



A-533-840  
Administrative Review  
POR: 2/1/2018 – 1/31/2019  
**Public Document**  
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February 27, 2020

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India

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## I. 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 183 producers and/or exporters of the subject merchandise. The period of review (POR) is February 1, 2018 through January 31, 2019. We preliminarily find that sales of the subject merchandise have been made at prices below normal value (NV).

## II. BACKGROUND

In February 2005, Commerce published in the *Federal Register* an AD order on shrimp from India.<sup>1</sup> Subsequently, on February 8, 2019, 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, 2018 through January 31, 2019.<sup>2</sup>

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 2019, Commerce received requests to conduct an administrative review of the AD order on shrimp from India from two domestic interested parties, the Ad Hoc Shrimp Trade Action Committee (the petitioner) and the American Shrimp Processors Association (ASPA), for numerous Indian producers/exporters. Commerce also received requests to conduct an administrative review from certain individual companies. On May 2,

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<sup>1</sup> 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).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816 (February 8, 2019).



2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for 254 companies.<sup>3</sup> On May 29, 2019, we published a correction to the notice of initiation to remedy several inadvertent errors in the original notice.<sup>4</sup>

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.<sup>5</sup> In May 2019, we received comments on the issue of respondent selection from the petitioner and ASPA and rebuttal comments from three potential respondents, Devi (comprised of Devi Fisheries Limited, Satya Seafoods Private Limited, Usha Seafoods, and Devi Aquatech Private Ltd.), Falcon (comprised of Falcon Marine Exports Limited and K.R. Enterprises), 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).<sup>6</sup>

In June 2019, 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.<sup>7</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from India by volume during the POR (*i.e.*, Devi and Falcon).<sup>8</sup> Accordingly, we issued the AD questionnaire to these companies.

In July 2019, we received responses from Devi and Falcon to section A (*i.e.*, the section related to general information) of the questionnaire.<sup>9</sup> However, in July 2019, we received timely submissions withdrawing all review requests for 71 companies, including Devi and Falcon. Therefore, we suspended the deadlines for Devi and Falcon for the remainder of the questionnaire, and we rescinded the review for the 71 companies for which the review requests were withdrawn.<sup>10</sup> In August 2019, we selected new respondents from those companies with

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777 (May 2, 2019) (*Initiation Notice*).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 24743, 24748 (May 29, 2019).

<sup>5</sup> See *Initiation Notice*, 84 FR at 18777.

<sup>6</sup> See Petitioner's Letter, "Certain Frozen Warmwater Shrimp from India: Comments Regarding Respondent Selection," May 13, 2019; ASPA's Letter, "Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from India (POR: 2/1/18-1/31/19): APSA's Comments on Respondent Selection," May 13, 2019; and Devi's, Falcon's, and the Liberty Group's Letter, "Certain Frozen Warmwater Shrimp from India: AR14 Respondent Selection Rebuttal Comments of Devi Fisheries Group, Falcon Marine and Liberty Group," dated May 17, 2019.

<sup>7</sup> See Memorandum, "Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review," dated June 25, 2019.

<sup>8</sup> *Id.*

<sup>9</sup> See Devi's July 24, 2019 Section A Questionnaire Response; and Falcon's July 24, 2019 Section A Questionnaire Response.

<sup>10</sup> See *Certain Frozen Warmwater Shrimp from India: Rescission of Antidumping Duty Administrative Review; 2018-2019, In Part*, 84 FR 62506 (November 15, 2019).

remaining, active review requests; these respondents are Razban Seafoods Ltd. (Razban) and Z A Sea Foods Pvt. Ltd. (ZA Sea Foods).<sup>11</sup>

In August 2019, we issued questionnaires to Razban and ZA Sea Foods. Subsequently, Razban filed comments regarding its selection as a mandatory respondent, and stated that it had no shipments because it was only a toller.<sup>12</sup> The petitioner provided rebuttal factual information and alleged that Razban was affiliated with, Pasupati Aquatics Pvt. Ltd. (Pasupati).<sup>13</sup> Razban submitted rebuttal information, contending that the information on Pasupati's website stating that it had merged with Pasupati was incorrect and that entry documentation erroneously lists Razban's name.<sup>14</sup> Razban also provided its processing agreement and audited financial statements to confirm its statements.<sup>15</sup> In August 2019, we suspended the questionnaire deadlines for Razban.<sup>16</sup> Based upon the information provided by Razban, we preliminary determine it did not have shipments of subject merchandise during the POR.

On August 21, 2019, ZA Sea Foods requested to align its reported costs with its fiscal year (*i.e.*, April 1, 2018 through March 31, 2019).<sup>17</sup> We issued a supplemental questionnaire to ZA Sea Foods regarding this revised cost period and after reviewing its response, we allowed ZA Sea Foods to align its costs with its fiscal year.<sup>18</sup> In September 2019, we received ZA Sea Foods' response to section A of the questionnaire.<sup>19</sup> Because ZA Sea Foods' response to section A of the questionnaire indicated that it did not have a viable home market, in September 2019, we issued a supplemental questionnaire related to its third country market sales.<sup>20</sup> We received ZA Sea Foods' response to this third country market supplemental questionnaire in October 2019.<sup>21</sup>

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<sup>11</sup> See Memorandum, "Certain Frozen Warmwater Shrimp from India: Selection of New Respondents for Individual Review," dated August 8, 2019.

<sup>12</sup> See Razban's Letter, "Certain Frozen Warmwater Shrimp from India: Request to Reverse New Mandatory Respondent Selection Decision," dated August 19, 2019 (Razban Letter).

<sup>13</sup> See Petitioner's Letter, "Certain Frozen Warmwater Shrimp from India: Response to Razban Seafoods Private Limited's Request to Reverse New Mandatory Respondent Selection Decision," dated August 22, 2019.

<sup>14</sup> See Razban's Letter, "Certain Frozen Warmwater Shrimp from India: AHSTAC's Factual Information in Response to Razban's Request to Reverse New Mandatory Respondent Selection Decision," dated August 26, 2019.

<sup>15</sup> See Razban Letter.

<sup>16</sup> See Commerce's Letter, "Antidumping Duty Review of Certain Frozen Warmwater Shrimp from India-Section A Extension In Part," dated August 26, 2019.

<sup>17</sup> See ZA Sea Foods' Letter, "Request to consider cost reporting period from April 01, 2018 to March 31, 2019 instead of February 01, 2018 to January 31, 2019," dated August 21, 2019.

<sup>18</sup> See Commerce's Letter, "Antidumping Duty Review of Certain Frozen Warmwater Shrimp from India – Request to Align Cost Reporting Period with Fiscal Year," dated August 23, 2019; ZA Sea Foods' Letter, "Certain Frozen Warmwater Shrimp from India: Z.A. Sea Foods Private Limited's (ZASF) Response to Questionnaire on Request to Align Cost Reporting Period with Fiscal Year," dated September 4, 2019; and Commerce's Letter, "Certain Frozen Warmwater Shrimp from India: Request for Adjustment of Cost Reporting Period for Questionnaire Section D," dated September 9, 2019.

<sup>19</sup> See ZA Sea Foods' September 16, 2019 Section A Questionnaire Response.

<sup>20</sup> See Commerce's Letter, "Certain Frozen Warmwater Shrimp from India: 2018-2019 Administrative Review: Supplemental Questionnaire for Selection of Comparison Market," dated September 25, 2019.

<sup>21</sup> See ZA Sea Foods' Letter, "ZASF Supplemental Questionnaire Response of Comparison Market for selectin of Third Country in the Anti-Dumping Order on Certain Frozen Warmwater Shrimp from India (A-533-840)," dated October 2, 2019.

Additionally, in October 2019, we extended the preliminary results of this review to no later than February 28, 2020.<sup>22</sup>

In October 2019, we received responses from ZA Sea Foods 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).<sup>23</sup>

From December 2019 through January 2020, we issued supplemental sales and cost questionnaires to ZA Sea Foods, and we received responses to these supplemental questionnaires in January 2020.<sup>24</sup>

### 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>25</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. 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

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<sup>22</sup> See Memorandum, “Certain Frozen Warmwater Shrimp from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated October 8, 2019.

<sup>23</sup> See ZA Sea Foods’ October 4, 2019 Sections B through D Questionnaire Response.

<sup>24</sup> See ZA Sea Foods’ January 2, 2020 Supplemental Sections A through D Questionnaire Response, and ZA Sea Foods’ January 29, 2020 Second Supplemental Section A Questionnaire Response.

<sup>25</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

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>26</sup>

#### **IV. 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 ZA Sea Foods’ 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 NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs 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

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

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.<sup>27</sup>

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.<sup>28</sup> 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 prices 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 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 consolidated customer codes reported by the respondent. 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 entry into the United States.<sup>29</sup> 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 NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* 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

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<sup>27</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

<sup>28</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 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).

<sup>29</sup> See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 57847 (October 29, 2019), and accompanying IDM at Comment 1.

*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*

For ZA Sea Foods, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.83 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>30</sup> 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 there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for ZA Sea Foods.

#### Product Comparisons

For ZA Sea Foods, we made product comparisons using CV, as discussed in the "Calculation of NV Based on CV" section below.<sup>31</sup>

#### Export Price

For all U.S. sales made by ZA Sea Foods, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first 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.

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, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. brokerage and handling expenses, U.S. inland freight expenses, commissions, bank charges, and other direct selling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

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<sup>30</sup> See Memorandum, "Analysis for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated concurrently with this memorandum (Preliminary Calculation Memorandum).

<sup>31</sup> See section 773(a)(4) 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 ZA Sea Foods' home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determined that the aggregate volume of ZA Sea Foods' home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise, pursuant to 773(a)(1)(C)(ii).

ZA Sea Foods stated that Vietnam was its largest third country market and products sold there were the most similar to the ones it sold to the United States, thus satisfying the regulatory criteria for third country market selection under 19 CFR 351.404(e)(1) and (2).<sup>32</sup> However, ZA Sea Foods stated that its customers in Vietnam were processors or traders,<sup>33</sup> and the petitioner raised concerns about the nature and the ultimate destination of sales ZA Sea Foods made to Vietnam, given that ZA Sea Foods' customers are also known processors and exporters of shrimp to the United States.<sup>34</sup>

In accordance with 19 CFR 351.404(f), Commerce will "normally... calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable." However, Commerce's regulations at 19 CFR 351.404(e)(3) provide that, in selecting a third country, Commerce may take into account "other factors as the Secretary considers appropriate." In the instant case, based upon Commerce's consideration of the trade patterns evidenced by ZA Sea Foods' customers in Vietnam (*i.e.*, the factor under 19 CFR 351.404(e)(3)), we find that ZA Sea Foods' sales to Vietnam are not appropriate for consideration as comparison sales to establish NV in this review. Therefore, we used CV as our comparison for ZA Sea Foods' U.S. sales, in accordance with section 773(a)(4) 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 U.S. sales. Sales are made at different

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<sup>32</sup> See ZA Sea Foods' October 2, 2019 Third Country Supplemental Response.

<sup>33</sup> See ZA Sea Foods' January 29, 2020 Second Supplemental Section A Response, at S2-6.

<sup>34</sup> See Petitioner's Letter, "Certain Frozen Warmwater Shrimp from India: Comments on Z.A. Sea Foods Private Limited's Section A Response and Request for Verification," dated September 26, 2019.

LOTs if they are made at different marketing stages (or their equivalent).<sup>35</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>36</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and 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,<sup>37</sup> 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.<sup>38</sup>

When Commerce is unable to match 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 to sales at a different LOT in the comparison market, where available data make it possible, we make a 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 is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>39</sup>

As discussed above, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling expenses and profit.<sup>40</sup> In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in the instant case to make a LOT determination on the basis of comparison market sales for ZA Sea Foods, Commerce may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.<sup>41</sup> We based the CV selling expenses and profit for ZA Sea Foods on the weighted-average selling expenses incurred and profits earned by the two mandatory respondents in the 2016-2017 administrative review on their comparison market sales (*i.e.*, Belgian sales for Devi and United Kingdom sales for the Liberty Group). However, we could not determine the LOT of the sales from which we derived selling expenses and profit for CV. As a result, we could not determine whether there is a difference in LOT between any U.S. sales and CV. Further, ZA Sea Foods did not claim a LOT adjustment. Therefore, we did not

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<sup>35</sup> See 19 CFR 351.412(c)(2).

<sup>36</sup> *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 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

<sup>37</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>38</sup> See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>39</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

<sup>40</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), unchanged in *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).

<sup>41</sup> See 19 CFR 351.412(d)(2).

make a LOT adjustment to NV in the case of ZA Sea Foods. See “Calculation of Normal Value Based on Constructed Value” section of this notice below.

C. *Calculation of Cost of Production*

In accordance with section 773(b)(3) of the Act, we calculated ZA Sea Foods’ COPs based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses. We examined ZA Sea Foods’ cost data and determined that our quarterly cost methodology was not warranted; therefore, we applied our standard methodology of using annual costs based on the reported data. We relied on the COP data submitted by ZA Sea Foods.

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

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because of concerns regarding the nature of the sales to the comparison market. Therefore, for margin calculation purposes we are comparing EP sales in the United States to CV, as described under section 773(e) of the Act. In accordance with section 773(e) of the Act, we calculated CV based on the sum of ZA Sea Foods’ raw materials and manufacturing costs incurred in producing the subject merchandise, plus amounts for selling, general, and administrative expenses, interest expenses, U.S. packing expenses, and profit. We calculated the cost of materials and fabrication, general and administrative expenses, and interest expenses as described in the Calculation of Cost of Production section above.

In the absence of comparison-market sales made in the ordinary course of trade to serve as the basis for CV profit and selling expenses, we are unable to use our “preferred method” to calculate these amounts and must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”).

The first statutory alternative provided in section 773(e)(2)(B) is not possible because we do not have information on the record representing the same general category as the subject merchandise sold by ZA Sea Foods. The second alternative for determining CV profit is not available to us in this case because there are no other mandatory respondent exporters or producers subject to the review with U.S. sales during the POR. Therefore, we calculated CV profit and CV selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act (*i.e.*, based on “any other reasonable method”), using the financial statements of Indian producers and exporters of shrimp, as calculated during the 2016-2017 administrative review of this

proceeding.<sup>42</sup> The information meets our criteria in that it represents the experience of Indian producers of subject merchandise (and thus similar business operations and products to the respondent) and is from a period of time just prior to our POR, and is thus the most reasonably contemporaneous data available.

Further, we are unable to calculate the amount realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise (*i.e.*, the “profit cap”), in accordance with section 773(e)(2)(B)(iii) of the Act, because the record does not contain any information for making such a calculation. However, the SAA makes clear that Commerce might have to apply alternative (iii) on the basis of facts available.<sup>43</sup> Therefore, we conclude that the method used to calculate CV profit serves as a reasonable profit cap for the preliminary results.

Finally, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.<sup>44</sup>

## V. CURRENCY CONVERSION

We made currency conversions into U.S. dollars 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.

## VI. 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 in the *Federal Register*.

☒

Agree

☐

Disagree

2/27/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>42</sup> See Preliminary Calculation Memorandum.

<sup>43</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1944) (SAA) at 840.

<sup>44</sup> See Preliminary Calculation Memorandum.