WTO's rulings on zeroing in administrative reviews. Consequently, the petitioner and the processors argue that the Department should continue to employ its "zeroing" methodology in the calculations for the final results.

#### Department's Position:

We have not changed our calculation of the weighted-average dumping margin, as suggested by the Liberty Group, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the EP or CEP of the subject merchandise" (emphasis added). 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 EP or CEP. We disagree with the Liberty Group that the Department's zeroing practice is an inappropriate interpretation of the Act. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act. See, e.g., Timken, 354 F.3d at 1342; and Corus I, 395 F.3d at 1347-49.

Section 771(35)(B) of the Act defines 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 prices and constructed export prices of such exporter or producer." The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section

---

Results of Antidumping Duty Administrative Review, 72 FR 71357 (Dec. 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>3</sup> In support of this assertion the petitioner cites the following: Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Duty Administrative Review, 74 FR 14519 (Mar. 31, 2009), and accompanying Issues and Decision Memorandum at Comment 10; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (Mar. 16, 2009), and accompanying Issues and Decision Memorandum at Comment 2; Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (Feb. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (Feb. 9, 2009), and accompanying Issues and Decision Memorandum at Comment 2; and Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (Dec. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

For the foregoing reasons, we have not changed the methodology employed in calculating the weighted-average dumping margins for Devi, Falcon, and the Liberty Group for the final results.

Comment 2: Using CBP Data for Respondent Selection

In our initiation notice, we stated that we intended to select respondents for individual review in this proceeding based upon CBP entry data. See Certain Frozen Warmwater Shrimp from Brazil, India and Thailand: Notice of Initiation of Administrative Reviews, 74 FR 15699, 15708 (Apr. 7, 2009) (Initiation Notice). After releasing the relevant CBP entry data to interested parties and analyzing their comments, we selected the three largest producers/exporters according to CBP entry data as the mandatory respondents in this administrative review. For further discussion, see the May 13, 2009, memorandum from Holly Phelps, Analyst, to James Maeder, Office Director, entitled "Selection of Respondents for Individual Review" (Respondent Selection Memo).

The petitioner argues that the Department's reliance on CBP "type 3" entry data (i.e., entries subject to antidumping or countervailing duties) for purposes of selecting mandatory respondents was unreasonable. Specifically, the petitioner contends that Department's decision to use the CBP data is premised on an assumption that the merchandise subject to the antidumping duty order which entered the United States during the POR is reasonably captured in data derived from CBP Form 7501 (CF-7501) entry summary forms. According to the petitioner, this assumption ignores the Department's experience in the 2007-2008 administrative review of certain frozen warmwater shrimp from the People's Republic of China. See Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (Sept. 10, 2009) (Shrimp from the PRC), and accompanying Issues and Decision Memorandum at Comment 7. In Shrimp from the PRC, the Department found upon verification that certain importers failed properly to identify subject merchandise in their CF-7501 forms submitted with respect to those entries. Thus, the petitioner claims that the Department established in Shrimp from the PRC that the entries of Chinese subject merchandise were not co-extensive with imports that certain U.S. importers declared to be "type 3" entries on the CF-7501 forms. The petitioner contends that the Department's experience in Shrimp from the PRC demonstrates that: 1) exporters that sell to unaffiliated U.S. importers lack control over how those importers complete their CBP forms; and 2) the Department has not addressed this fact when determining that CBP

data are reliable. According to the petitioner, the U.S. Courts take into account “whatever in the record fairly detracts from its weight” when reviewing the Department’s determinations to ensure that they are supported by substantial evidence.<sup>4</sup> Therefore, the petitioner contends that the Department erred in this administrative review when it did not find that the potential for misclassification of entries similar to that experienced in Shrimp from the PRC undermined the Department’s conclusion that CBP “type 3” import data are reliable.

The petitioner also notes that in the Respondent Selection Memo the Department only addressed the specific problems with the CBP data identified by the petitioner in its respondent selection comments, and concluded that these errors were minor. According to the petitioner, this approach has the effect of creating an insurmountable obstacle to interested parties’ impeaching CBP data, a task made even more difficult by the fact that the Department did not: 1) collect company-specific data via quantity and value (Q&V) questionnaires (which, the petitioner claims, may contradict CBP data); and 2) release CBP “type 1” data (i.e., free and dutiable entries for consumption) (which the petitioner contends would permit the domestic industry to determine whether “type 1” entries were misclassified in this review in the same way as in Shrimp from the PRC). Moreover, the petitioner claims it is unreasonable for the Department to give the domestic interested parties only five days to both review and develop evidence to impeach the reliability of CBP “type 3” data, and thus the Department’s schedule for comment appears to be designed to preclude meaningful review.<sup>5</sup>

Moreover, the petitioner claims there are policy reasons why the Department should not rely exclusively on CBP “type 3” data for respondent selection. According to the petitioner, the Department is aware that circumvention of certain antidumping duty orders has undermined the efficacy of trade relief for a number of U.S. industries. The petitioner contends that, with respect to the antidumping duty orders on shrimp, the Department lacks the authority to address many of the circumvention schemes employed by U.S. importers to avoid the payment of antidumping duties.<sup>6</sup> In contrast, the petitioner argues that the Department can address the misclassification of subject merchandise as non-subject merchandise on CF-7501 forms. The petitioner alleges that if the Department were to both: 1) obtain and release both CBP “type 1” and “type 3” data; and 2) issue Q&V questionnaires, the Department and interested parties would have the information necessary to identify inconsistencies in reporting and the misclassification of subject merchandise. The petitioner contends that, because the Department has not released CBP “type 1” data or issued Q&V questionnaires in this review, the Department appears to have determined that concerns of administrative practicability outweighed concerns regarding unlawful circumvention of the antidumping order.

---

<sup>4</sup> See Suramerica de Aleaciones Laminadas, C.A. V. United States, 44 F.3d 978, 985 (Fed. Cir. 1994).

<sup>5</sup> According to the petitioner, it is impossible for the domestic interested parties to present evidence that U.S. importers have misclassified CBP “type 1” data because such data are confidential and not available to private parties. Thus, the petitioner claims that the Department’s standard not only precludes the release of CBP “type 1” entry data but also ensures that the Department need not address questions that raise doubts about the reliability of CBP “type 3” entry data.

<sup>6</sup> According to the petitioner, the Department is largely unable to address the transshipment of shrimp from the People’s Republic of China through countries not subject to antidumping duty orders covering shrimp such as Indonesia, Malaysia, and Mexico, where product is falsely labeled as originating in a non-subject country.

According to the petitioner, issues of administrative practicability should not preclude the Department from releasing CBP “type 1” data because such data are as readily available to the Department as CBP “type 3” data. The petitioner argues that, when the Department declined to issue CBP “type 1” data in the third administrative review of the antidumping duty order on shrimp from India,<sup>7</sup> the Department neither: 1) based its conclusion on an actual review of the “type 1” data; nor 2) identified any administrative or regulatory burden that would justify the Department’s refusal. Consequently, according to the petitioner, prior to the issuance of the final results the Department must both issue Q&V questionnaires to all Indian exporters subject to this administrative review and also obtain and release CBP “type 1” data to all parties with administrative protective order (APO) access in this proceeding.

Finally, the petitioner argues that the Department’s exclusive reliance on CBP data to select respondents is unlawful. According to the petitioner, pursuant to section 751(a)(2) of the Act, the Department is obligated to determine the dumping margin for each entry of subject merchandise for those parties for which an administrative review was requested. Further, the petitioner notes that, pursuant to section 777A(c)(2) of the Act, the Department may limit its individual examination to a reasonable number of exporters and producers either by selecting: 1) a statistically valid sample; or 2) companies which account for the largest volume of the subject merchandise from the exporting country. According to the petitioner, the Department’s reliance on CBP “type 3” data for respondent selection purposes does not fulfill either of these requirements because CBP data does not constitute a complete universe of entries of subject merchandise (given that U.S. importers may define (and may misclassify) what constitutes subject merchandise).

Devi disagrees with the petitioner, maintaining that the Department correctly relied on CBP data to determine the largest exporters when selecting mandatory respondents in this review. Devi states that it is now the Department’s practice to use CBP data for respondent-selection purposes except in instances where a reliance on CBP data would yield inaccurate results.<sup>8</sup> Further, Devi asserts that the CBP data reasonably reflects imports of subject merchandise because the data are compiled from actual entries of subject merchandise (based on the harmonized tariff schedule (HTS) numbers included in the scope of the order). Moreover, according to Devi, there is no legal basis for the Department to change its mandatory respondent selection method at this late stage of the administrative review. Finally, Devi states that it would have been selected as a mandatory respondent in this review regardless of the methodology, provided that volume of exports was the determining factor for the Department’s selection. Thus, Devi claims that the petitioner’s insistence on alternative methodologies for respondent selection would have little to no impact on the outcome of this review, and, as a consequence, the Department should reject the petitioner’s respondent selection arguments here as it has done in prior reviews.

---

<sup>7</sup> The petitioner notes that in Certain Frozen Warmwater Shrimp from India; Final Results of Antidumping Duty Administrative Review, 74 FR 33409 (July 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2 (Shrimp from India Final Results), the Department stated that the release of CBP “type 1” data would “not prove beneficial in this case.”

<sup>8</sup> In support of its position, Devi cites Shrimp from the PRC at Comment 8; and Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 58540 (Oct. 7, 2008).

Department's Position:

We continue to find that it was appropriate to base our respondent selection decision on CBP data. Where it is not practicable to examine all known exporters/producers of subject merchandise, section 777A(c)(2)(B) of the Act permits us to examine “exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.” In this review, the Department reasonably determined that it was not practicable to examine all 159 known exporters/producers and therefore limited its selection to the three largest producers/exporters. As outlined above, in determining which three producers/exporters accounted for the largest volume of imports of subject merchandise, we relied on CBP entry data for all “type 3” entries of frozen warmwater shrimp from India entering under the HTS numbers included in the scope of the antidumping duty order on shrimp from India. See the April 8, 2009, memorandum from Holly Phelps, analyst, to the file, entitled, “Release of Customs Entry Data from U.S. Customs and Border Protection.”

As an initial matter, we disagree with the petitioner that the existence of misclassified entries in Shrimp from the PRC, discovered at verification and which the Department addressed in its calculation of importer-specific assessment rates in that case, undermines the reliability of CBP “type 3” import data in the context of respondent selection generally or in this particular case. The facts in Shrimp from the PRC were specific to that case and those companies involved. The petitioner has not presented any evidence on the record demonstrating that any specific inaccuracies exist in the CBP data released in this administrative review. Thus, we find no basis to reject CBP data merely because the petitioner speculates that it might be inaccurate. See, e.g., Al Tech Specialty Steel Corp. v. United States, 28 C.I.T. 1468, 1479 (2004) (Al Tech) and Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (CIT 1999) (Asocolflores) at 472 (where the Court held that “{s}peculation, however, is not support for a finding.”).

We similarly disagree with the petitioner that the Department precluded meaningful comment on the CBP “type 3” data by giving parties only five days to review it. The petitioner did not request additional time in this segment of the proceeding before it submitted its comments on the CBP data released by the Department. We responded to the petitioner’s timely objections in the Respondent Selection Memo, stating:

As to the Ad Hoc Committee’s arguments, we disagree that CBP data should not be used for purposes of respondent selection because they allegedly: 1) do not identify exporters; 2) contain errors and inconsistencies; and 3) do not account for potential affiliations.

The Ad Hoc Committee’s statement that the CBP data released to the interested parties contain manufacturer, but not exporter information is inaccurate. The data reported to CBP in the “manufacturer ID” block on the CBP Form 7501 (the entry summary) are “the invoicing party or parties (manufacturers or other direct suppliers).” See CBP FORM 7501 INSTRUCTIONS available online at [http://www.cbp.gov/linkhandler/cgov/toolbox/forms/7501\\_](http://www.cbp.gov/linkhandler/cgov/toolbox/forms/7501_)



instructions.ctt/7501\_instructions.doc. An invoicing party may be a producer or an exporter. Accordingly, it is reasonable for the Department to consider the “invoicing party” to be the relevant manufacturer or exporter for purposes of respondent selection.

With respect to the Ad Hoc Committee’s argument regarding alleged errors and inconsistencies in the CBP data, we note that the inaccuracies identified in its submission refer almost entirely to minor variations in spelling or punctuation of exporters’ names. We do not find this issue to be of sufficient concern to cause us to solicit Q&V data. While we acknowledge that CBP data may contain minor variations in spelling and punctuation, we have no reason to believe that these variations invalidate the CBP data. For the most part, the Department has been able to readily identify which of these variations refer to the same company. See, e.g., Initiation Notice, 74 FR at 15704. Similarly, we have consolidated all known name variations of the same exporter in Attachment 1.

With respect to the Ad Hoc Committee’s concerns regarding potential affiliations/collapsible entities, we note that this is the fifth segment of this proceeding and that we have developed considerable information during previous segments regarding affiliations of companies under review. Further, we have already indicated in the Initiation Notice, where applicable, absent information to the contrary, we will continue to treat any affiliated companies found to be collapsible in previous segments of the proceeding as a single entity in the current segment. Moreover, we disagree that Q&V data obtained directly from respondents would provide sufficient information to determine whether other affiliated parties should be collapsed. Absent detailed responses addressing the Department’s collapsing criteria, which no party to this review has advocated collecting, the record would not contain information necessary for a collapsing analysis. The Ad Hoc Committee has not raised any other concerns regarding CBP data. Thus, for these reasons, we disagree that Q&V data are preferable to CBP data.

See Respondent Selection Memo at pages 5 and 6. We find that five days is sufficient time for parties to comment on the CBP data, especially in cases like this where no party raised major issues with the data, such as evidence of fraudulent classifications. Moreover, the petitioner did not request more time to review the CBP data in this administrative review; had it done so the Department likely would have granted additional time.

Further, we disagree with the petitioner that the Department’s exclusive reliance on CBP data to select respondents is inconsistent with law. Section 777A(c)(2)(B) of the Act requires the Department to examine “exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.” The Act is silent concerning the data source selected by the Department to determine which exporters and producers account for the “largest volume of subject merchandise.” Accordingly, the Department has discretion to choose the specific method employed for determining which companies are the largest, so long as that method is reasonable. See generally, Chevron U.S.A. v. Natural Res. Def. Council, Inc., 467

U.S. 837 (1984); and Huayin Foreign Trade Corp. v. United States, 322 F.3d 1369, 1374-75 (Fed. Cir. 2003). The Department's current practice is to select respondents using CBP "type 3" data.<sup>9</sup> We continue to find that this method is reasonable because: 1) the data are compiled from actual entries of merchandise subject to the order based on information required by and provided to the U.S. government authority responsible for permitting goods to enter the United States; and 2) there is no specific evidence on the record of this review that the "type 3" CBP data is inaccurate.

Regarding the petitioner's general argument that the use of CBP "type 3" data violates the requirements of section 751(a)(2) of the Act, we similarly find this argument unavailing. Section 777A(c)(2) of the Act is an exception to the general rule expressed in section 751(a) of the Act. The petitioner has not established that any merchandise has been misclassified for purposes of this review. Further, it is unclear how selecting different mandatory respondents would address the issue of any potentially misclassified entries.

Moreover, we disagree with the petitioner's allegation that by obtaining and releasing CBP "type 1" data and issuing Q&V questionnaires the Department would be able to address: 1) an interested party's concerns regarding either potential misclassification of subject merchandise as non-subject merchandise; or 2) potential circumvention of an antidumping duty order. As noted above, the petitioner has provided no evidence that the misclassification of entries, or evasion, has occurred in this administrative review. Thus, we find that the petitioner's contentions are based on speculation, and it is well established that speculation by itself does not provide support for a finding. See, e.g., Al Tech, 28 C.I.T. at 1479, Asocolflores, 40 F. Supp. 2d at 471-472, and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630 (Nov. 6, 2007) (Rebar from Turkey), and accompanying Issues and Decision Memorandum at Comment 1. Accordingly, we continue to find that CBP data are sufficiently reliable to use for purposes of respondent selection.

In any event, we note that even if we were to issue Q&V questionnaires, the Q&V data obtained would cover a slightly different universe of sales than the CBP data because of the lag between shipment and entry into the United States. Thus, contrary to the petitioner's claim, we do not believe that Q&V data would help an interested party "check" the CBP "type 3" data. Similarly, regarding the petitioner's request that the Department release "type 1" entry data, we disagree

---

<sup>9</sup> See, e.g., Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 37409 (July 1, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews, 73 FR 50308 (Aug. 26, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 56795 (Sept. 30, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review, 73 FR 64305 (Oct. 29, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews, 73 FR 70964 (Nov. 24, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 73 FR 79055 (Dec. 24, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 74 FR 5821 (Feb. 2, 2009); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 74 FR 12310 (Mar. 24, 2009); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 74 FR 19042 (Apr. 27, 2009); Initiation of Antidumping and Countervailing Duty Administrative Reviews, 74 FR 25711 (May 29, 2009).

that the release of this data would prove beneficial in this case. The petitioner has put forth no evidence that would indicate these “type 1” entries were entries of subject products misreported to CBP as entries of non-subject merchandise, or that there has otherwise been any misclassification of entries which would cast doubt upon the veracity of the CBP data in this case. Finally, as discussed above, because nothing on the record of this case indicates that the CBP “type 3” data used to select respondents were unreliable, we find no basis to believe that the results of an alternative respondent selection exercise using another data source would yield different results. Therefore, we continue to find that it was appropriate to base our respondent selection decision on CBP data of “type 3” entries.

Comment 3: Revocation of Devi

In our Preliminary Results, we made a preliminary finding that it was appropriate to revoke the order on shrimp from India with respect to subject merchandise produced and exported by Devi, pursuant to section 751(d) of the Act and 19 CFR 351.222(b)(2)(i). Specifically, we preliminarily found that Devi had not sold the subject merchandise at less than NV during this POR or the prior two PORs and that Devi had made shipments to the United States in commercial quantities throughout the relevant period. See Preliminary Results, 75 FR at 12179. Moreover, we preliminarily found that Devi met all the procedural requirements for revocation, in accordance with 19 CFR 351.222(e). Id.

The processors argue that, even if the Department were to calculate a de minimis margin for Devi in the final results, it should not revoke the order with respect to Devi because the continued application of the order is necessary to offset dumping by this company, in accordance with 19 CFR 351.222(b)(2)(i)(C). The processors concede that the Department normally presumes that the continued application of an order to a particular respondent is not necessary where the Department has found that the respondent has sold commercial quantities of subject merchandise at not less than fair value (LTFV) for three consecutive reviews. However, the processors contend that this presumption is rebuttable, as noted in Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, Final Rule, 64 FR 51236, 51238 (Sept. 22, 1999) (Amended Regulation Concerning Revocation). Specifically, the processors contend that the Department considers various factors in evaluating whether future dumping is likely to occur, including: production capacity, the exporter’s prices and dumping margins, currency movements, and the ability of the respondent to compete in the U.S. market without dumping. Further, the processors argue that the Department has declined to revoke respondents from other antidumping duty orders where it has found that the respondent was likely to resume dumping. As support for their assertion, the processors cite Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 61 FR 49727 (Sept. 23, 1996) (Brass Sheet and Strip from Germany); and Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part, 63 FR 26147 (May 12, 1998) (Magnesium from Canada Preliminary Results).

The processors contend that there is substantial record evidence which indicates that Devi is likely to resume dumping if the company is revoked from the order. First, the processors state that Devi is a highly export-oriented business with a particular focus on the U.S. market and that

it has a successful U.S. affiliate. Thus, the processors argue that Devi has a strong incentive to increase shipments and supply its affiliated importer at competitive prices. The processors claim these incentives will likely lead to future dumping by Devi. The processors note that the attractiveness of the U.S. market was a factor upon which the Department relied in determining not to revoke the respondents from the respective orders in Brass Sheet and Strip from Germany and Magnesium from Canada Preliminary Results.

Second, the processors argue that the record evidence indicates that Devi faces significant pricing pressures which will serve as an incentive to resume dumping if it is revoked from the order. In support of this assertion, the processors note statements in Devi's annual report discussing the pricing pressures faced by the company and its reduced sales volumes, as well as outlining its shift from black tiger exports to lower-cost white shrimp. Additionally, the processors point to the average sales prices of shrimp sold by the three respondents selected for individual examination in this review, which, the processors argue, show that Devi sold its product at prices higher than its competitors.

Third, the processors claim that Devi is operating below capacity and that if it is revoked from the order it will likely increase its production and resume selling its products to the United States at LTFV. According to the processors, low capacity utilization was a factor relied on by the Department in declining to revoke a respondent from the antidumping duty order in Brass Sheet and Strip from Germany. Finally, the processors point to statements in Devi's annual report which indicate that Devi is pursuing investments and expansion, developing new product lines, and soliciting new customers in the United States, arguing that these statements indicate that Devi will likely resume dumping if it is revoked from the order.

Devi disagrees. As an initial matter Devi notes that it has satisfied all of the requirements for revocation, which Devi argues entitles it to the presumption that it will not resume dumping in the future. Devi also notes that the Amended Regulation Concerning Revocation, 64 FR at 51238, requires positive evidence to rebut the presumption that a respondent will not resume dumping. Devi contends that none of the arguments put forward by the processors is sufficient to overcome this presumption.

Devi addresses each of the points raised by the processors in turn, arguing that none of these rationales justifies maintaining the order with respect to Devi. Regarding its export-oriented business structure, Devi states that the export profile of a company is not meaningful in determining whether a company will likely resume dumping. Moreover, Devi asserts that its continued success and voluminous shipments to the United States at prices above NV show that Devi does not need to engage in dumping to maintain its business in the United States. Similarly, regarding the processors' contention that competitive pressure on Devi's successful U.S. subsidiary will result in Devi's resumption of dumping, Devi counters that, because the subsidiary has been in operation during each of the last three administrative reviews where Devi has not sold at LTFV, its existence does not demonstrate a future likelihood of dumping. With respect to the processors' reliance on Pure Magnesium from Canada Preliminary Results and Brass Sheet and Strip from Germany, Devi asserts that these two cases are not on point because, unlike Devi, the respondents involved in those cases did not have shipments in commercial quantities.

With respect to the processors' claim that Devi will face increased pricing pressures, Devi argues that its pricing practices have been examined extensively by the Department, which has found its prices to be above NV. Further, Devi contends that the processors' comparison of Devi's prices to those of the other respondents ignores the fact that the subject merchandise is a diverse class of products; thus, simple average price comparisons are not sufficient to rebut the presumption in favor of revocation. Moreover, Devi argues that its capacity utilization is not relevant because it secured de minimis margins with three different volumes of shipments and, therefore, any increase or decrease in production is not probative of its likelihood of future dumping. Finally, Devi contends that the processors misinterpreted portions of its annual report with regard to future investments and changes in its product line. Devi argues that the changes in business strategy cited by the processors do not show that Devi will sell its products at unfair prices in the United States. Therefore, Devi asserts that its history of selling subject merchandise in commercial quantities at prices above NV entitle it to revocation.

Department's Position:

The framework for determining whether a producer or exporter is eligible for revocation is set forth in 19 CFR 351.222(b). Specifically, section 19 CFR 351.222(b)(2)(i) states:

In determining whether to revoke an antidumping duty order in part, the Secretary will consider:

- (A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;
- (B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and
- (C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

This framework is further explained in the Department's Amended Regulation Concerning Revocation, 64 FR at 51236, which states that, where there has been an absence of dumping for three years, "the Department intends to presume that an order is not necessary in the absence of additional evidence." This presumption can "be rebutted by positive evidence indicating that dumping may recur if the order were revoked." Id., quoting Proposed Regulation Concerning the Revocation of Antidumping Duty Orders, 64 FR 29818, 29820 (June 3, 1999). Further, "each revocation determination must be based on substantial, positive evidence." See Amended Regulation Concerning Revocation, 64 FR at 51238.

After evaluating the record evidence and the arguments presented by the parties, we have determined that all of the criteria under 19 CFR 351.222 have been met with respect to Devi's revocation request. With regard to the first two criteria of subsection 19 CFR 351.222(b)(2), our final margin calculations show that Devi sold subject merchandise in the United States at not less than NV during the current review period, and that Devi sold shrimp to the United States at not less than NV (*i.e.*, its dumping margins were zero or *de minimis*) in the two previous administrative reviews. See Shrimp From India Final Results, 74 FR at 33411 and Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 40492, 40495 (July 15, 2008). Moreover, Devi shipped subject merchandise to the United States in commercial quantities in each of those years, as required by 19 CFR 351.222(e)(ii). See the March 8, 2010, memorandum from Henry Almond, Analyst, to the file, entitled, "Analysis of Commercial Quantities for Devi Sea Foods Limited's Request for Revocation," for a detailed analysis of Devi's commercial quantities. Further, as required by 19 CFR 351.222(e)(iii), Devi has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV. See Devi's February 27, 2009, letter to the Department.

The processors have not challenged Devi's qualification for revocation under the first two criteria outlined in 19 CFR 351.222(b)(2)(A)-(B). Rather, they have focused their attention on the third criterion, and argue that Devi's heavy reliance on U.S. exports and its possible idle production capacity show that the continued application of the antidumping order is necessary to offset dumping under 19 CFR 351.222(b)(2)(C). As discussed below, we find the processors' speculative claims unpersuasive and that the continued application of the order to Devi is not otherwise necessary to offset dumping. Therefore, we have determined that Devi qualifies for revocation of the antidumping duty order with respect to its exports to the United States of its own shrimp, pursuant to 19 CFR 351.222(b)(2).

In support of their contention that Devi is likely to resume dumping and that the continued application of the order to Devi is necessary, the processors point to the following factors: 1) Devi's U.S. export-oriented business structure, including the success of its U.S. affiliate; 2) the competitive price-driven nature of the U.S. shrimp market; 3) Devi's apparent below-capacity operating level; and 4) Devi's planned growth into new product lines and expanded customer base. In support of these factors, the processors merely point to Devi's operational structure, which is well established on the record, and statements included in the public portions of Devi's 2009 annual report. The processors have proffered no additional positive evidence to indicate that Devi's continued inclusion in the order is otherwise necessary.

With respect to the first factor listed above, we note that Devi's basic operating structure, including the existence of its U.S. affiliate, remains essentially unchanged over the last three administrative reviews – all three of which culminated in Devi's receiving *de minimis* dumping margins based upon sales in commercial quantities. Thus, Devi's operating structure by itself is not positive evidence of the continued necessity of the application of the order, or Devi's future likelihood of dumping, since the same operating structure has not resulted in dumping for three consecutive years. Similarly, the processors have offered no evidence that there has been a fundamental change in the U.S. shrimp market of the sort that would drive Devi to resume dumping. Indeed, over the last three administrative reviews we have found no evidence that

Devi has engaged in dumping despite the competitive nature of the U.S. shrimp industry to which the processors cite. Regarding Devi's purported below-capacity operating level, we note that Devi has nonetheless shipped in commercial quantities to the United States over the relevant period, as required by 19 CFR 351.222(e)(ii). See the Commercial Quantities Memo. Moreover, while we agree that the record shows that Devi's operating capacity declined in this administrative review, we disagree that this fact has significant bearing on whether the respondent in this case is likely to resume dumping in the future. Indeed, we do not find this decline surprising, given Devi's statement in its annual report, the same document cited by the processors, that the company is transitioning its production from black tiger to white shrimp, and its first harvest of the new product will not be ready until after January 2010.<sup>10</sup> Similarly, with respect to the statements included in Devi's annual report which indicate plans for expansion, including into different shrimp product lines, there is nothing in these statements which supports the processors' position that dumping may recur if the antidumping duty order were revoked with regard to Devi.<sup>11</sup> Given the above statements, taken together, the record as a whole does not support the conclusion that Devi is likely to resume dumping in the United States.

Finally, we find the domestic industry's reliance on Pure Magnesium from Canada Preliminary Results and Brass Sheet and Strip from Germany to be misplaced. In Brass Sheet and Strip from Germany, the Department was concerned with the respondent's diminishing import volumes, including PORs with only single sales, and the respondent's future opening of a plant in the United States which would use the subject merchandise as an input. See Brass Sheet and Strip from Germany, 61 FR at 49730. Conversely, record evidence in the present proceeding demonstrates that Devi has shipped in substantial commercial quantities throughout the relevant time frame and there is no record evidence that Devi is undergoing the sort of operational changes present in Brass Sheet and Strip from Germany. With respect to Pure Magnesium from Canada Preliminary Results, we note that the processors, in citing the preliminary results of that review, contend that the Department weighed various factors in determining whether to revoke the respondent from the underlying order. However, in the final results of that review, the Department made clear that it declined to revoke the respondent based solely upon the company's failure to ship in commercial quantities. See Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part, 64 FR 12977, 12979 (Mar. 16, 1999) ("...{the respondent} did not sell the subject merchandise in the United States in commercial quantities in any of the three years...."). Thus,

---

<sup>10</sup> See Devi's October 2, 2009, response at Exhibit 1 ("Director's Report").

<sup>11</sup> In contrast, when one reads Devi's annual report as a whole, it is clear that Devi is not poised to resume dumping its product in the United States once its exports are removed from the order. Specifically, Devi's directors have made numerous statements emphasizing the importance of continued profitability of the company, including:

- "Your company did not want to be part of the unwarranted and imprudent competition and lied low without having to resort to unprofitable propositions;"
- "Your directors have taken utmost care and caution to steer the business on the profit track to the best of their ability and experience successfully mitigating the risks posed by the worsening economic situation in major shrimp importing countries;" and
- "With all these positive factors around the corner your directors are confident that the company's business is poised for excellent growth in terms of volume and profitability during the next three years." See, id.

that case is also clearly distinguishable from the instant case because Devi did ship in commercial quantities throughout the relevant period.

However, as noted above, pursuant to 19 CFR 351.222, Devi has agreed to immediate reinstatement of the order should the Department find in the future that it has resumed making sales at less than NV. Should the domestic industry believe that Devi has resumed dumping and provides adequate evidence to support its belief that dumping is recurring, the Department may initiate a changed circumstances review to determine whether it is appropriate to reinstate the order with respect to Devi's exports of subject merchandise, pursuant to section 751(b)(1) of the Act. See, e.g., Initiation of Antidumping Duty Changed Circumstances Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 73 FR 18766 (Apr. 7, 2008); and Sebacic Acid From the People's Republic of China: Notice of Initiation of Changed Circumstances Review, 69 FR 39906 (July 1, 2004).

In summary, we find that on balance there is insufficient evidence on the record to support the position that the order as to Devi is necessary to offset dumping. Thus, based on the above reasons, we have determined that it is appropriate to revoke the antidumping duty order with respect to sales of shrimp to the United States produced and exported by Devi.

Comment 4: *Calculation of the U.S. Indirect Selling Expense Ratio for Devi USA*

According to the petitioner, Devi failed to include certain salary expenses incurred by its U.S. affiliate, Devi USA, in the company's calculation of indirect selling expenses incurred in the United States. The petitioner bases its argument on the fact that Devi USA's financial statements do not include any labor or salary expenses for its employees in the United States, while the record shows that Devi USA had U.S. employees who were engaged in the day-to-day operations and sales activities of the company.

The petitioner contends that it is the Department's practice to impute a labor charge where a respondent has failed to include reasonable labor expenses, and the Department should do so here. In support of this argument, the petitioner cites to Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (Mar. 11, 2005), and accompanying Issues and Decision Memorandum at Comment 11 (Swine from Canada); and Fresh Kiwifruit from New Zealand; Final Results of Antidumping Administrative Review, 59 FR 48596, 40600-48601 (Sept. 22, 1994) (Kiwifruit from New Zealand). According to the petitioner, the Department should base an imputed labor expense on the amount of a transfer payment made by Devi to Devi USA recorded in Devi's financial statements.

Devi disagrees, and counters that the salaries paid to its U.S. employees are clearly reflected in both its financial statements and its indirect selling expense calculation. Moreover, Devi notes that the transfer payment from Devi to Devi USA is recorded in the companies' respective sales and purchases accounts, because the payment was an adjustment to the transfer price paid by Devi USA to Devi on its purchases of shrimp. Therefore, Devi maintains that this payment is wholly unrelated to the administrative or operational expenses of Devi USA and should not be included in its indirect selling expense calculation.



Department's Position:

We disagree with the petitioner. Contrary to the petitioner's assertions, Devi has reported substantial salary expenses for Devi USA, see, e.g., Devi's October 19, 2009, response (Public Version) at Exhibit 7 (showing \$261,376.62 of salary expenses incurred by Devi USA and included in Devi's indirect selling expense calculation), which are also clearly reflected in Devi's financial statements. See Schedule 7 of Devi USA's 2008-2009 financial statements, contained in the October 19, 2009, response (Public Version) at Exhibit 2 (showing \$251,645 in salary expenses, which are included in Devi USA's profit and loss statement).

We examined Devi USA's indirect selling expense calculation at verification and confirmed that Devi USA reported its salary expenses appropriately. See the January 8, 2010, memorandum from Elizabeth Eastwood and Henry Almond to the file, entitled, "Verification of Devi Seafoods Inc. in the 2008-2009 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India" (Devi USA Verification Report) at pages 12-13 and Verification Exhibit 14 (containing the monthly account details for Devi USA's "Salaries – Selling" account for the POR). Thus, we find no basis to increase Devi's U.S. indirect selling expenses, as requested by the petitioner.

Regarding the transfer payment from Devi to Devi USA identified by the petitioner (i.e., a per-pound payment to Devi USA for sales of Devi's shrimp during the 2007-2008 fiscal year) the petitioner has provided no evidence that this payment relates to the salary expenses incurred by Devi USA. Thus, it would be inappropriate to use this payment as a substitution for, or an addition to, the salary expenses reported by Devi. Finally, given that Devi did, in fact, report the salary expenses in question, we find that the petitioner's reliance on Swine from Canada and Kiwifruit from New Zealand is misplaced because both of those cases involved the Department resorting to calculating a surrogate labor expense where a respondent had failed to report labor expenses.

Comment 5: Treatment of a Sales Write-Off for the Liberty Group

In the Preliminary Results, we adjusted the indirect selling expense ratio for Liberty Frozen Foods Private Limited (LFF), one of the companies in the Liberty Group, to include the value of a sales write-off recognized during the POR but not reported in the company's costs. The Liberty Group argues that the Department erred by including this sales write-off in LFF's indirect selling expense ratio because it relates to sales made outside the POR.

In its February 4, 2010, supplemental response, the Liberty Group informed the Department that the sales write-off related to a quality claim for a sale made by LFF during the 2003-2004 fiscal year. The Liberty Group explains that the customer withheld partial payment on the grounds of certain quality deficiencies, and in order to sustain the business relationship, LFF wrote off the amount in its 2007-2008 financial statements. In its case brief, however, the Liberty Group characterizes the write-off alternately as a "quality claim" and a "bad debt expense." In order to minimize confusion, we note that the "quality claim" and the "bad debt expense" each relate to the same sales write-off described by the Liberty Group.

The Liberty Group explains that, as part of LFF's normal accounting practices, LFF ties each quality claim to the sale to which it relates and reports the discount given to its buyer as a direct sales adjustment. While the Liberty Group acknowledges that the write-off at issue could not be treated as a direct offset to any POR sales because it related to a sale made in prior period, it notes that it recorded the sales write-off amount in a separate account reflected in the financial statements for the period ending March 31, 2008. Nonetheless, the Liberty Group contends that the timing of the accounting entry for the write-off is immaterial, since the write-off relates to sales made long before the POR. Therefore, the Liberty Group argues that, because the write-off can be tied to specific sales made prior to the POR, the Department should have treated it as a direct expense during the 2003-2004 fiscal year. Consequently, the Liberty Group claims that the Department should not include the write-off in the calculation of LFF's indirect selling expenses for the current POR.

The Liberty Group contends that its suggested treatment of LFF's expense is consistent with the Department's treatment of similar bad debts. The Liberty Group claims that the Department's treatment of bad debt varies depending on the relationship between the bad debt expenses and the underlying sale. The Liberty Group also maintains that the Department has classified bad debt expenses as direct selling expenses where the sales write-off can be tied to specific sales of subject merchandise, and indirect selling expenses where the write-off also relates to non-subject merchandise.<sup>12</sup>

Alternatively, the Liberty Group argues that, if the Department continues to include the write-off at all in the calculation of indirect selling expenses, the write-off should be pro-rated to include only the portion that is attributable to the POR. According to the Liberty Group, because the write-off was recorded during the 2007-2008 fiscal year (which ended March 31, 2008), there is only a two month overlap between the fiscal year and the POR. The Liberty Group argues that it would be unfair to attribute the entire write-off to the current POR when only two months of the fiscal year in which the write-off was recorded occurred during the POR. Therefore, the Liberty Group contends that, if the Department continues to include the write-off in its calculation of indirect selling expenses, it should only include one sixth of it.

The petitioner and the processors disagree with the Liberty Group, maintaining that the Department should continue to use the full amount of the bad debt write-off in the calculation of LFF's indirect selling expense ratio. The petitioner asserts that the Liberty Group has misstated the Department's policy with respect to bad debts. While the petitioner agrees that the Department's practice is to determine whether a bad debt can be tied to sales of subject merchandise, it disagrees that the Department only treats bad debts related to non-subject merchandise as indirect selling expenses.<sup>13</sup> Instead, the petitioner asserts that the Department

---

<sup>12</sup> In support of its argument, the Liberty Group cites Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review, 66 FR 18747 (Apr. 11, 2001) (Pipe from Korea), and accompanying Issues and Decision Memorandum at Comment 10; and Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (Mar. 19, 2003) (OCTG from Argentina), and accompanying Issues and Decision Memorandum at Comment 17.

<sup>13</sup> To support its claim with respect to the Department's practice, the petitioner cites Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel

has treated those bad debts that can be tied to sales of subject merchandise as direct selling expenses, and those bad debts that cannot be tied as indirect selling expenses. Moreover, the petitioner notes that the Department has even treated bad debts where the underlying sales preceded the POR as direct expenses using a reasonable allocation methodology. See, e.g., Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408, 4412 (Feb. 6, 1996).

According to the petitioner, the Liberty Group did not address the Department's practice, but simply argued that the write-off should be excluded altogether. While the petitioner acknowledges that the Department has ignored such write-offs if a respondent establishes that they are extraordinary in nature, it notes that the Liberty Group has not demonstrated that the write-off in question was extraordinary. The petitioner argues that where there has been no demonstration that bad debt expenses are extraordinary, the Department has treated these costs as indirect selling expenses. See e.g., Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (Jan. 26, 2005), and accompanying Issues and Decision Memorandum at Comment 6.

Therefore, the petitioner contends that, because the write-off occurred during the POR, the Department should continue its well-established practice of treating the entire amount as part of indirect selling expenses, even when the relevant sales predated the POR. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) (Saccharin from the PRC), and accompanying Issues and Decision Memorandum at Comment 10.

According to the processors, the Liberty Group incorrectly focuses on the date of underlying sale rather than the date on which the bad debt was recognized in the company's financial statements. The processors note that the Department has excluded bad debts related to sales preceding the POR only where the entire amount was also written off prior to the POR. In support of this argument, the processors cite to: Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review (SSSSC from Korea), 66 FR 64950 (Dec. 17, 2001), and accompanying Issues and Decision Memorandum at Comment 2.

The processors maintain that, where the amount of the bad debt expenses was written off during the POR but could not be tied to specific POR sales, the Department has accounted for the expenses in the indirect selling expense ratio. In support of this argument, the processors cite to: Porcelain-on-Steel Cookware From Mexico; Final Results of Antidumping Duty Administrative Review, and accompanying Issues and Decision Memorandum at Comment 4. Therefore, the processors argue that the Department acted appropriately in using the full amount of the write-off

---

Flat Products from the Republic of Korea, 71 FR 7513 (Feb. 13, 2006), and accompanying Issues and Decision Memorandum at Comment 17; Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (Mar. 14, 2005), and accompanying Issues and Decision Memorandum at Comment 21; and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review, 66 FR 18747 (Apr. 11, 2001), and accompanying Issues and Decision Memorandum at Comment 10.

in the calculation of LFF's indirect selling expense ratio during the preliminary results and should continue to use the full amount of the write-off for purposes of the final results.

Department's Position:

We disagree with the Liberty Group that the write-off should be excluded from our calculations. Absent a provision for bad debt expense recorded by the company,<sup>14</sup> it is the Department's practice to include the full amount of a write-off of such debt in our calculations during the period in which the write-off was recorded in the company's accounting system. See, e.g., Saccharin from the PRC at Comment 10.

While we agree with the Liberty Group's assertion that the Department may treat bad debt expenses related solely to subject merchandise as direct selling expenses, the record evidence with respect to LFF's sales write-off is inadequate to do so here. In its October 7, 2009, supplemental response to section D of the questionnaire (i.e., the section relating to cost of production (COP) and constructed value), the Liberty Group identified the write-off as an exclusion from its reported costs that "related to {a} previous period." See the October 7 response at Exhibit 3.2.6. We requested further information from the Liberty Group regarding the write-off in a supplemental questionnaire issued on January 7, 2010. In its response to the January 7 supplemental questionnaire, the Liberty Group described the circumstances surrounding the write-off as follows:

"The quality claim relates to financial year 2003-04. The buyer concerned did not make part of the payment on certain sales in that year on grounds of certain quality deficiencies. The Company did not accept the claim; consequently the entire amount in dispute remained in {LFF's} receivables account. However {,} after discussions and in order to sustain {the} business relationship it was decided toward {the} end of {the} 2007-2008 {fiscal year} that the buyer's claim should be accepted. Therefore the amount was written off from receivables during 2007-08."

See the February 4, 2010, supplemental questionnaire response at page 3.

Because the information on the record does not show the market to which the sales involved in the write-off were made, we are unable to treat this write-off as a direct selling expense. Furthermore, the Department has classified bad debt expenses as indirect selling expenses in the past. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (Oct. 25, 2007), and accompanying Issues and Decision Memorandum at Comment 14; and Notice of Final Determination of Sales at Less

---

<sup>14</sup> In cases where a company records a provision for bad debt, the Department's practice is to recognize the amount of the bad debt expense when the corresponding provision is recorded rather than when the actual write-off occurs. See, e.g., Small Diameter Circular Seamless Carbon and Alloy Steel Pipe from Brazil: Final Results of Antidumping Administrative Review, 70 FR 7243 (Feb. 11, 2005), and accompanying Issues and Decision Memorandum at Comment 6; and Stainless Steel Bar from India: Final Results of the Administrative Review, FR 68 FR 47543 (Aug. 4, 2003), and accompanying Issues and Decision Memorandum at Comment 7.

Than Fair Value: Glycine from India, 73 FR 16640 (Mar. 28, 2008), and accompanying Issues and Decision Memorandum at Comment 2. We also agree with the petitioner that LFF's bad debt expense, which LFF identifies as part of its "normal accounting practices" and similar to "discounts {given} in a few other cases," are not extraordinary expenses which the Department would disregard from its margin calculations.

Finally, we disagree with the Liberty Group that it would be appropriate to allocate only a portion of the write-off to the POR. It is the Department's practice to include in its calculations all indirect expenses that are recognized and recorded during the POR.<sup>15</sup> While the Liberty Group argues that the Department should parse these expenses into POR and non-POR components, such an analysis would introduce a level of complexity that is outside of the Department's practice. It is our practice to examine the dates on which certain expenses are incurred as recorded in a company's books and records. Because the write-off in question was recorded in LFF's audited financial statements (for the year ending March 31, 2008) during the POR, we are continuing to include the entire amount of the write-off in our calculations.

Therefore, consistent with our practice and the preliminary results, we have continued to treat this write-off as an indirect selling expense and have included it in the calculation of LFF's indirect selling expense ratio for purposes of the final results.

Comment 6: Calculation of Devi's G&A Expense Ratio

The petitioner maintains that Devi failed to include in its reported costs any compensation for the company's directors who perform G&A functions. Therefore, the petitioner contends that the Department should add an amount for such compensation to the numerator of the G&A expense ratio. The petitioner states that the Department has recognized certain instances which require the Department to impute costs when a respondent's submitted costs do not reasonably reflect the costs of producing the merchandise due to the limitations in the respondent's records. As support for this assertion, the petitioner cites Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004) (Honey from Argentina), and accompanying Issues and Decision Memorandum at Comment 2.

Devi maintains that compensation for its directors is, in fact, included in its reported costs. Devi points to its own financial statements which show that the directors' remuneration appears as components of three different expenses: manufacturing costs, G&A expenses, and selling expenses. Devi argues that, given the evidence on the record, the petitioner's claim is unsubstantiated.

---

<sup>15</sup> This inclusion of bad debts recorded in the POR is consistent with the Department's exclusion of bad debts recorded outside the POR. See SSSSC from Korea at Comment 2 (where the Department determined that, because a company wrote off its bad debt expenses prior to the POR and did not include such expenses in its audited financial statements for the POR, the expense was not incurred during the POR and therefore should not be included in the agency's margin calculation).

Department's Position:

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 (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

We disagree with the petitioner that Devi failed to report its compensation for the company's directors who perform G&A functions. In this case, Devi's directors' compensation is taken directly from the normal books and records of the company kept in accordance with GAAP in India and has been included in the reported costs. Devi's audited financial statements show the compensation for directors, and the same compensation reconciled to Devi's reported costs (i.e., such costs are components of Devi's cost of manufacturing, selling, and G&A). See tab 1 of the October 29, 2009, response to the Department's first supplemental questionnaire and Exhibit 12 of Devi's July 15, 2009, response to section D of the questionnaire.

Therefore, for the final results, we have continued to rely on Devi's reported costs as adjusted in the preliminary results.

Comment 7: Calculation of Devi's Financial Expense Ratio

The petitioner argues that Devi's financial expense ratio is understated because: 1) two of the claimed offsets to these expenses are inappropriate and 2) it may be out of line with the financial expenses of other companies in India. First, the petitioner contends that the Department should disallow a forward contract currency exchange gain as an offset because it does not appear to be an exchange gain at all (given that it is shown on Devi's financial statements as a component of G&A). Thus, the petitioner claims that the Department should consider it a separate line of business relating to investment activities and exclude it from the calculation. Second, the petitioner states that the Department should disallow sales-related interest income as an offset to gross financial expenses and instead account for it as a sales price adjustment in the margin calculation. Third, the petitioner argues that the Department should test Devi's interest rate against reasonable benchmarks and adjust the rate if it appears understated. As evidence of the interest rates in India, the petitioner cites Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Administrative Review, 69 FR 36060 (June 28, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (Hot-Rolled Steel from India).

Devi asserts that the forward contract currency exchange gain is indeed a foreign exchange gain and is properly reported as an offset to Devi's financial expenses. Devi argues that the nature of the gain was explained in its December 4, 2009, supplemental section D questionnaire response at question 4. Further, Devi states that the Department examined the foreign exchange gain in question at Devi's cost verification. Devi maintains that the gain arose from the cancelations of forward-currency contracts which were made in the ordinary course of Devi's export business. Accordingly, Devi disagrees with the petitioner's argument that the gain arose from a separate business activity.

Moreover, Devi maintains that it properly excluded the sales-related interest from its reported financial expense because it reported this interest as a U.S. direct selling expense. Devi points out that this interest is an expense incurred upon the discounting of its invoices and to have included it in the reported financial expenses and as a selling expense would have double counted the expense. Thus, for the reasons noted above, Devi asserts that it has not understated its financial expense ratio in this administrative review, and the Department should dismiss the petitioner's arguments regarding this issue.

Department's Position:

We agree with Devi that its reported financial expense ratio was not understated. With regard to the forward contract currency exchange gain, we disagree with the petitioner that the presentation of the gain on the financial statement as a G&A expense raises doubt about whether the gain is an exchange gain. Devi explained the transactions underlying the net gain in detail with evidence from its normal books and records which showed that the net gain arose from the cancelation of forward currency-exchange contracts. See Devi's December 28, 2009, second supplemental section D questionnaire response at page 9. The record shows that Devi's forward contract currency exchange gain for the fiscal year was reflected as a current year gain in the company's audited financial statements prepared in accordance with Indian GAAP. See schedule 16 of Devi's financial statement fiscal-year-ending March 31, 2009, contained at tab 1 of the October 29 response. Further, we examined these transactions during the cost verification and confirmed Devi's explanation. See the April 13, 2010, memorandum from Fred Mines to the file entitled, "Verification of the Cost Response of Devi Sea Foods Limited in the Antidumping Administrative review of Certain Frozen Warmwater Shrimp from India." In addition, we find that Devi's treatment of the foreign exchange gains and losses is consistent with our normal practice. See, e.g., Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Administrative Review, 68 FR 11045, 11048 (March 7, 2003); Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) (Silicomanganese from Brazil), and accompanying Issues and Decision Memorandum at Comment 14 (where foreign exchange gains and losses were included as a component of net financial expenses in the calculation of the COP and constructed value).

We disagree with the petitioner's argument that the forward contract currency exchange gain relates to a separate business activity. Devi is exposed to changes in foreign currency when it sells shrimp on credit to foreign countries. This exposure is inherent in the normal course of Devi's export business, and, to manage this exposure to the fluctuations in foreign currency exchange rates, Devi continuously enters into and cancels forward-currency contracts. The cancelation of these contracts results in gains or losses. See Devi's December 28 response at page 10. Generally, companies in the business of producing and selling merchandise are not in the business of speculating with foreign currencies. In order to minimize the risk of holding foreign-denominated monetary assets and liabilities, companies such as Devi often engage in a variety of activities from an enterprise-wide perspective to lessen their exposure. See, e.g., Silicomanganese from Brazil at Comment 14.

With regard to the sales-related interest, we agree with Devi that this should be accounted for as a sales price adjustment in the margin calculation. Further, we disagree with the petitioner that

the item is income and that Devi used it to offset the reported financial expenses. Devi's financial statements show the item as an interest expense on post-shipment credits (see schedule 19 of Devi's financial statements for the fiscal-year-ending March 31, 2009, contained at tab 1 of the October 29 response), which Devi reported as credit expenses in the sales database. The financial expense ratio calculation shows that the items in question were deducted from the gross financial expense amount used to calculate the net financial expense ratio because these items were reported as part of credit expenses (i.e., a selling expense) in Devi's sales databases. See tab 10 of the October 29 response. Because the interest is an expense incurred upon the discounting of Devi's invoices, to have included it in both the reported financial expenses and as a selling expense would have double counted the expense.

Finally, we disagree with the petitioner's contention that Devi's calculated financial expense ratio should be compared to a benchmark and adjusted if the reported ratio is lower. 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 GAAP exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. See, e.g., Granular Polytetrafluoroethylene Resin from Italy: Final Results of Antidumping Duty Administrative Review, 74 FR 14519 (Mar. 31, 2009), and accompanying Issues and Decision Memorandum at Comment 1. In the instant case we find that the reported financial expenses were recognized in Devi's normal books and records, were based on borrowing from unaffiliated persons, and were reflected in Devi's financial statements prepared in accordance with Indian GAAP. See, e.g., Certain Preserved Mushrooms from India: Final Results of Antidumping Administrative Review, 68 FR 41303 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 12 (where we stated "the Department relies on audited financial statements as a reliable basis of information for purposes of calculating COP ..."). There is no evidence on the record of this proceeding that Devi's loans at issue were not obtained at commercially-available terms.

Finally, we note that the petitioner's reliance on Hot-Rolled Steel from India is misplaced. In that case, the Department applied adverse facts available to account for loan transactions (and the resulting interest expenses) with unreported affiliates. In the current case, the interest expenses at issue were incurred by Devi itself and reported to the Department appropriately.

Therefore, we have continued to accept Devi's reported financial expense ratio, as adjusted in the preliminary results, for purposes of the final results.



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 \_\_\_\_\_

---

Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

---

(Date)