



A-533-840

AR8: 2/1/2012 - 1/31/2013

Public Document
E&C/Office II: DC

DATE: March 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India.¹ The review covers 205 producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2012, through January 31, 2013. We preliminarily found that sales of the subject merchandise have been made at prices below normal value (NV).

BACKGROUND

In February 2005, the Department published in the Federal Register an AD order on shrimp from India.² Subsequently, on February 1, 2013, the Department published in the Federal Register a notice of opportunity to request an administrative review of the AD order on shrimp from India for the period February 1, 2012, through January 31, 2013.³

¹ The deadline for the preliminary results of this review was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (i.e., March 18, 2014). See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

² See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (February 1, 2005) (Shrimp Order).

³ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 78 FR 7397 (February 1, 2013).



Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in February 2013, the Department received requests to conduct an administrative review of the AD order on shrimp from India from two domestic interested parties, the Ad Hoc Shrimp Trade Action Committee (the petitioner) and the American Shrimp Processors Association (ASPA), for numerous Indian producers/exporters. The Department also received requests to conduct an administrative review from certain individual companies. On April 2, 2013, and May 1, 2013, in accordance with 19 CFR 351.221(c)(1)(i), we published notices of initiation of administrative review for 205 companies.⁴

In the Initiation Notice, the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data. See Initiation Notice, 77 FR at 19639. On April 15, 2013, we received comments on the issue of respondent selection from the petitioner and ASPA. The Department did not receive comments from the respondents.

In May 2013, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.⁵ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from India during the POR (i.e., Devi Fisheries Limited (Devi Fisheries) and Falcon Marine Exports Limited (Falcon)). Accordingly, we issued the AD questionnaire to these companies.

Also in May 2013, we received responses from Devi Fisheries and Falcon to section A (i.e., the section related to general information) of the questionnaire. In June 2013, we received responses from Devi Fisheries and Falcon to sections B and C (i.e., the sections covering comparison market and U.S. sales, respectively) of the questionnaire.

In July 2013, we received a response from Falcon to section D (i.e., the section covering cost of production (COP) and constructed value (CV)) of the questionnaire. Also in this month we received a request from ASPA that the Department initiate a sales-below-cost investigation related to Devi Fisheries' sales to Belgium.⁶ Based on this request, in August 2013, we initiated a sales-below-cost investigation for Devi Fisheries⁷ and required it to respond to section D of the

⁴ See Certain Frozen Warmwater Shrimp from India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews, 78 FR 19639 (April 2, 2013) (Initiation Notice); see also Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 25418 (May 1, 2013).

⁵ See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Henry Almond, Senior Analyst, Office 2, AD/CVD Operations entitled, "Selection of Respondents for Individual Review," dated May 1, 2013 (Respondent Selection Memo).

⁶ Belgium was Devi Fisheries' only viable third country market.

⁷ See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "The American Shrimp Processors Association's Allegations of Sales Below the Cost of Production for Devi Fisheries Limited," dated August 21, 2013 (Devi Fisheries Cost Investigation Memo).

questionnaire. Devi Fisheries submitted its response to section D of the questionnaire in September 2013.

In August and September 2013, we issued a supplemental sales questionnaire to Devi Fisheries and a supplemental cost questionnaire to Falcon. We received responses to these questionnaires from Devi Fisheries and Falcon in the same months.

In October 2013, as explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁸ Thus, all deadlines in this segment of the proceeding have been extended by 16 days. Additionally, on October 29, 2013, we extended the preliminary results of the current review by 120 days.⁹ Because the extended deadline of March 16 falls on a non-business day, the preliminary results of this review are due on the next business day (i.e., March 17, 2014).¹⁰

In December 2013 and January 2014, we issued a supplemental cost and sales questionnaire to Devi Fisheries and Falcon, respectively. We also requested a revised database from Devi Fisheries. We received responses to these questionnaires, in addition to the revised database, during the same time period.

SCOPE OF THE ORDER

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹¹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus*

⁸ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” dated October 18, 2013.

⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary, AD/CVD Operations, from Blaine Wiltse, Senior International Trade Analyst, Office II, AD/CVD Operations entitled, “Certain Frozen Warmwater Shrimp from India and Thailand: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Reviews,” dated October 29, 2013.

¹⁰ See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

¹¹ “Tails” in this context means the tail fan, which includes the telson and the uropods.

merguiensis), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order. Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.¹²

DISCUSSION OF THE METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Devi Fisheries’ and Falcon’s sales of shrimp from India were made in the United States

¹² On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

at less than NV, we compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

When making these comparisons in accordance with section 771(16) of the Act, we considered all products sold in the comparison market as described in the “Scope of the Order” section of this memorandum, above, that were in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If contemporaneous sales of identical comparison market merchandise, as described below, were reported, we made comparisons to the monthly weighted-average comparison market prices that were based on all such sales. If there were no contemporaneous sales of identical merchandise, then we identified sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e). Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as discussed in the “Calculation of Normal Value Based on Constructed Value” section, below. See section 773(a)(4) of the Act.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average method), unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping duty investigations.¹³ In recent investigations, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department has applied a “differential pricing” analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation.¹⁴ The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

¹³ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁴ See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and the accompanying Issues and Decision Memorandum at Comment 3; and Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination zip code and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large threshold (i.e., 0.8).

Next, the “ratio test” assesses the extent of the significance of the price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent but less than 66 percent of the value of total sales, then the results support the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support the application of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

For Devi Fisheries, based on the results of the differential pricing analysis, the Department finds that at least 66 percent of Devi Fisheries' U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method as applied to all U.S. sales. Accordingly, the Department has determined to use the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Devi Fisheries.

For Falcon, based on the results of the differential pricing analysis, the Department finds that between 33 percent and 66 percent of Falcon's export sales pass the Cohen's *d* test, which confirms the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to those U.S. sales which passed the Cohen's *d* test. Accordingly, the Department has determined to use the average-to-transaction method for those U.S. sales which passed the Cohen's *d* test and the average-to-average method for those U.S. sales which do not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Falcon.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Devi Fisheries and Falcon covered by the description in the “Scope of the Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e), we compared U.S. sales of shrimp to sales of shrimp made in the third country comparison market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of non-broken shrimp to sales of the most similar non-broken foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are 1) cooked form; 2) head status; 3) count size; 4) organic certification; 5) shell status; 6) vein status; 7) tail status; 8) other shrimp preparation; 9) frozen form; 10) flavoring; 11) container weight; 12) presentation; 13) species; and 14) preservatives. Where there were no sales of identical or similar non-broken merchandise, we made product comparisons using CV, as discussed in the “Calculation of Normal Value Based on Constructed Value” section below.¹⁵

During the POR, Falcon reported one sale of broken shrimp in the United States. We compared this sale to sales of broken shrimp in the comparison market using the product characteristic hierarchy noted above. Where there were no sales of identical or similar broken shrimp in the comparison market, we made product comparisons using CV.

Export Price

For all U.S. sales made by Devi Fisheries and Falcon, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

A. Devi Fisheries

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for billing adjustments and discounts, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight expenses, survey report charges, other shipment expenses, foreign brokerage and handling expenses, U.S. brokerage and handling expenses, international freight expenses, terminal handling charges, marine insurance expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees), where appropriate, in accordance with section 772(c)(2)(A) of the Act.

¹⁵ See section 773(a)(4) of the Act.

B. *Falcon*

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for cold storage expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, export survey charges, terminal handling charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. *Home Market Viability ad Comparison Market*

In accordance with section 773(a)(1)(B)(i) of the Act, we normally use home market sales as the basis for NV. However, pursuant to section 773(a)(1)(C)(ii) we use third country sales as the basis for NV if the volume of home market sales is insufficient to permit a proper comparison with the sales of subject merchandise to the United States.

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Devi Fisheries' and Falcon's respective home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that the aggregate volume of home market sales of the foreign like product for each of the respondents was insufficient to permit a proper comparison with U.S. sales of the subject merchandise, pursuant to 773(a)(1)(C)(ii).

For both Devi Fisheries and Falcon, we selected Belgium as the comparison market because this country was their only viable third country market.¹⁶ Therefore, we used sales to Belgium as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. *Level of Trade*

To the extent practicable, we determine NV for sales at the same level of trade (LOT) as the U.S. sales. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. The NV LOT is that of the starting price for sales in the home market or applicable third country market.¹⁷ For EP, the LOT is that of the starting price for sales in the

¹⁶ See Devi Fisheries' May 31, 2013, submission at Exhibit 1; and Falcon's May 31, 2013, submission at Exhibit A-1.

¹⁷ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible.

United States. To determine whether comparison market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT, and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁸ Company-specific LOT findings are summarized below.

1. Devi Fisheries

Devi Fisheries reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to unaffiliated trading companies). We examined the selling activities performed for U.S. sales and found that Devi Fisheries performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the selling function categories, we find that Devi Fisheries performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities to Devi Fisheries' customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Devi Fisheries reported that it made direct sales to trading companies. We examined the selling activities performed for third country sales and found that Devi Fisheries performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. Accordingly, based on the selling function categories noted above, we find that Devi Fisheries performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Devi Fisheries' customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Devi Fisheries.

Finally, we compared the EP LOT to the third country market LOT and found that the selling functions performed for U.S. and third country market customers do not differ, as Devi Fisheries performed the same selling functions at the same relative level of intensity in both markets.

¹⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732-33 (November 19, 1997).

Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

2. *Falcon*

Falcon reported that it made EP sales in the U.S. market through a single channel of distribution (i.e., direct sales to unaffiliated trading companies). We examined the selling activities performed for U.S. sales and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India and the United States); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the selling function categories noted above, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Falcon reported that it made direct sales to trading companies. We examined the selling activities performed for third country sales and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. Accordingly, based on these selling function categories noted above, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Falcon.

Finally, we compared the EP LOT to the third country market LOT and found that the selling functions performed for U.S. and third country market customers do not differ, as Falcon performed the same selling functions at the same relative level of intensity in both markets. Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

C. *Cost of Production Analysis*

In accordance with section 773(b)(2)(A) of the Act, to initiate a COP investigation the Department must have "reasonable grounds" to believe or suspect that sales of the foreign like product under consideration for the determination of NV have been made at prices below the COP of that product. An allegation will be deemed to have provided reasonable grounds if: 1) a reasonable methodology is used in the calculation of the COP, including the use of the respondent's actual data, if available; 2) using this methodology, sales are shown to be made at

prices below the COP; and 3) the sales allegedly made below cost are representative of a broader range of foreign models which may be used as a basis for NV. See section 773(b)(2)(A)(i) of the Act and Notice of Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 70 FR 48668, 48670 (August 19, 2005), unchanged in Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 70 FR 62297 (October 31, 2005).

On July 22, 2013, ASPA alleged that Devi Fisheries made sales to its third country market (*i.e.*, Belgium) during the POR at prices that were below the COP. Based on our analysis of the allegation made by ASPA, we found that Devi Fisheries' sales to Belgium which fell below the COP were representative of the broader range of models which may be used as a basis for NV. Therefore, we determined that there were reasonable grounds to believe or suspect that Devi Fisheries' sales of shrimp in Belgium were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Devi Fisheries' comparison market sales were made at prices below their COP.¹⁹

In addition, we found that Falcon made sales to its comparison market (*i.e.*, Belgium) below the COP in the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded.²⁰ Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, we preliminarily find that there are reasonable grounds to believe or suspect that Falcon made sales in its third country market at prices below the cost of producing the merchandise during the current POR. Accordingly, we are also conducting a sales-below-cost investigation to determine whether Falcon's comparison market sales were made at prices below their COP.

1. *Calculation of Cost of Production*

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of materials and conversion for the foreign like product, plus amounts for general and administrative expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses).

Based on our review of the record evidence, Devi Fisheries and Falcon do not appear to have experienced significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost. The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation.

¹⁹ See Devi Fisheries Cost Investigation Memo.

²⁰ See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 40848, 40850 (July 11, 2012) (India Shrimp AR6 Final Determination).

2. *Test of Comparison Market Sales Prices*

On a product-specific basis, pursuant to section 773(a)(1)(B)(ii) of the Act, we compared the adjusted weighted-average COP to the third country sales prices of the foreign like product, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

3. *Results of the COP Test*

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we disregard none of the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) the sales were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost recovery test with no adjustments.

We found that, for certain products, more than 20 percent of Devi Fisheries' and Falcon's comparison market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no comparable third country sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Act. See "Calculation of Normal Value Based on Constructed Value" section below.

D. *Calculation of Normal Value Based on Comparison Market Prices*

1. *Devi Fisheries*

We calculated NV for Devi Fisheries on the reported packed, delivered prices to unaffiliated customers in Belgium. We made deductions to the starting price, where appropriate, for foreign inland freight expenses, foreign brokerage and handling expenses, marine insurance expenses,

survey report charges, other shipment expenses, and international freight expenses (including terminal handling charges), under section 773(a)(6)(B) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank charges, Export Credit and Guarantee Corporation (ECGC) fees, Export Inspection Agency (EIA) fees, imputed credit expenses, overseas claim charges, and other direct selling expenses), and commissions. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

We added U.S. packing costs and deducted third country packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.²¹

2. *Falcon*

We calculated NV for Falcon on the reported packed, delivered prices to unaffiliated customers in Belgium. We made deductions to the starting price, where appropriate, for discounts, in accordance with 19 CFR 351.401(c). We also made deductions for cold storage expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, export survey charges, foreign brokerage and handling expenses, and international freight expenses (including terminal handling charges), under section 773(a)(6)(B) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank charges, ECGC fees, EIA fees, outside inspection/lab expenses, imputed credit expenses, and other direct selling expenses), and commissions. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, as described above.

We added U.S. packing costs and deducted third country packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.²²

²¹ See 19 CFR 351.411(b).

²² See *id.*

E. *Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those shrimp products for which we could not determine the NV based on comparison market sales because, as noted in the “Results of the COP Test” section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV.²³ We also made adjustments, when applicable, for comparison market indirect selling expenses, to offset U.S. commissions in EP comparisons.²⁴

Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by Devi Fisheries and Falcon, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In addition, Devi Fisheries and Falcon reported that they purchased forward exchange contracts which were used to convert their sales prices into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such currency in the forward sale agreement to convert the foreign currency.²⁵ Therefore, we used the reported forward exchange rates for currency conversions where applicable.

²³ See 19 CFR 351.410(c).

²⁴ See 19 CFR 351.410(e).

²⁵ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 6; see also Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination, 77 FR 13275, 13281 (March 6, 2012), unchanged in India Shrimp AR6 Final Determination, 77 FR at 40848.

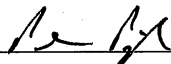
Recommendation

Based on our analysis, we recommend adopting the above positions in these preliminary results. If this recommendation is accepted, we will publish the preliminary results of the review and the preliminary dumping margins for Devi Fisheries and Falcon in the Federal Register.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

18 MARCH 2014
(Date)