



A-533-840
Administrative Review
POR: 2/1/2017 – 1/31/2018
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October 21, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2017-2018 Antidumping Duty Administrative Review of Certain
Frozen Warmwater Shrimp from India

I. SUMMARY

We analyzed the comments of the interested parties in the 2017-2018 administrative review of the antidumping duty order covering certain frozen warmwater shrimp (shrimp) from India. As a result of our analysis, we made no changes to the margins found in the preliminary results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

1. Differential Pricing
2. Adverse Facts Available

II. BACKGROUND

On April 23, 2019, the Department of Commerce (Commerce) published the preliminary results of the 2017-2018 administrative review of the antidumping duty order on shrimp from India.¹ This review covers six producers/exporters. Commerce selected the Elque Group² and Magnum³ (collectively, the respondents) for individual examination. The period of review (POR) is February 1, 2017 through January 31, 2018.

¹ See *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 16843 (April 23, 2019) (*Preliminary Results*).

² The Elque Group consists of Calcutta Seafoods Pvt. Ltd., Bay Seafood Pvt. Ltd., and Elque & Co.

³ Magnum consists of Magnum Sea Foods Limited and Magnum Estates Limited.

We invited parties to comment on the *Preliminary Results*. On May 22 and 23, 2019, we received case briefs from the Elque Group and Magnum, respectively. On May 28, 2019, we received a rebuttal brief from the Ad Hoc Shrimp Trade Action Committee (the petitioner). On September 19, 2019, Commerce held a public hearing.⁴ After analyzing the comments received, we made no changes to the 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,⁵ 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

⁴ See Commerce’s Letter, “Certain Frozen Warmwater Shrimp from India: Notice of Hearing,” dated August 19, 2019; see also Hearing Transcript from Neal R. Gross and Co., Inc., filed onto the record on September 27, 2019.

⁵ “Tails” in this context means the tail fan, which includes the telson and the uropods.

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.⁶

IV. DISCUSSION OF THE ISSUES

Comment 1: Differential Pricing

In the *Preliminary Results*, we defined the time periods used in the differential pricing analysis using the dates that the subject merchandise entered the United States, consistent with our practice in this proceeding.⁷

Magnum's Argument

- Magnum contends that Commerce should define the time periods used in the differential pricing (DP) analysis using the U.S. date of sale, which Magnum characterizes as Commerce's "standard" methodology. Magnum claims that the fact pattern which caused Commerce to depart from this methodology in prior segments of this proceeding (*i.e.*, a significant lag time between sale and entry date) does not exist in this review.⁸
- Magnum states that using entry date for the DP analysis creates arbitrary and unequal quarterly groupings, resulting in distorted periods that are not representative of the sales in the actual quarters in which sales were made. For instance, Magnum states that it only reported two shipments with a sale date outside the POR, but with an entry date inside of it. According to Magnum, using entry date caused the first quarter of the DP analysis to cover

⁶ 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).

⁷ See Memorandum, "Preliminary Results Calculations for Magnum," dated April 9, 2019, at 2-3 (citing Memorandum, "Issues and Decision Memorandum for the Final Results of the 2015-2016 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated September 5, 2017 at Comment 1) (Magnum's Calc Memo).

⁸ See Magnum's Case Brief, "Magnum Administrative Case Brief: Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India (A-533-840)," dated May 23, 2019 (Magnum's Case Brief) at 2.

four months of potential sales data (*i.e.*, December 2016, January 2017, February 2017, and March 2017), rather than covering three months, thus, over-allocating sales to the first quarter of the POR.⁹

- Further, Magnum states that Commerce failed to address the distortion introduced by using a date that is unrelated to when the price for that sale was established.¹⁰ According to Magnum, given this significant time difference, it is not surprising that all four control numbers that passed the DP analysis for the first quarter also shipped in December. Magnum insists that the results of using entry date for the DP analysis proves that the DP analysis is arbitrary, since the entry dates bear no relationship to when the price of the U.S. sale was set.¹¹
- Moreover, Magnum suggests if sales are organized by entry date, the analysis is no longer tied to the date upon which the pricing was determined, which renders it subject to factors (such as the transport time to the U.S. port) unrelated to when the prices for such sales were established. Considering this fact, Magnum suggests that it is incumbent upon Commerce to avoid using an arbitrary DP analysis based on a date that a respondent cannot predict at the time of sale.¹²
- Finally, Magnum claims that it is unaware of any other proceedings where Commerce found it appropriate to use entry date for its DP analysis. In this review, Magnum insists that Commerce has deviated from its precedent and has not provided, nor does the record contain, a reasonable basis for departing from its practice of using sale date.¹³
- Magnum cites *Washers from Korea* and *OTR China 2012-2013* to demonstrate that Commerce’s normal practice avoids the influence of arbitrary factors by providing an orderly and predictable approach to its differential pricing analysis.¹⁴

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.* at 4 (citing *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 55595 (September 16, 2015) (*Washers from Korea*); *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) (*OTR China 2012-2013*), and accompanying Issues and Decision Memorandum (IDM) at 5, stating “time periods are defined by the quarter within the period of investigation or administrative review based upon the reported date of sale;” *Dongbu Steel Co. Ltd. v. United States*, 635 F.3d 1363, 1371 (Fed. Cir. 2011) (*Dongbu Steel*) finding “we have indicated that an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently;” *Consolidated Bearing Co. v. United States*, 348 F.3d 997, 1007 (Fed. Cir. 2003) (*Consolidated Bearing Company*), holding Commerce’s “instructions were arbitrary and capricious....[it] consistently followed a contrary practice in similar circumstances and provided no reasonable explanation for the change in practice.”).

- Based on the foregoing, Magnum argues that Commerce should use its “standard” methodology of sale date,¹⁵ by adopting the SAS language Magnum proposes in its case brief.¹⁶

The Petitioner’s Rebuttal

- The petitioner refutes that Commerce erred by using entry date, rather than the date of sale. According to the petitioner, this methodology is consistent with Commerce’s practice in the past four administrative reviews in which Commerce previously articulated the logical basis for using entry date. For instance, the petitioner states that in *India Shrimp 2014-2015*,¹⁷ Commerce explained that, because of a significant time lag between the time that a sale has shipped and when the sale enters the United States, respondents’ sales are divided into five quarters, one of which predates the POR, when sales should be grouped into four quarters.
- Further, the petitioner states that Commerce provided an even more detailed explanation for using entry date in *India Shrimp 2015-2016*,¹⁸ stating, among other things, that in administrative reviews where the universe of sales is based on entry date, rather than sale date, defining time periods using entry date permits respondents’ sales to be grouped into four quarters, eliminating distortions from the analysis.¹⁹ Thus, the petitioner finds that in both *India Shrimp 2014-2015* and *India Shrimp 2015-2016*, Commerce has explained a preference for using entry date where the administrative record demonstrates that the universe of reported U.S. sales transactions is based on entry date.
- According to the petitioner, in this case, Commerce appropriately used entry date, because the universe of reported transactions is based on entry date, rather than date of sale.²⁰ Thus, the petitioner claims that, because Magnum does not differentiate facts in this case from prior reviews, advocating a change in practice here establishes an arbitrary and inconsistent approach in which Commerce toggles between entry date and the date of sale based upon which approach benefits the respondents. Therefore, the petitioner requests that Commerce maintain a consistent approach by using entry date for its DP analysis.²¹

¹⁵ *Id.* at 4.

¹⁶ See Magnum’s Case Brief at 5.

¹⁷ See Petitioner’s Rebuttal Brief, “Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India (2017-2018),” dated May 28, 2019 (Petitioner’s Rebuttal Brief) at 3 (citing *Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014-2015*, 81 FR 62867 (September 13, 2016) (*India Shrimp 2014-2015*), and accompanying IDM at Comment 2).

¹⁸ *Id.* at 3 (citing *Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review; 2015-2016*, 82 FR 43517 (*India Shrimp 2015-2016*) (September 18, 2017), and accompanying IDM at Comment 1.

¹⁹ *Id.*

²⁰ See Petitioner’s Rebuttal Brief at 4 (citing Magnum’s February 8, 2019 Supplemental Sections A, B, and C Questionnaire Response (public version) (Magnum February 8, 2019 SABCR) at 12, noting that in response to Commerce’s instructions indicating that certain sales with entry dates outside of the period of review be removed from the universe of reported sales, Magnum explained that it was removing sales from the revised U.S. database.).

²¹ See Petitioner’s Rebuttal Brief at 5.

Commerce's Position

We agree with the petitioner and, for purposes of these final results, continue to define the time periods in the differential pricing analysis in this review based on entry date, consistent with the three prior administrative reviews.²² In the *Preliminary Results*, we invited arguments and justifications from interested parties regarding our differential pricing approach, including arguments for modifying the group definitions used in this review based on the record of this review. The petitioner's argument that the time periods should be defined using entry date, rather than the date of sale, is supported by record evidence and is consistent with past precedent in this proceeding.²³ Because Magnum's universe of U.S. sales is defined based on entry date, and there is a time lag between sale date and entry date, Magnum's sales are spread over five quarters if we define time period using date of sale.²⁴ Further, this time lag does not correspond with the defined quarters such that the beginning and ending quarters would not include all of the prices within that quarter but be limited to those which were reported in the respondent's U.S. sales data. We also note that the time lag is consistent over the POR such that a change would introduce an expected distortion in the groups. Therefore, there exists a logical basis to redefine the time period based on entry date when examining whether there are prices that differ significantly among quarters.

In general, section 751 of the Tariff Act of 1930, as amended (the Act), requires that Commerce determine a dumping margin for each entry during the period of review. However, as a practical matter, Commerce usually examines U.S. sales during the period of review, rather than the U.S. sales associated with entries during the period of review because either the respondent does not have information concerning the U.S. entry, or the respondent's U.S. affiliate makes U.S. sales out of inventory where there is no reliable link between entries and the sales of subject merchandise.²⁵ Accordingly, the universe of U.S. sales examined in an administrative review is limited to those whose dates of sale fall within the period of review. Accordingly, for the differential pricing analysis, the default definition for time periods is based on the quarters of the POR and the dates of U.S. sale. As a result, there are four time periods of equal duration into which U.S. prices can be grouped consistent with the statutory requirement to consider price differences between different time periods. Further, Commerce allows interested parties to recommend an alternative to the definition of time periods in the differential pricing analysis based on U.S. sale dates falling within the quarters of the period of review.

Generally, in this proceeding, and specifically for Magnum in this review, the universe of U.S. sales has been defined as the U.S. sales associated with the entries of subject merchandise during the period of review. As noted in earlier reviews, there is an unpredictable relationship between the date of U.S. sale and the date of entry, such that time periods based on the date of U.S. sale

²² See, e.g., *India Shrimp 2014-2015* IDM at Comment 2; and *India Shrimp 2015-2016* IDM at Comment 1.

²³ See, e.g., *India Shrimp 2014-2015* IDM at Comment 2; and *India Shrimp 2015-2016* IDM at Comment 1.

²⁴ See Magnum February 8, 2019 SABCQR and corresponding U.S. sales database.

²⁵ See, e.g., *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34131 (July 17, 2019), and accompanying Preliminary Decision Memorandum at 3 stating, "Commerce's normal practice is to examine each U.S. sale of merchandise entered for consumption during the POR, unless the respondent does not know the entry dates or the first sale to an unaffiliated party is after importation into the United States."

would result in quarters of unequal duration. Accordingly, Commerce departed from the default definition at the request of the mandatory respondents (*i.e.*, Falcon and the Liberty Group),²⁶ and defined the time periods quarters based on entry date rather than U.S. sale date. As a result, four time periods of equal duration are the basis for considering whether Magnum's U.S. prices differed significantly between different time periods during the period of review. This has preserved Commerce purpose in establishing the default time periods as part of the differential pricing analysis.

We disagree with Magnum's contentions that it is arbitrary to use entry date to define the time periods or that this modification is unjustified. In administrative reviews where the universe of reported transactions is based on entry date, rather than sale date, defining the time periods using entry date permits respondents' sales to be grouped into four quarters of equal duration, thus providing balance to our analysis.²⁷ This does not necessarily mean that the number or quantity of the sales in each quarter are equal. There is no expectation that the number of or quantity of the U.S. sales in any time period, region or to purchasers are equal. Indeed, the analysis assumes that they will be different and sets a minimum limit for the number and quantity of sales in either the test or comparison groups to avoid possible unrepresentative comparisons of the average prices between the two groups. Thus, we find that, in such cases, it is appropriate to define the time periods using entry date, rather than date of sale.

We note that we have followed this practice in the three previous reviews and have addressed parties' comments twice on this issue.²⁸ Thus, Magnum, cannot claim that it is unaware or insufficient justification exists for this methodology and,²⁹ contrary to Magnum's assertions that our action here is arbitrary and capricious,³⁰ Commerce's actions in this review are, in fact, consistent with our findings in the prior three administrative reviews in that the universe of U.S. sales has been defined as the U.S. sales associated with the respondent's entries during the period of review. Further, Magnum cites to no case precedent to the contrary – *i.e.*, reviews where, with the same fact pattern as here, Commerce has addressed arguments regarding entry versus sale date and has preferred sale date over entry date when a respondent has reported its U.S. sales based upon the sale's associated entry date during the POR.

Magnum argues that facts in this review differentiates it from prior administrative reviews in which we have used entry date. We disagree. The universe of U.S. sales reported by Magnum is defined by the entry date associated with its U.S. sales. Further, contrary to Magnum's assertions that there exists no significant lag time between sale and entry date in this case,

²⁶ See *India Shrimp 2014-2015* IDM at Comment 2; and *India Shrimp 2015-2016* IDM at Comment 1.

²⁷ As noted above, where the universe of sales is based on entry date, sales will not be divided into four quarters when the time periods are defined using the date of sale because of the lag between the date of shipment and the date of entry.

²⁸ See *India Shrimp 2014-2015* IDM at Comment 2; *India Shrimp 2015-2016* IDM at Comment 1; Memorandum, "Preliminary Results Calculations for the Liberty Group," dated March 5, 2018, at 2; and Memorandum, "Preliminary Results Calculations for Devi," dated March 5, 2018, at 3.

²⁹ We cited our past practice on this issue in Magnum's calculation memorandum for the *Preliminary Results*. See Magnum's Calc Memo at 3.

³⁰ See Magnum's Case Brief at 2 and 4 (citing *Consolidated Bearing Company*, 348 F. 3d 997, 1007; and *Dongbu Steel*, 635 F. 3d 1363, 1371).

evidence on the record demonstrates otherwise. Specifically, Magnum's U.S. sales listing shows that the gap between the date upon which a price is made (*i.e.*, invoice date), and the time in which Magnum's merchandise enters the United States, is significant. Moreover, there exists a significant time lag between the date of shipment from India to the date of entry into the United States.³¹

As noted in prior cases, this lag time results in five quarters of unequal, and unpredictable, duration.³² For instance, the first and last quarters (QTR00 and QTR04) are truncated because the first quarter only captures sales in December 2016, and the last quarter captures two months of sales data and only three quarters include sales, each spanning three months. Although Magnum claims that, by using entry date for our analysis, we are creating unequal groups, by relying on U.S. sale date which predates entry date with significantly unpredictable differences, by using sale date we will have five quarters, including two quarters of unequal, and unpredictable, duration.

Commerce disagrees with Magnum's assertion that the results of the Cohen's *d* test demonstrate that the use of time periods based on entry date is distortive. Such logic is results driven and is inapposite to Commerce's reason for its approach in this review. The statute requires Commerce to identify a pattern of prices that differ significantly among time periods, regions, or purchasers. The statute does not provide guidance on how to define time periods, regions or purchasers, and Commerce has a reasonable, established practice to address this requirement, with the flexibility to alter its approach given the situation before it. The purpose of identifying a pattern is that such a pattern may indicate circumstances in which dumping may be masked and which may be addressed by the application of an alternative comparison methodology. Commerce attempts to identify such circumstances such that injurious dumping may be effectively identified and remedied. In this review, Commerce has found that the appropriate approach to defining time periods is to group U.S. prices into quarters based on the date of entry associated with the U.S. sale. Commerce finds such an approach appropriate for this review, and Magnum's claims would merely prevent Commerce from appropriately recognizing a pattern of prices which differ significantly by time periods, and would thwart Commerce's purpose to remedy injurious dumping effectively. Commerce finds no fault with Magnum for having U.S. prices which differ significantly over time; however, when such pricing by Magnum masks dumping, Commerce is obligated to remedy such behavior to the extent permitted. Thus, we agree with the petitioner that it is appropriate to use entry date instead of date of sale.

Finally, we disagree with Magnum that *Washers from Korea* or *OTR China 2012-2013* supports its argument to use the date of sale to define time periods in this case. In *Washers from Korea* and *OTR China 2012-2013*, the petitioners argued for the use of monthly, not quarterly, time periods.³³ Therefore, we are not departing from Commerce's standard practice of employing quarterly time comparisons in this administrative review.

³¹ See Memorandum, "Differential Pricing Analysis Memo Related to Magnum," dated October 21, 2019, at Attachment 1.

³² *Id.* at Attachment 2.

³³ See *Washers from Korea* IDM at Comment 7; and *OTR China 2012-2013* IDM at Comment 25.

Comment 2: Adverse Facts Available

In the *Preliminary Results*, we applied facts available with an adverse inference to the Elque Group because it failed to provide adequate responses to Commerce’s original and supplemental questionnaires.

The Elque Group’s Arguments

- The Elque Group contends that Commerce’s decision to apply adverse facts available (AFA) to Elque Group in the preliminary results is unfair, unreasonable, unsupported by substantial evidence, and otherwise contrary to law. The Elque Group argues that it did not withhold information, fail to provide necessary information, or refuse to verify its information.
- Elque Group notes that it is a small and inexperienced first-time respondent who was selected for the review with virtually no notice. Additionally, the Elque Group states that it represented itself, because it could not afford the cost of representation by a law firm. Nevertheless, the Elque Group argues that it fully cooperated and responded to all the questionnaires to the best of its ability.
- The Elque Group argues that the loss of about 105 days in the review – 70 days before it was selected as a respondent and 35 days on account of the U.S. government shutdown – was a significant handicap that denied it a fair opportunity to respond more effectively to Commerce’s requirements.
- The Elque Group notes that the law requires that Commerce “shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority.”³⁴
- The Elque Group states that it has submitted all the requested information to the extent that such information was maintained in its records in the normal course of business. The Elque Group contends that, if Commerce believes that it did not respond to any questions in the form and manner requested, then the reason for it was that Elque Group was not required to and, hence, did not maintain such information in its records in the normal course of business. The Elque Group cites a Court of Appeals for the Federal Circuit (Federal Circuit) decision that held that Commerce may not use adverse facts available if a respondent does not keep certain records that are not required to be kept in the normal course of business.³⁵
- The Elque Group argues that Commerce’s conclusion that Elque Group tracks purchased shrimp size information which could have been used to calculate size-specific shrimp costs is factually incorrect and not supported by record evidence.

³⁴ See Elque Group’s Case Brief, “Certain Frozen Warmwater Shrimp from India: Case Brief of Elque Group in 13th Administrative Review (2/1/2017-1/31/2018,” dated May 22, 2019 (Elque Group’s Case Brief), at 7 (citing section 782(c)(2) of the Act).

³⁵ See Elque Group’s Case Brief at 14 (citing *F.lli De Ceccio Di Fillipo Fara Martino S.p.A v. United States*, 216 F.3d 1027 (Fed. Cir. 2006)).

- The Elque Group argues that, although Commerce stated that there were significant discrepancies in the reported costs, Commerce has not questioned Elque Group on this alleged discrepancy. The Elque Group contends that such questioning would have provided an opportunity for the Elque Group to either explain or make corrections to any incorrect calculations.
- The Elque Group states that Commerce’s inference that it had not provided adequate total cost reconciliations is an unfair and incorrect characterization of the record. Moreover, the cost reconciliations are typically probed and confirmed during on-site verification, which Elque Group was prepared to do.
- The Elque Group argues that Commerce’s finding that it has not complied with requests for information is not supported by record evidence. Therefore, the Elque Group argues that Commerce should reverse its preliminary decision to apply AFA.³⁶

The Petitioner’s Rebuttal

- The petitioner argues that Commerce appropriately assigned the Elque Group an AFA rate in the preliminary results.
- The petitioner states that Calcutta Seafoods Private Limited – one of the three entities that comprise the Elque Group – has been subject to each of the last twelve administrative reviews of the antidumping duty order on certain frozen warmwater shrimp from India.³⁷ Thus, according to the petitioner, there is no reasonable basis upon which to assert, or for Commerce to conclude, that the Elque Group had no notice that its shipments might be subject to an administrative review.
- The petitioner argues that the Elque Group’s extensive commentary in its case brief, along with its request that a hearing be conducted in this proceeding,³⁸ appears to reflect the fact that the company determined that its tactical, strategic determination to limit its resource expenditures in responding to Commerce was ill-conceived.³⁹
- The petitioner states that the record of this proceeding demonstrates that the Elque Group was given numerous opportunities by Commerce to provide information that would have permitted the agency to conduct its review.
- The petitioner argues that the use of an adverse inference is warranted, because the Elque Group failed to respond adequately to Commerce’s questionnaires, constituting a failure to cooperate to the best of the company’s ability to comply with requests for information.⁴⁰

³⁶ See Elque Group’s Case Brief at 17-18.

³⁷ See Petitioner’s Rebuttal Brief at 5-6.

³⁸ *Id.* at 7 (citing Calcutta Seafoods Private Limited’s Letter, “Hearing Request for the Elque Group in the 13th Administrative Review (2/1/2017-1/31/2018),” dated May 21, 2019).

³⁹ *Id.* (citing Elque Group’s Case Brief at 8 (explaining that the company was “handling its own review due to economic reasons...”).

⁴⁰ *Id.* at 9-10 (citing 776(b) of the Act).

Commerce's Position

We have determined that the use of facts otherwise available with an adverse inference is appropriate for the final results with respect to the Elque Group, because the company repeatedly withheld requested information, significantly impeded the proceeding, and failed to cooperate by not acting to the best of its ability in supplying requested information.

Section 776(a)(2) of the Act provides that:

if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Section 776(b) of the Act provides that, “if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.”⁴¹ In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴² Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁴³ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁴⁴

The Federal Circuit has stated that, “while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or

⁴¹ See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁴² See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870; see also, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

⁴³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

⁴⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

inadequate record keeping.”⁴⁵ The AFA standard, moreover, assumes that because respondents are in control of their own information, they are required to take reasonable steps to present information that reflects their experience for reporting purposes before Commerce.

We find that the use of AFA is appropriate for the final results, with respect to the Elque Group, because of its failure to: (1) provide the requisite explanations and documentation showing how information is maintained in the company’s normal accounting and production system; (2) explain how its reported costs were derived; (3) demonstrate the extent to which its submitted costs reasonably reflect cost differences according to Commerce’s physical characteristics; and (4) provide complete/accurate cost reconciliation and other information necessary for Commerce to meaningfully analyze the Elque Group’s reported costs.

We disagree with the Elque Group that it was denied a fair opportunity to respond to Commerce’s questionnaires. On August 9, 2018, Commerce issued the original questionnaire, including section D of the questionnaire, to the Elque Group, and on November 13, 2018, the Elque Group filed its section D response.⁴⁶ Although the Elque Group was given over three months to prepare its responses, Commerce found that the Elque Group failed to respond adequately to numerous questions contained in the original questionnaire, as its answers were often vague and failed to explain its product-specific cost calculations. For example, in response to Question III.A.3 of section D of Commerce’s original questionnaire, which asks how the company accounted for cost differences according to product physical characteristics, the Elque Group responded that “all physical characteristics were incorporated in its reporting methodology,”⁴⁷ However, our analysis of the submitted cost data showed that, even though some products clearly require more processing than others, the Elque Group did not report product-specific conversion costs (*i.e.*, it reported conversion costs which were identical for all products).

The product-specific costs a respondent normally reports should reflect cost differences attributable to the different physical characteristics defined by Commerce, in order to ensure that the product-specific costs we use for the sales-below-cost test and constructed value (CV) accurately reflect the corresponding product’s physical characteristics.⁴⁸ Similarly, the product-specific costs should incorporate differences in variable costs associated with the physical differences in the merchandise, in accordance with 19 CFR 351.411(b), to be used in the calculation of the difference-in-merchandise (DIFMER) adjustment. The requirement to report product-specific sales and cost data is a significant requirement to enable Commerce to perform its dumping analysis and margin calculation. The specific physical characteristics identified at the beginning of each case, which make up the control number (CONNUM), are those physical characteristics determined to be the most significant in differentiating products subject to the proceeding.

The CONNUM in this case is comprised of fourteen product characteristics (*i.e.*, cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp

⁴⁵ See *Nippon Steel*, 337 F. 3d at 1382.

⁴⁶ See Elque Group Section D Response dated November 13, 2018 (Elque Group November 13, 2018 DQR).

⁴⁷ *Id.* at 27.

⁴⁸ See sections 773(b)(1) and 773(e) of the Act.

preparation, frozen form, flavoring, container weight, presentation, species, and preservative). The level of detail within each physical characteristic (*e.g.*, shrimp count size) reflects the importance Commerce places on comparing the most similar products in a price-to-price comparison. In its initial section D response, the Elque Group did not provide any explanation or supporting calculations showing how it accounted for the differences in shrimp sizes, which is an important physical characteristic affecting the reported shrimp costs. In response to Question III.C., which instructs respondents to provide illustrative worksheets demonstrating how the submitted CONNUM-specific costs were calculated and how they tie to source data from the Elque Group's normal accounting system, the Elque Group simply referred Commerce to Exhibits D-36 and D-37, even though the referenced exhibits only contained unexplained Excel worksheets containing the calculation of the per-unit material cost derived by dividing an unknown value by an unknown quantity, without explaining how such amounts were derived and how they tie to the company's normal accounting system.⁴⁹

Such illustrative worksheets and explanations are necessary for Commerce to understand how the Elque Group calculated shrimp cost, especially in light of our analysis of the Elque Group's cost database, which shows that the reported shrimp costs do not follow the differences in CONNUM characteristics. For example, we compared the reported input shrimp cost for a number of similar CONNUMs with different shrimp size characteristics, in some instances separated by more than ten Commerce size ranges. We conducted such analysis by species of shrimp and found that for some species, the reported input shrimp cost for the smaller shrimp sizes was significantly higher than the input shrimp cost for the larger sizes. For other species, the input shrimp cost for the smaller shrimp sizes was significantly lower than the cost for the larger sizes. We also noted large differences in input shrimp costs among similar CONNUMs that differ only in one characteristic (*i.e.*, preservative) which should not affect the raw shrimp costs.⁵⁰

Because the Elque Group's original section D questionnaire response was incomplete and did not provide sufficient explanations for Commerce to understand the Elque Group's cost calculation, we sent the Elque Group requests for additional information and clarification. Specifically, on December 17, 2018, Commerce issued the first supplemental section D questionnaire to the Elque Group,⁵¹ in which we repeated our request from the original section D questionnaire for information on how the Elque Group calculated product-specific costs, among other questions. We stated that "if your reported costs do not reflect cost differences for different sizes of shrimp according to Commerce's physical characteristics, revise your response for each producing company to account for such differences in each producing company's cost database."⁵² In our supplemental questionnaire, we referenced the Elque Group's statement on page 24 of the original section D response that the "Elque Group records the details of its purchases in the Tally financial accounting software. The details entered include the date of purchase, species, form of purchase, basis of purchase, count sizes, quantities and rate for mix count size,"⁵³ because this

⁴⁹ See Elque Group November 13, 2018 DQR at 32 and 33.

⁵⁰ See Elque Group March 20, 2019 Second Section D Supplemental Response, COP database at Exhibit SUPPLE D-20

⁵¹ See Commerce's Letter, "Section D Supplemental Questionnaire," dated December 17, 2018 (Commerce December 17, 2018 DSQ1).

⁵² *Id.*

⁵³ *Id.* at question 2 (citing Elque Group November 13, 2018 DQR at 24).

statement suggests that the company keeps track of purchased input shrimp by count size and thus may use such information to calculate size-specific costs. Additionally, in the December 17, 2018 supplemental questionnaire, we requested that the Elque Group report the cost differences for conversion costs which are attributable to CONNUMs with different physical characteristics, specifically stating that “if your accounting system does not keep track of conversion costs by Commerce’s characteristics, use any reasonable method, such as production time or product yield, to calculate such cost differences.”⁵⁴ Finally, we requested that the Elque Group provide a complete reconciliation of its reported costs to each producing company’s normal books and records in our December 17, 2018 supplemental questionnaire.

In its response to the first supplemental questionnaire, the Elque Group did not revise its response to account for size-specific shrimp cost, and it did not provide an explanation of how the reported shrimp cost was calculated. In addition to not providing cost differences related to different shrimp sizes, the Elque Group also failed to provide conversion cost differences for products with different physical characteristic. For example, the Elque Group reported products in block and semi-block frozen form and assigned the same conversion (*e.g.*, power) costs to such products. However, based on the Elque Group’s description of its freezing processes in its questionnaire responses, semi-block products require three to four hours of freezing time, while block products require only ninety minutes; therefore, it is reasonable to infer that the products in semi-block frozen form have a higher power costs because they consume more electricity.⁵⁵ However, the Elque Group assigned the same conversion costs to all products, without accounting for these differences. Similarly, according to the Elque Group’s explanation of its preservative treatment process, preservative treatment “involves placing raw shrimp in a vessel with a slurry of ice and the preservatives and then mechanically stirring the slurry for a given period of time.”⁵⁶ Accordingly, this should result in higher conversion costs for products with preservative treatment, yet the Elque Group reported no variation in costs.

Further, the company attempted to provide the requested reconciliation of reported costs to each producing company’s books and records, however, the reconciliation contained numerous discrepancies where the reported costs did not tie to the reconciliation.⁵⁷ Because the Elque Group was unable to link the data reported to Commerce to its book and records, we cannot have confidence in the accuracy and integrity of the data reported in the Elque Group’s questionnaire responses.

Given these significant deficiencies, Commerce provided the Elque Group with another opportunity to respond to our requests for information through the issuance of a second supplemental D questionnaire on March 5, 2019.⁵⁸ In the second supplemental D questionnaire Commerce:

⁵⁴ *Id.* at question 4.

⁵⁵ See Elque Group’s October 30, 2018 Section C Response at 13.

⁵⁶ See Elque Group November 13, 2018 DQR at 6.

⁵⁷ See Elque Group Section D 1st Supplemental Response dated December 24, 2018, at 5-6, 9-10, and 13-14.

⁵⁸ See Commerce’s Letter, “Section D Supplemental Questionnaire,” dated March 5, 2019 (Commerce March 5, 2019 DSQ2).

- 1) repeated its request that the company provide CONNUM-specific shrimp costs that reflect cost differences for the different sizes of shrimp consumed. To emphasize the importance of reporting such cost differences, we specifically stated: “Please note that if your accounting system does not normally account for such raw shrimp cost differences, you must use a reasonable method to account for the cost difference associated with the different sizes and form of input shrimp;”
- 2) repeated the request for worksheets showing how the reported CONNUM-specific shrimp costs were calculated;
- 3) repeated the request to provide CONNUM-specific conversion costs; and
- 4) requested an explanation concerning multiple discrepancies identified in the total cost reconciliation.⁵⁹

In its response to the second supplemental D questionnaire, the Elque Group again failed to calculate size-specific shrimp cost, repeating its claim that it “do{es} not have accounting system to maintain the cost of input raw shrimp specifically in count size, form, *etc.*,” even though we instructed the Elque Group to use a reasonable method to account for such cost differences if its normal system does not track such cost differences.⁶⁰ Moreover, in response to question 4 of that same supplemental questionnaire, which asked the Elque Group to “explain whether you record in your system the average shrimp count size and the form for each purchased lot,” the Elque Group replied that “we maintain in our system the average shrimp count size and the form for each purchased lot in the production report which is electronically maintained in Excel format.”⁶¹ This statement once again confirms that the company tracks purchased shrimp size information that can be used to calculate size-specific shrimp costs, but that the Elque Group did not utilize these data to calculate size-specific shrimp costs. In answering other questions, the Elque Group again failed to explain and provide the details of its calculation of raw material costs, did not calculate product-specific conversion costs, and did not provide an adequate explanation of the discrepancies in the cost reconciliation.

The above-referenced information shows the Elque Group’s repeated pattern of not providing the information in the manner and form requested by Commerce, while offering little information concerning its cost reporting methodology, despite multiple requests for information and clarification. This significantly impeded Commerce’s ability to analyze the Elque Group’s section D questionnaire response.

Regarding the Elque Group’s argument that Commerce should not apply AFA because it reported its costs as the Elque Group recorded them in its normal books, and, thus, should not be penalized for not keeping certain records that would enable it to report costs in the manner requested by Commerce, we find this argument to be without merit. Commerce establishes the CONNUM characteristics during the initial investigation when questionnaires are first issued. These characteristics are set before a respondent company receives a questionnaire and,

⁵⁹ *Id.*

⁶⁰ See Elque Group Section D 2nd Supplemental Questionnaire Response dated March 20, 2019, at 2.

⁶¹ *Id.* at 1.

therefore, they have no relation to how a respondent records costs in its books. Given these facts, Commerce does not expect respondents to track in their normal books and records cost differences according to each CONNUM characteristic. However, we do expect respondents to act to the best of their ability to account for such cost differences by utilizing a reasonable method, based on the cost and production information kept in the normal course of business,⁶² which the Elque Group failed to do.

The Elque Group also argues that Commerce erred in its assertion that the Elque Group tracks purchased shrimp size information which the Elque Group could have used to calculate size-specific shrimp costs. To this we note that, as discussed above, the Elque Group repeatedly stated in its responses that the company keeps track, in some form, of purchased shrimp by count size. Moreover, the Elque Group reiterated this in its case brief stating that “it maintained the average count of each lot of raw shrimp it purchased.”⁶³ While the Elque Group maintains that such lot-specific count size information “is inadequate to determine raw material cost of several count sizes of finished products produced from that lot,”⁶⁴ the Elque Group did not act to the best of its ability to employ a reasonable method to use the available lot-specific count size information to report product-specific costs, as Commerce requested it do multiple times.

In its case brief, the Elque Group refers to the analysis Commerce performed for the preliminary results where we identified certain discrepancies in the reported raw shrimp costs. For example, reported shrimp cost for the smaller shrimp sizes was significantly higher than the cost for the larger sizes for some species, and significantly lower for other species. The Elque Group argues that Commerce never questioned the Elque Group about these discrepancies which would have provided an opportunity for the company to explain or correct its responses. We disagree. The above discrepancies resulted from the shrimp cost calculation method employed by the Elque Group, for which no explanation was provided by the company, despite Commerce’s repeated attempts to obtain such information. Had the Elque Group explained and provided the details of its shrimp cost calculation, Commerce would have had a better understanding of why such discrepancies exist, and, if necessary, would have asked specific questions to clarify such calculations.

The Elque Group contends that Commerce’s inference that the Elque Group did not provide an adequate cost reconciliation is an incorrect characterization of the record and that discrepancies in the cost reconciliation may not be so material as to render the entire cost database unusable. We disagree. As noted above, the Elque Group did not provide an adequate cost reconciliation in its original section D response and did not clarify all the discrepancies in the cost reconciliation in its responses to the two supplemental questionnaires. Without such information, it is not feasible to assess how significant such discrepancies are and whether all of the relevant costs were reported. Further, to the Elque Group’s argument that its cost reconciliation, despite its deficiencies, could have been reviewed and confirmed during on-site verification, we note that verification is not an opportunity to submit new factual information.

⁶² See, e.g., *Grain-Oriented Electrical Steel from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 59223 (October 1, 2014), and accompanying IDM at Comment 1.

⁶³ See Elque Group’s Case Brief at 10.

⁶⁴ *Id.*

The regulations at 19 CFR 351.301(b) establish time limits for the submission of new factual information, and the Elque Group failed to submit such information necessary to analyze and rely upon its cost reconciliation in a timely manner.

The Elque Group further suggests that Commerce should consider certain exceptional circumstances in this review, namely that: (1) the Elque Group is a small and inexperienced company that represents itself due to economic reasons; (2) it was a first-time respondent; (3) was selected for the review with virtually no notice, and (4) the law requires that Commerce take into account any difficulties experienced by interested parties, particularly small companies, in supplying the requested information. In this regard, we note, as the petitioner pointed out, that Calcutta Seafoods Private Limited – one of the three entities that comprise the Elque Group – has been subject to the last twelve administrative reviews of the antidumping duty order on certain frozen warmwater shrimp from India, and, as such, there is no reasonable basis upon which to assert that the Elque Group received no notice that its shipments might be subject to an administrative review of this antidumping duty order.

We agree with the Elque Group that, in accordance with section 782(c)(2) of the Act, Commerce takes into account difficulties experienced by parties, particularly small companies. As a result, Commerce specifically stated in its supplemental questionnaires to the Elque Group: “[I]f you have questions regarding this questionnaire, please contact Commerce officials identified in the cover letter.”⁶⁵ The Elque Group contacted Commerce officials when it was first selected as a respondent to obtain guidance about the review process and administrative requirements. However, the Elque Group never contacted Commerce with any questions regarding section D and provided no indication that it was experiencing difficulties in preparing its responses, or indicated that it needed any clarifications or help in reporting its costs. Further, the Elque Group states that 782(c)(2) of the Act requires Commerce to “take into account any difficulties experienced by interested parties, particularly, small companies.” However, we note that we provided the Elque Group multiple opportunities to provide such information, including in the initial questionnaire and in two supplemental questionnaires, in an attempt to give the Elque Group adequate opportunity to provide such information and to convey the importance of providing this information.

Furthermore, we disagree with the Elque Group that the timing of our respondent selection determination shortened the time available for it to respond to Commerce’s questionnaires. Commerce originally selected different respondents; however, all review requests for the originally selected respondents were timely withdrawn. Therefore, we reselected respondents on August 7, 2018,⁶⁶ and issued the initial questionnaire to the Elque Group two days later. We gave the Elque Group the standard deadlines for responses to the questionnaire (*i.e.*, 21 days for section A and 37 days for sections B, C, and D). We granted the Elque Group extensions for its initial responses resulting in a total of 47 days for its section A response, 91 days for its section B

⁶⁵ See Commerce’s Letter, “Antidumping Duty Questionnaire,” dated August 9, 2018; Commerce December 17, 2018 DSQ1; and Commerce March 5, 2019 DSQ2.

⁶⁶ We issued this second respondent selection memo 113 days after the initiation of the review, which was April 16, 2018. See Memorandum, “Certain Frozen Warmwater Shrimp from India: Selection of New Respondents for Individual Review,” dated August 7, 2018.

response, 82 days for its section C response, and 96 days for its section D response.⁶⁷ We granted extensions to the Elque Group which far exceed the amount of time that we normally grant given the Elque Group's status as a small company, first-time respondent, and acting on a *pro se* basis.

Additionally, the Elque Group states that Commerce did not respond to its December 19, 2018 extension request. Due to the partial shutdown of the federal government which began on December 22, 2018, Commerce was unable to respond to the Elque Group's request prior to the original due date of the supplemental questionnaire. Because the Elque Group was representing itself, it was likely unaware that Commerce usually tolls the deadlines following a government closure and, therefore, the Elque Group filed its supplemental section D request on the original deadline of December 24, 2018. While this unusual and unfortunate situation occurred due to the partial government shutdown, it did not prejudice the Elque Group in terms of the time available to submit responses. Indeed, Commerce provided an additional opportunity in March 2019 for the Elque Group to provide complete responses following the deficiencies in its December 2018 supplemental section D response; however, even with this additional opportunity and time following the government shutdown, the Elque Group did not provide the necessary information and data.

The Elque Group argues that the timing of its selection as a mandatory respondent, coupled with the partial federal government shutdown, constituted exceptional circumstances which prevented it from receiving a fair opportunity to respond to the questionnaire. However, as noted above, based on the numerous and substantial extensions of time that the Elque Group received to submit its questionnaire responses, it was not denied extensions because it was selected as a mandatory respondent later in the proceeding. Additionally, subsequent to the federal government shutdown, Commerce issued a second supplemental section D questionnaire to the Elque Group (and provided the Elque Group with a seven-day extension to submit its response). Commerce usually gives respondents an opportunity to remedy deficiencies in its initially reported data, but because of the Elque Group's special circumstances as a first-time and *pro se* respondent, we provided a second opportunity for it to remedy its deficiencies, in accordance with section 782(c)(2) of the Act. However, as noted above, the Elque Group failed to provide the necessary information, even though it had three opportunities to do so.⁶⁸ Therefore, we disagree that the timing of the case unfairly prejudiced the Elque Group or precluded it from opportunities to provide the necessary information.

⁶⁷ See Commerce's Letter, "Certain Frozen Warmwater Shrimp from India: 2017-2018 Administrative Review (section A extension granted)," dated August 28, 2018; Commerce's Letter, "Certain Frozen Warmwater Shrimp from India: 2017-2018 Administrative Review (sections B through D extension granted in part)," dated September 13, 2018; Commerce's Letter, "2017-2018 Administrative Review of Certain Frozen Warmwater Shrimp from India: Grants Partial Extension for Section A, B, C, and D Response," dated September 20, 2018; Commerce's Letter, "2017-2018 Administrative Review of Certain Frozen Warmwater Shrimp from India: Grants Partial Extension for Sections C and D Response," dated October 24, 2018; and Commerce's Letter, "2017-2018 Administrative Review of Certain Frozen Warmwater Shrimp from India: Grants Partial Extension for Section D Response," dated November 6, 2018.

⁶⁸ See Commerce's Letter, "Antidumping Duty Questionnaire," dated August 9, 2018; Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India (supplemental section D questionnaire)," dated December 17, 2018; and Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India (second supplemental section D questionnaire)," dated March 5, 2019.

Accordingly, despite Commerce's issuance of the original section D questionnaire and two section D supplemental questionnaires, the Elque Group still failed to provide Commerce with, among other things, the following requisite explanations and documentation: (1) description of how information is maintained in its normal accounting and production system; (2) explanation of how its reported costs were derived; (3) clear description of the extent to which its submitted costs reasonably reflect cost differences, according to merchandise's physical characteristics (*i.e.*, CONNUM reporting); and (4) a complete and accurate cost reconciliation. As stated above, all of these items are necessary for Commerce to analyze the Elque Group's section D questionnaire response meaningfully. As a result of the Elque Group's deficient responses to our multiple requests for explanations and clarifications, we are unable to assess the reasonableness and reliability of the submitted cost data necessary to calculate an antidumping duty margin.

Therefore, pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act, for these final results, we continue to find that the application of facts otherwise available with an adverse inference to the Elque Group is warranted. Specifically, Commerce has assigned the Elque Group, as facts available with an adverse inference, a dumping margin of 110.90 percent, which is the rate that we have previously assigned to non-cooperative respondents in prior segments of this proceeding.⁶⁹

V. 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*.



Agree

Disagree

10/21/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁶⁹ Specifically, Commerce assigned an antidumping rate of 110.90 percent to 127 companies in the 2006-2007 administrative review of this case. See *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 40492 (July 15, 2008).