



A-533-840  
Administrative Review  
POR: 2/1/2016 – 1/31/2017  
**Public Document**  
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**DATE:** July 10, 2018

**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:** Issues and Decision Memorandum for the Final Results of the  
2016-2017 Antidumping Duty Administrative Review of Certain  
Frozen Warmwater Shrimp from India

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**I. Summary**

We analyzed the comments of the interested parties in the 2016-2017 administrative review of the antidumping duty order covering certain frozen warmwater shrimp (shrimp) from India. As a result of our analysis, we made changes to the margin calculations for Devi.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

1. Ministerial Errors for Devi

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<sup>1</sup> Devi consists of Devi Fisheries Limited, Satya Seafoods Private Limited, Usha Seafoods, and Devi Aquatech Private Limited.



## **II. Background**

On March 12, 2018, the Department of Commerce (Commerce) published the preliminary results of the 2016-2017 administrative review of the antidumping duty order on shrimp from India.<sup>2</sup> This review covers 231 producers/exporters. Commerce selected Devi and the Liberty Group<sup>3</sup> (collectively, the respondents) for individual examination. The period of review (POR) is February 1, 2016, through January 31, 2017.

We invited parties to comment on the *Preliminary Results*. On April 11, 2018, we received a case brief from the respondents. On April 16, 2018, we received a rebuttal brief from the Ad Hoc Shrimp Trade Action Committee (the petitioner). After analyzing the comments received, we changed the weighted-average margins from those presented in the *Preliminary Results*.

## **III. 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,<sup>4</sup> 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.

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<sup>2</sup> See *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10665 (March 12, 2018) (*Preliminary Results*).

<sup>3</sup> The Liberty Group consists of: Devi Marine Food Exports Private Ltd.; Kader Exports Private Limited; Kader Investment and Trading Company Private Limited; Liberty Frozen Foods Pvt. Ltd.; Liberty Oil Mills Ltd.; Premier Marine Products Private Limited; and Universal Cold Storage Private Limited.

<sup>4</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

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.<sup>5</sup>

#### **IV. Margin Calculations**

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

- We revised Devi’s margin calculations to correct a currency conversion error related to the calculation of foreign unit price in U.S. dollars. *See* Comment 1.<sup>6</sup>
- We revised Devi’s margin program to correct a quantity unit conversion error related to the calculation of inventory carrying costs. *See* Comment 1.<sup>7</sup>

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<sup>5</sup> 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) 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.

<sup>6</sup> *See* Memorandum, “Certain Frozen Warmwater Shrimp from India: Final Results Calculations for Devi,” dated July 10, 2018.

<sup>7</sup> *Id.*

## V. Discussion of Issues

### Comment 1: Ministerial Errors for Devi

#### *The Respondents' Argument*

- Devi states that Commerce should correct two ministerial errors in the *Preliminary Results*. Specifically, Devi notes that Commerce did not use its reported forward exchange rates in the calculation of the foreign unit price in U.S. dollars. Devi also notes that, when recalculating inventory carrying costs, Commerce did not convert the values from a per-kilogram to a per-pound basis.

#### *The Petitioner's Arguments*

- The petitioner argues that, when using forward exchange rates to convert currencies, Commerce must also account for any fees associated with these transactions, consistent with the *Preamble*<sup>8</sup> to Commerce's regulations.
- The petitioner claims that, in other cases involving forward exchange contracts, the record clearly indicated how the respondent accounted for any associated fees.<sup>9</sup> The petitioner argues that, because the record here does not demonstrate that Devi reported such fees, Commerce should not use Devi's forward exchange rates for the final results.

### Commerce's Position

We agree with Devi that we made the two ministerial errors noted above, and we corrected our calculations for the final results accordingly. With regard to the petitioner's argument related to forward exchange contracts, section 773A(a) of the Tariff Act of 1930, as amended (the Act) states:

In an antidumping proceeding under this title, the administering authority *shall* convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency.<sup>10</sup>

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<sup>8</sup> See *Antidumping Duties; Countervailing Duties; Final Rule* 62 FR 27296, 27376 (May 19, 1997) (*Preamble*).

<sup>9</sup> See Petitioner's Rebuttal Brief at 3 (citing *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016) (*CORE from India*) and accompanying Issues and Decision Memorandum (IDM), at 18-19).

<sup>10</sup> See section 773A(a) of the Act (emphasis added). See also 19 CFR 351.415(b).

In its responses, Devi explained how its forward contracts are linked to export sales.<sup>11</sup> Additionally, Devi provided supporting documentation for two invoices demonstrating the link between these invoices and the corresponding forward exchange contracts.<sup>12</sup> Accordingly, we find that Devi “established that a currency transaction on forward markets is directly linked to an export sale under consideration,” and, therefore, Commerce is required by section 773A(a) of the Act (*i.e.*, “shall”) use the forward exchange rates provided by Devi.

We disagree with the petitioners that *CORE from India* calls this finding into question. In that case, like here, Commerce relied upon the respondent’s forward exchange contracts to perform currency conversions after determining that they were linked to its U.S. sales.<sup>13</sup> Finally, while the record is silent as to whether Devi incurred fees associated with its foreign exchange contracts, there is no evidence that Devi failed to report these fees and we did not ask Devi to identify them in its response.

Therefore, because the Act provides that Commerce “shall” use the forward exchange rates when they are linked to U.S. export sales, we have used Devi’s reported forward exchange rates for purposes of the final results.

Finally, regarding Devi’s argument that we did not convert inventory carrying costs to a per-pound basis in the *Preliminary Results*, we reexamined the calculations and agree with Devi. Therefore, we converted our recalculation of Devi’s inventory carrying costs to a per-pound basis, consistent with the reporting of the other U.S. variables in our margin calculation.

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<sup>11</sup> See Devi’s February 14, 2018 Supplemental Sections A, B, and C Response, at 7-8.

<sup>12</sup> *Id.*, at Exhibits SABC-15 and SABC-16.

<sup>13</sup> See *CORE from India* IDM at Comment 6.

## VI. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



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Agree



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Disagree

7/10/2018

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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