



A-533-840
Administrative Review
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2016-
2017 Administrative Review of the Antidumping Duty Order on
Certain Frozen Warmwater Shrimp from India

SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India. The review covers 231 producers and/or exporters of the subject merchandise. The period of review (POR) is February 1, 2016, through January 31, 2017. We preliminarily find that sales of the subject merchandise have been made at prices below normal value (NV).

BACKGROUND

In February 2005, Commerce published in the *Federal Register* an AD order on shrimp from India.¹ Subsequently, on February 8, 2017, Commerce 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, 2016, through January 31, 2017.²

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 2017, Commerce received requests to conduct an administrative

¹ 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).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 9709 (February 8, 2017).



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. Commerce also received requests to conduct an administrative review from certain individual companies. One of these interested parties, Falcon Marine Exports Ltd. and its affiliate K.R. Enterprises (collectively, Falcon), notified Commerce in its request for review that it intended to participate as a voluntary respondent.³ On April 10, 2017, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for 239 companies.⁴ On June 13, 2017, we published a correction to the notice of initiation to remedy several inadvertent errors in the original notice.⁵

In the *Initiation Notice*, Commerce indicated that, in the event that we limited the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.⁶ In April 2017, we received comments on the issue of respondent selection from the petitioner and two potential respondents, Devi (comprised of Devi Fisheries Limited (Devi Fisheries), Satya Seafoods Private Limited (Satya), and Usha Seafoods (Usha)), and the Liberty Group (comprised of Devi Marine Food Exports (P) Ltd., Universal Cold Storage (P) Ltd., Kader Exports (P) Ltd., Liberty Frozen Foods (P) Ltd., Premier Marine Products (P) Ltd., Kader Investment & Trading Company (P) Ltd., and Liberty Oil Mills).⁷

In June 2017, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to Commerce, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.⁸ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we

³ See Falcon's Letter, "Certain Frozen Warmwater Shrimp from India: Falcon Marine Exports Ltd./K.R. Enterprises Request for Administrative Review and Request for Voluntary Respondent Treatment (02/01/16 – 01/31/17)," dated February 22, 2017. Although Falcon subsequently filed timely a response to Commerce's questionnaire, we did not analyze this response due to Commerce's resource constraints. For further discussion, see Memorandum, "Antidumping Duty Review of Certain Frozen Warmwater Shrimp from India: Selection of Voluntary Respondent," dated February 26, 2018 (Voluntary Respondent Memorandum) and the "Determination Not to Select Falcon as a Voluntary Respondent" section, below.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 17188 (April 10, 2017) (*Initiation Notice*).

⁵ See *Certain Frozen Warmwater Shrimp from India: Correction to the Initiation Notice of the 2016-2017 Antidumping Duty Administrative Review*, 82 FR 27041 (June 13, 2017). Pursuant to this notice, the number of companies subject to the administrative review changed to 231.

⁶ See *Initiation Notice*, 82 FR at 17189.

⁷ See Devi's and the Liberty Group's Letter, "Certain Frozen Warmwater Shrimp from India: Indian Respondents' Comments on CBP Data and Respondent Selection," dated April 21, 2017; Petitioner's Letter, "Certain Frozen Warmwater Shrimp from India: Comments Regarding CBP Import Data/Respondent Selection and Request for Sampling," dated April 21, 2017; Devi's and the Liberty Group's Letter, "Certain Frozen Warmwater Shrimp from India: Rebuttal to Petitioner's Comments on CBP Data and Respondent Selection," dated May 2, 2017; and Petitioner's Letter, "Certain Frozen Warmwater Shrimp from India: Rebuttal Comments Regarding CBP Import Data/Respondent Selection" dated May 2, 2017.

⁸ See Memorandum, "Selection of Respondents for Individual Review," dated June 15, 2017. As noted in the "Affiliation and Collapsing" section, below, Devi subsequently informed Commerce that, prior the POR, it formed a company known as Devi Aquatech Private Limited (Aquatech) See Devi's July 13, 2017 Section A Questionnaire

could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from India by volume during the POR (*i.e.*, Devi and the Liberty Group).⁹ Accordingly, we issued the AD questionnaire to these companies.

In July 2017, we received responses from Devi, Falcon, and the Liberty Group to section A (*i.e.*, the section related to general information) of the questionnaire.¹⁰ In August and September 2017, we received responses from these companies to the remaining sections of the questionnaire (*i.e.*, sections B, C, and D, the sections covering comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively).¹¹ Additionally, in August 2017, we collapsed Devi's newly formed entity, Aquatech, into the Devi group of companies.¹²

In October 2017, we extended the preliminary results of this review to no later than February 28, 2018.¹³

In December 2017, we issued supplemental sales questionnaires to Devi and the Liberty Group, and we received responses to these supplemental questionnaires in January 2018.¹⁴ In February 2018, we issued supplemental cost questionnaires to Devi and the Liberty Group, and we received responses to these supplemental questionnaires in two parts during the same month.¹⁵ Because the second parts of these cost responses were received so late in the proceeding, we did

Response (AQR), at 2. Although Devi stated that Aquatech was not yet producing shrimp, it did have two sales of subject shrimp to the United States during the POR. *Id.* at 17. We collapsed Aquatech with Devi on August 30, 2017. Therefore, we hereinafter refer to the collapsed entity, comprised of Aquatech, Devi Fisheries, Satya, and Usha, as "Devi."

⁹ *Id.*

¹⁰ See Devi July 13, 2017 AQR, Falcon's July 13, 2017 Section A Questionnaire Response, and the Liberty Group's July 13, 2017 Section A Questionnaire Response.

¹¹ See Devi's August 10, 2017 Section B Questionnaire Response (Devi August 10, 2017 BQR); Devi's August 3, 2017 Section C Questionnaire Response (Devi August 3, 2017 CQR); Devi's August 23, 2017 Section D Questionnaire Response (Devi August 23, 2017 DQR); Falcon's August 3, 2017 Section C Questionnaire Response; Falcon's August 10, 2017 Section B Questionnaire Response; Falcon's August 23, 2017 Section D Questionnaire Response; the Liberty Group's August 15, 2017 Section B Questionnaire Response (the Liberty Group August 15, 2017 BQR); the Liberty Group's August 8, 2017 Section C Questionnaire Response (the Liberty Group August 8, 2017 CQR); and the Liberty Group's September 1, 2017 Section D Questionnaire Response (the Liberty Group September 1, 2017 DQR).

¹² See Memorandum, "Whether to Collapse the Devi Group and Devi Aquatech Private Limited in the 2016-2017 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated August 30, 2017 (Collapsing Memo).

¹³ See Memorandum, "Certain Frozen Warmwater Shrimp from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated October 18, 2017. Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, the deadline will become the next business day. The revised deadline for the preliminary results of this administrative review is now March 5, 2018. See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

¹⁴ See Devi's January 10, 2018 Supplemental Sections A, B, and C Questionnaire Response, and the Liberty Group's January 12, 2018 Supplemental Sections A, B, and C Questionnaire Response.

¹⁵ See Devi's February 15, 2018 Supplemental Section D Questionnaire Response Part I; Devi's February 23, 2018 Supplemental Section D Questionnaire Response Part II; the Liberty Group's February 14, 2018 Supplemental Section D Questionnaire Response Part I; and the Liberty Group's February 21, 2018 Supplemental Section D Questionnaire Response Part II).

not use this cost information in our analysis in the preliminary results. Instead, we will consider it for purposes of the final results.

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,¹⁶ 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 merguensis*), 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.

¹⁶ “Tails” in this context means the tail fan, which includes the telson and the uropods.

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.¹⁷

AFFILIATION AND COLLAPSING

Legal Framework

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered “affiliated” or “affiliated persons” as: two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.¹⁸ Section 771(33) of the Act further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) notes that control may be found to exist within corporate groupings.¹⁹ Commerce’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁰

Section 351.401(f)(1) of Commerce’s regulations states that Commerce will treat affiliated producers as a single entity where they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production. Section 351.401(f)(2) of Commerce’s regulations further states that, in identifying a significant potential for manipulation, Commerce may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in

¹⁷ On April 26, 2011, Commerce amended the antidumping duty order to include dusted shrimp, pursuant to the 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).

¹⁸ *See* section 771(33)(F) of the Act.

¹⁹ *See* SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 838 (1994) (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

²⁰ *See also Preamble*, 62 FR at 27298.

production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

While 19 CFR 351.401(f) refers to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has applied these criteria in determining whether non-producers likewise should be collapsed.²¹

Affiliation and Single Entity Analysis

As noted in the “Background” section above, in July 2017, Devi submitted a response to section A of the questionnaire which stated that it had formed a new entity, Aquatech.²² In this submission, Devi stated that Aquatech was not yet producing shrimp, but had made two sales to the United States of shrimp produced by Devi.

We analyzed the information on the record and determined that Aquatech is affiliated with Devi, pursuant to section 771(33)(F) of the Act.²³ In addition, based on the evidence provided in Devi’s questionnaire response, we also determined that Aquatech should be collapsed with Devi and treated as a single entity in this investigation. This finding is based on the determination that Devi and Aquatech have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure their manufacturing priorities²⁴, and that the level of common ownership, degree of overlapping management, and extent to which their operations are intertwined present a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f).²⁵

DETERMINATION NOT TO SELECT FALCON AS A VOLUNTARY RESPONDENT

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review. When Commerce limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a)(1) of the Act directs Commerce to calculate individual weighted-average dumping margins for companies not

²¹ See, e.g., *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), unchanged in *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 5. The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a “reasonable interpretation of the antidumping duty statute.” See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1338 (CIT 2003).

²² See Devi July 13, 2017 AQR, at 2.

²³ See the Collapsing Memo.

²⁴ We noted in the Collapsing Memo that, although Aquatech’s facility was not yet completed and producing shrimp, Devi itself stated that Aquatech was expected “to complete and to commence production of frozen shrimp from October 2017.” See the Collapsing Memo at 5-6.

²⁵ For a discussion of the facts on which these conclusions are based, see the Collapsing Memo.

initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: 1) the information is submitted by the due date specified for exporters or producers initially selected for examination; and 2) the number of companies subject to the review is not so large that any additional individual examination of companies that have voluntarily provided information would be unduly burdensome and inhibit the timely completion of the review.

Under section 782(a) of the Act, as amended by the Trade Preferences Extension Act of 2015 (TPEA), in determining whether it would be unduly burdensome to examine a voluntary respondent, Commerce may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of those investigations and reviews.²⁶ In *Grobest*, the CIT remanded to Commerce its decision not to review a voluntary respondent in light of the administrative burden associated with reviewing the number of mandatory respondents selected.²⁷ The CIT held that “Commerce {must} separately determine whether reviewing the voluntary respondents would be unduly burdensome and inhibit the timely completion of the investigation.”²⁸

As explained in its February 26, 2018, memorandum declining to select Falcon as a voluntary respondent, Commerce considered the criteria in section 782(a)(2) of the Act to determine whether it would be unduly burdensome to review a voluntary respondent at that time.²⁹ Pursuant to section 782(a) of the Act, as amended by the TPEA, we determined that examining Falcon as a voluntary respondent would be unduly burdensome and would inhibit the timely completion of the administrative review. In coming to our determination, we considered the following factors: 1) the complexity of the issues or information presented in this review; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of those investigations and reviews.³⁰ Based on these criteria, Commerce found that, because of the complexity of the information presented in the proceeding and the total number of investigations and reviews being conducted as of the date of the determination, it only had sufficient resources to examine two mandatory respondents. Thus, consistent with section 782(a) of the Act, Commerce has not considered Falcon’s unsolicited questionnaire responses.

²⁶ On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 782(a) of the Act. See the TPEA, Public Law 114-27, 129 Stat. 362 (2015). The amendments to the Act are applicable to determinations made on or after August 6, 2015, and, therefore, apply to this review. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015: Interpretive Rule*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*).

²⁷ See *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1362 (CIT 2012) (*Grobest*).

²⁸ *Id.* (citation omitted).

²⁹ See Voluntary Respondent Memorandum, at 3-5.

³⁰ *Id.* at 4-5.

DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Devi's and the Liberty Group's sales of shrimp from India to the United States were made at less than NV, Commerce compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this memorandum.

A) *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (EPs) (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average normal values with the EPs or CEPs of individual sales (*i.e.*, 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 strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.³¹

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³² Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into

³¹ 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 the accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

³² See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

account when using the average-to-average method to calculate the weighted-average dumping margin. 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 code (*i.e.*, state) 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 period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and normal value 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* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period 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 prices to the particular purchaser, region or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant 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 account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of 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 and less than 66 percent of the value of total sales, then the results support consideration of 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 consideration 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, Commerce examines whether using only the average-to-average method can appropriately account for such

differences. In considering this question, Commerce tests whether using an alternative comparison 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, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins 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 margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications 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.

B) *Results of the Differential Pricing Analysis*

Devi

For Devi, based on the results of the differential pricing analysis, Commerce preliminarily finds that 59.75 percent of the value of U.S. sales pass the Cohen's *d* test,³³ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Devi.

The Liberty Group

For the Liberty Group, based on the results of the differential pricing analysis, Commerce preliminarily finds that 56.73 percent of the value of U.S. sales pass the Cohen's *d* test,³⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative

³³ See Memorandum, "Certain Frozen Warmwater Shrimp from India; Preliminary Results Calculations for Devi," dated March 5, 2018.

³⁴ See Memorandum, "Certain Frozen Warmwater Shrimp from India: Preliminary Results Calculations for the Liberty Group," dated March 5, 2018.

comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for the Liberty Group.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Devi and the Liberty Group 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(f), we compared Devi's and the Liberty Group's U.S. sales of shrimp to sales of their 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.³⁵

Export Price

For all U.S. sales made by Devi and the Liberty Group, we used the 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 the CEP methodology was not otherwise warranted based on the facts of record.

A. *Devi*

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

³⁵ See section 773(a)(4) of the Act.

B. *The Liberty Group*

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, foreign inland freight expenses, export survey charges, terminal handling charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, demurrage charges, 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 and 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's and the Liberty Group'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 Devi and the Liberty Group, we selected Belgium and the United Kingdom, respectively, as the comparison markets because, among other things, Devi's and the Liberty Group's sales of foreign like product in Belgium and the United Kingdom were the most similar to the subject merchandise and both were viable comparison markets.³⁶ Therefore, we used sales to Belgium and the United Kingdom as the basis for comparison market sales for Devi and the Liberty Group, respectively, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at

³⁶ See Memorandum, "Certain Frozen Warmwater Shrimp from India: Selection of an Appropriate Third Country Market," dated August 30, 2017 (for Devi) and Memorandum, "Certain Frozen Warmwater Shrimp from India: Selection of an Appropriate Third Country Market," dated September 19, 2017 (for the Liberty Group).

different LOTs if they are made at different marketing stages (or their equivalent).³⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁸ In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),³⁹ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁰

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴¹

In this administrative review, we obtained information from the respondents regarding the marketing stages involved in making the reported third country and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

I. Devi

Devi reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to unaffiliated companies).⁴² We examined the selling activities performed for U.S. sales and found that Devi performed the following selling functions: customer contact/price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; the provision of quality assurance-related activities; the performance of banking and financial-related activities; and inventory maintenance and cold storage.⁴³ These selling activities can be generally grouped into four selling function categories

³⁷ See 19 CFR 351.412(c)(2).

³⁸ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010), and accompanying IDM at Comment 7 (*OJ from Brazil*).

³⁹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general, and administrative (SG&A) expenses, and profit for CV, where possible.

⁴⁰ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁴¹ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁴² See *Devi* July 13, 2017 AQR, at 31 and 36.

⁴³ *Id.* at 33-36.

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 performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for U.S. sales. Because all sales to the United States are made through a single distribution channel and the selling activities to Devi'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, Devi reported that it also made sales through a single channel of distribution (*i.e.*, direct sales to unaffiliated companies).⁴⁴ We examined the selling activities performed for third country sales and found that Devi performed the following selling functions: customer contact/price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; the provision of quality assurance-related activities; the performance of banking and financial-related activities; and inventory maintenance and cold storage.⁴⁵ Accordingly, based on the selling function categories noted above, we find that Devi performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Devi's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Devi.

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 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.

2. *The Liberty Group*

The Liberty Group reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to unaffiliated companies). We examined the selling activities performed for U.S. sales and found that the Liberty Group 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 noted above, we find that the Liberty Group performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing, and warranty and technical support for U.S. sales. Because all sales in the United States are made through a single distribution channel and the selling activities to the Liberty Group's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

⁴⁴ *Id.* at 31 and 36.

⁴⁵ *Id.* at 33-36.

With respect to the third country market, the Liberty Group reported that it also made sales through a single channel of distribution (*i.e.*, direct sales to unaffiliated companies). We examined the selling activities performed for third country sales and found that the Liberty Group 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 these selling function categories noted above, we find that the Liberty Group performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing, and warranty and technical support for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to the Liberty Group's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for the Liberty Group.

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 the Liberty Group 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*

The TPEA made numerous amendments to United States the AD and CVD law, including amendments to section 773(b)(2)(A) of the Act.⁴⁶ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission.⁴⁷ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request CV and COP information from respondent companies in all antidumping proceedings.⁴⁸ Because these amendments apply to this review, Commerce requested this information from Devi and the Liberty Group.⁴⁹ Devi and the Liberty Group submitted timely responses.⁵⁰ We examined Devi's and Liberty Group's cost data and determined that our quarterly cost methodology was not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

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 cost 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).

⁴⁶ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁴⁷ See *TPEA Application Dates*, 80 FR at 46793.

⁴⁸ *Id.* at 46794-95.

⁴⁹ See Commerce Letter re: Antidumping Duty Questionnaire, dated June 15, 2017.

⁵⁰ See Devi August 23, 2017 DQR, and the Liberty Group September 1, 2017 DQR.

Based on our review of the record evidence, the respondents 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. Commerce relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation. We made no changes to the respondents' reported costs.

Commerce has a longstanding practice of collecting POR COP data,⁵¹ even though companies may have produced certain products -- sold in the U.S. or foreign markets during the POR - only in prior periods. In such cases, instead of collecting pre-POR cost data for the non-produced products, Commerce simply assigns them the COPs of the most physically-similar merchandise produced during the POR.⁵²

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 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, 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

⁵¹ See, e.g., Commerce's standard cost questionnaire at I.C., which directs respondents to calculate "reported COP and CV figures based on the actual costs incurred by your company during the {POR}", as recorded under your company's normal accounting system." (emphasis added).

⁵² See, e.g., *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 81 FR 79423, (November 14, 2016) and accompanying Preliminary Decision Memorandum at 18-19 (stating, "Where NVR reported sales of products produced prior to the POI, we assigned costs to these products using the costs reported for the most similar product produced during the POI."), unchanged in *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017); and *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2015-2016*, 82 FR 30836 (July 3, 2017) and accompanying IDM at Comment 3 (stating, "Further, it is the Department's practice in assigning surrogate costs (where a respondent did not produce a product during the reporting period) to use the most similar product available in establishing those surrogates...").

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 also applied our standard cost recovery test with no adjustments.

We found that, for certain products, more than 20 percent of Devi’s and the Liberty Group’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

We calculated NV for Devi based on the reported packed, delivered prices to unaffiliated customers in Belgium. We made deductions for foreign inland freight expenses, export survey charges, foreign brokerage and handling expenses, international freight expenses, terminal handling expenses, and other shipment charges, under section 773(a)(6)(B) of the Act.

In addition, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Specifically, we made adjustments to NV for direct selling expenses (including bank discounting and interest expenses, bank charges, Export Credit and Guarantee Corporation (ECGC) fees, Export Inspection Council (EIC) fees, overseas claim charges, repacking expenses, rejection insurance, 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 third country 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.⁵³

⁵³ *See* 19 CFR 351.411(b).

2. *The Liberty Group*

We calculated NV for the Liberty Group based on the reported packed, delivered prices to unaffiliated customers in the United Kingdom. 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, foreign inland freight expenses, export survey charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, and 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, EIC 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 third country 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.⁵⁴

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

⁵⁴ *Id.*

market sales from, and adding U.S. direct selling expenses to, CV.⁵⁵ We also made adjustments, when applicable, for comparison market indirect selling expenses, to offset U.S. commissions in EP comparisons.⁵⁶

Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by Devi and the Liberty Group, 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 and the Liberty Group 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, Commerce is directed to use the exchange rate specified with respect to such currency in the forward sale agreement to convert the foreign currency.⁵⁷ Therefore, we used the reported forward exchange rates for currency conversions where applicable.

⁵⁵ See 19 CFR 351.410(c).

⁵⁶ See 19 CFR 351.410(e).

⁵⁷ 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 IDM at Comment 6; see also *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 12544 (March 6, 2017), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 43517 (September 18, 2017) and *Certain Frozen Warmwater Shrimp from India: Notice of Correction to the Final Results of the 2015-2016 Antidumping Duty Administrative Review*, 82 FR 43740 (September 19, 2017).

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 and the Liberty Group in the *Federal Register*.



Agree



Disagree

3/5/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance