



A-533-840
Administrative Review
POR: 2/1/2018 – 1/31/2019
Public Document
E&C/OII: BB

December 21, 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: Issues and Decision Memorandum for the Final Results of the
2018-2019 Antidumping Duty Administrative Review of Certain
Frozen Warmwater Shrimp from India

I. SUMMARY

We analyzed the comments of the interested parties in the 2018-2019 administrative review of the antidumping duty order covering certain frozen warmwater shrimp (shrimp) from India. As a result of our analysis, we made changes to the margin calculations for Z A Sea Foods Pvt. Ltd. (ZA Sea Foods). 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:

Comment 1: Differential Pricing Time Periods
Comment 2: Use of Third-Country Sales as a Comparison Market
Comment 3: Methodology for Constructed Value Profit and Selling Expenses
Comment 4: Names in Customs Instructions

II. BACKGROUND

On March 6, 2020, the Department of Commerce (Commerce) published the preliminary results of the 2018-2019 administrative review of the antidumping duty order on shrimp from India.¹ This review covers 183 producers/exporters. Commerce selected Razban Seafoods Ltd. (Razban) and ZA Sea Foods (collectively, the respondents) for individual examination. The period of review (POR) is February 1, 2018 through January 31, 2019.

¹ See *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 13131 (March 6, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



We invited parties to comment on the *Preliminary Results*. On April 10, 2020, we received a case brief from ZA Sea Foods and seven other Indian shrimp producers.² On April 17, 2020, we received a rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (AHSTAC, the petitioner) and the American Shrimp Processors Association (ASPA).³ After analyzing the comments received, we changed the weighted-average margins from those presented in the *Preliminary Results*.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁴ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁵ Additionally, on October 7, 2020, Commerce extended the final results of this review by 60 days.⁶ The deadline for the final results of this review is now December 21, 2020.

On October 27, 2020, Commerce placed the final decision of U.S. Customs and Border Protection (CBP) regarding circumvention of the Indian shrimp order by Vietnamese companies on the record of this investigation.⁷ We allowed parties an opportunity to comment on this CBP determination. On November 3, 2020, ZA Sea Foods, AHSTAC, and ASPA submitted comments on the CBP determination.⁸

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,⁹ 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

² See Indian Producers' Case Brief, "Anti-Dumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Case Brief," dated April 10, 2020 (Indian Producers Case Brief).

³ See AHSTAC's Rebuttal Brief, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India (2018-2019): Rebuttal Brief," dated April 17, 2020; and ASPA's Rebuttal Brief, "Certain Frozen Warmwater Shrimp from India: ASPA's Rebuttal Brief," dated April 17, 2020.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁶ See Memorandum, "Certain Frozen Warmwater Shrimp from India; 2018-2019 Administrative Review: Extension of Deadline for Final Results," dated October 7, 2020.

⁷ See Memorandum, "2018-2019 Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from India: Placing U.S. Customs and Border Protection Decision on the Record and Setting Comment Deadline," dated October 27, 2020 (CBP EAPA Decision).

⁸ See ZA Sea Foods's Letter, "Anti-Dumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Comments on CBP EAPA Determination," dated November 3, 2020 (ZA Sea Foods CBP Decision Comments); AHSTAC's Letter, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India (2018-2019): Comments Regarding the Relevance of CBP's Final Determination," dated November 3, 2020 (AHSTAC CBP Decision Comments); and ASPA's Letter, "Certain Frozen Warmwater Shrimp from India: ASPA's Comments on CBP Evasion Decision," dated November 3, 2020.

⁹ "Tails" in this context means the tail fan, which includes the telson and the uropods.

which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

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.¹⁰

¹⁰ 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); 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).

IV. DISCUSSION OF THE ISSUES

Comment 1: Differential Pricing Time Periods

ZA Sea Foods' Argument

- Commerce should modify the time periods used for the differential pricing analysis in the *Preliminary Results*. While Commerce assigned quarters based on entry date in the *Preliminary Results*, ZA Sea Foods' universe of sales is based on the sale date. Therefore, Commerce should revise the quarters to be based on sale, rather than entry, date.
- ZA Sea Foods acknowledges that, in the previous segment of this proceeding, Commerce defined the differential pricing quarters by entry date. However, the respondent in that segment reported its universe of sales based on entry date, unlike ZA Sea Foods, which reported its universe based on sale date (*i.e.*, invoice date).¹¹ Commerce should not depart from its overall normal practice for administrative reviews, as it did in the prior segment of this proceeding.
- During the prior segment of this proceeding, Commerce stated that it “usually examines U.S. sales during the period of review, rather than the U.S. sales associated with entries during the period of review,” and that “the default definition for time periods is based on the quarters of the POR and the dates of U.S. sale.” Therefore, Commerce’s standard practice is to assign quarters based on the date of sale. This method provides a uniform and predictable approach across reviews, and Commerce should apply this standard quarterly methodology here.
- ZA Sea Foods states that it is unaware of any other case where Commerce has departed from its normal practice in this way. Commerce departed from its practice here without evidence or a reasonable basis for departure and the administrative record does not support an exception to the standard differential pricing methodology in this review.

AHSTAC's Argument

- Contrary to ZA Sea Foods' statement that it is unaware of any other proceeding where Commerce defined quarters by entry rather than sale date, this is now the fifth consecutive review of this proceeding where Commerce has used entry dates to define quarters. Additionally, Commerce has thrice addressed arguments related to the use of entry dates in this proceeding.¹² ZA Sea Foods argument that Commerce should change

¹¹ See ZA Sea Foods' Letter, “ZASF's Section A Questionnaire Response in the Anti-Dumping Order on Certain Frozen Warmwater Shrimp from India (A-533-840),” dated September 16, 2019 (ZA Sea Foods September 16, 2019 AQR) at A-18.

¹² See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 57847 (October 29, 2019) (*Shrimp from India AR13 Final Results*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (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) (*Shrimp from India AR10 Final Results*), and accompanying IDM at Comment 2; *Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review; 2015-2016*, 82 FR 43517 (September 18, 2017) (*Shrimp from India AR11 Final Results*), and accompanying IDM at Comment 1.

its established practice in this case to use sale date is a result of ZA Sea Foods' reporting its universe of sales based on sale date, not entry date.

- ZA Sea Foods' reporting of entry date for all sales is unusual, but ZA Sea Foods argues that there would be no distortion if Commerce changed the calculation to use sale date. Commerce defines quarters by date of sale when the respondent does not know the entry date and the universe of sales is defined by sale dates within the POR. If the quarters were defined by entry date, some dates would fall outside the POR and necessitate five quarters rather than four.¹³ However, ZA Sea Foods reported entry dates for all its sales, and it did not argue that the use of entry date is distortive and would result in five quarters.
- Since adopting the practice to define quarters by entry date in this proceeding, Commerce has repeatedly emphasized the logic of using entry dates to avoid distortions caused by the use of sale dates outside the POR when the universe of sales is defined by entry date. Commerce's positions in the tenth and eleventh reviews of this proceeding support the position that, where the universe is defined by the entry date, certain transactions associated with these entries would have sale dates that fall outside the POR.¹⁴ Because ZA Sea Foods' universe is not defined by entry date, this means that ZA Sea Foods may not have reported all sales during the POR.
 - If ZA Sea Foods reported its universe based on sale date, some transactions should have entry dates outside of the POR given the lag time between shipment and customs entry date observed in prior reviews of this proceeding. However, ZA Sea Foods failed to identify any record evidence indicating that the use of entry dates would require the use of periods outside the POR.
 - Because ZA Sea Foods has not argued or shown distortions resulting from the use of entry date, ZA Sea Foods' statements amount to claims that Commerce's general time period practice should take precedence over the specific practice developed in the last four reviews of this order.
- In the tenth and eleventh administrative reviews, the domestic producers argued against quarters defined by entry date. ZA Sea Foods now seeks to change this practice for its own benefit without showing why quarters based on entry date are distortive. Commerce cannot switch between quarters based on sale date and quarters based on entry date because it is inappropriate and arbitrary.

ASPA's Argument

- ZA Sea Foods incorrectly characterizes Commerce's practice in this proceeding and the record of this review regarding the definition of quarters for differential pricing. ZA Sea Foods argues that defining quarters by entry date is a departure from Commerce's normal practice and only addresses the use of entry dates in the previous administrative review; however, this is the fifth consecutive review of this proceeding where Commerce has

¹³ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64042 (November 20, 2019).

¹⁴ See *Shrimp from India AR13 Final Results* and IDM at Comment 1; and *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10665 (March 12, 2018), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32835 (July 16, 2018).

used entry date to define quarters. ZA Sea Foods argues for Commerce to change its predictable practice in this proceeding because it will be of benefit to ZA Sea Foods.

- ZA Sea Foods points to no authority requiring Commerce to use invoice date to establish quarters.¹⁵ Commerce's date selection is "a practical matter," not a policy matter dictated by the statute.¹⁶ Commerce selects a date that will avoid the "five quarter problem," which arises when there is a significant lag between the sale date and the entry date.¹⁷ In this proceeding, Commerce's practice is to use entry dates to avoid quarters of unequal duration, but Commerce also allows parties to suggest alternate time period definitions responsive to the individual facts at hand.¹⁸
 - The use of entry dates in this review does not cause the "five quarter problem," and, therefore, is not contrary to Commerce's practice. While ZA Sea Foods argues that grouping by sale date would create four quarters of equal duration, ZA Sea Foods has not shown that the use of entry date would prevent the use of four quarters.
 - The record does not provide a reason to change the consistently used entry date but instead shows that the use of entry dates best fulfills the purpose of the differential pricing test, *i.e.*, to unmask dumping. While ZA Sea Foods argues that Commerce should reverse its practice in this proceeding, Commerce should use the date which better unmasks dumping, which in this case is the entry date.

Commerce's Position

While we agree with AHSTAC and ASPA that we usually define differential pricing quarters by entry date in reviews of this proceeding, the specific facts of this particular review make it more appropriate to define quarters by sale date for ZA Sea Foods. Although we have used and defended the use of quarters based on entry dates in the past several reviews of this case, in those instances the respondent's universe of reported sales was also based on entry date.¹⁹ For shrimp from India, there is generally a time lag between sale date and entry date, meaning that a respondent's universe of sales will vary depending on whether they are reported based on entry date or sale date.²⁰ Because ZA Sea Foods' reported its universe of U.S. sales based on sale date, it is appropriate to match our definition of quarters in this review to also use sale date, rather than entry date.

At the time ZA Sea Foods filed its questionnaire responses, it was a first-time and *pro se* respondent. The antidumping duty questionnaire instructs respondents to "{r}eport each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR."²¹ As all ZA Sea Foods' sales were EP and it knew the entry date for all sales, it should

¹⁵ See *Shrimp from India AR13 Final Results* IDM at 8.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 6-7.

¹⁸ *Id.* at 6-7.

¹⁹ See, e.g., *Shrimp from India AR10 Final Results* IDM at 20; *Shrimp from India AR11 Final Results* IDM at 6; and *Shrimp from India AR13 Final Results* IDM at 6.

²⁰ See *Shrimp from India AR13 Final Results* IDM at 6.

²¹ See Commerce Letter, Antidumping Duty Questionnaire, dated August 8, 2019 at C-2.

have reported its universe of sales based on U.S. entry dates that occurred during the POR.²² ZA Sea Foods instead reported its universe of POR sales based on its sale date, which is prior to entry date due to shipping time. However, we did not notify ZA Sea Foods of this error nor instruct ZA Sea Foods to correct it.

In accordance with section 782(d) of the Tariff Act of 1930, as amended (the Act), Commerce “shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency.” Additionally, section 782(c)(2) of the Act, states that Commerce “shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority.” As noted above, we did not notify ZA Sea Foods of the deficiency in its reporting of its U.S. universe of sales. As a first-time and *pro se* respondent, it is unlikely that ZA Sea Foods would have recognized the error itself or been aware of the years of case precedent related to this issue. Because we gave ZA Sea Foods no notification of the error or opportunity to correct it, it would be unfair to apply programming language on a different basis than ZA Sea Foods’ reported sales.

Therefore, purely as a result of our failure to notify ZA Sea Foods of the incorrect basis it used for its universe of sales, it is appropriate to revise the differential pricing quarters to be based on sale date. This decision is not a change in the established practice of using quarters based on entry dates, but, rather, it is a result of the particular facts of this review. AHSTAC and ASPA note several issues with defining quarters based on date of sale rather than date of entry, but none of those apply in this particular case. The “five quarter problem” occurs when there is a lag between the sale and entry dates that can result in five quarters of data for a year-long POR. AHSTAC argues that ZA Sea Foods failed to identify any record evidence indicating that the use of entry dates would require the use of periods outside the POR and that ZA Sea Foods has not argued or shown distortions resulting from the use of entry date. However, we note that there is also no record evidence indicating that the use of sale dates would require periods outside the POR, and neither has AHSTAC shown that distortions would result from the use of sale date to define quarters.

As ASPA notes, the “five quarter problem” is not at issue with ZA Sea Foods’ sales. As we explained in the 2014-15 review of this case, which was the first segment of this proceeding to employ quarters based on entry, rather than sale, date: “Because the universe of Falcon’s and the Liberty Group’s sales is based on entry date, the respondents’ sales are divided into more than four quarters when we define time period using the date of sale. 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 time periods.”²³ Thus, the “five quarter problem” in the prior reviews only arose because those respondents reported their universe of sales based on entry date; however, ZA Sea Foods reported its universe of sales based on sale date, and the same logical basis to define quarters based on entry date does not exist in this review.

²² See ZA Sea Foods’ Letter, “ZASF Section B, C & D Questionnaire Response of Anti-Dumping Order on Certain Frozen Warmwater Shrimp from India (A-533-840),” dated October 4, 2019 (ZA Sea Foods October 4, 2019 BCDQR) at C-20, C-41

²³ See *Shrimp from India AR10 Final Results* IDM at 20-21.

AHSTAC also argues that ZA Sea Foods may not have reported all of its sales during the POR because it only reported sales with entry dates during the POR.²⁴ We agree with this argument, but as noted above, we did not notify ZA Sea Foods of this error. AHSTAC does not argue for the application of either facts available or adverse facts available; however, even if the argument were made, neither is appropriate in this case as we did not notify ZA Sea Foods of the need to correct its database nor provide it an opportunity to submit such a correction. ASPA additionally argues that Commerce should use the date that better unmask dumping, which in this case, according to ASPA, is the entry date. While we agree that unmasking dumping is fundamental to our work, the calculations that unmask dumping must be valid. In this case, there is a fundamental mismatch between a sales universe reported based on sale date and splitting that database into quarters based on another date, *i.e.*, entry date. If the universe is based on sale date, and there is no concern about the “five quarter problem,” the sales quarters should also be defined by sale date.

While the use of quarters based on sale date for this review is inconsistent with past reviews of this proceeding, there is consistency among all segments of this proceeding in that the date used to define the universe of sales matches the date used to define quarters. We again note that this revision is only in response to the facts of this particular review and is not a change in the overall quarterly precedent established in previous segments this proceeding. For the reasons noted above, we have revised the programming for ZA Sea Foods to define quarters based on the date of sale.

Comment 2: Use of Third-Country Sales as a Comparison Market

ZA Sea Foods’ Argument

- Commerce generally uses a respondent’s home market to determine normal value (NV). If the home market is not viable during the POR, Commerce uses a third-country market instead. However, in the *Preliminary Results*, Commerce used constructed value (CV) to calculate NV. Commerce should reconsider the legal, factual, and equitable reasons underlying this decision, and instead revise the final results to use ZA Sea Foods’ Vietnamese sales, *i.e.*, the company’s sales to a third-country market, as the basis for NV.
- The law and Commerce’s regulations establish that Commerce should use ZA Sea Foods’ sales to Vietnam for NV. ZA Sea Foods points to Commerce’s statements in the *Preliminary Results* that Vietnam is ZA Sea Foods’ largest third-country market and that the products sold to Vietnam are the most similar to those sold to the United States. However, Commerce then stated that, due to the trade patterns of ZA Sea Foods’ Vietnamese customers, sales to Vietnam were not an appropriate basis for NV and used CV to calculate NV instead.
- Commerce should reconsider this decision for the final results because it contradicts Commerce’s regulations that provide only limited exceptions to determining NV based on comparison market sales. Section 351.404(c) of Commerce’s regulations states that Commerce “will calculate normal value on the basis of price in the exporting country” if

²⁴ As there is generally a lag between the sale or shipment date and the U.S. entry date, there may be missed sales at the beginning of the POR that were sold before the POR but did not enter the United States until after the POR began. Conversely, there may be sales included in a database that were sold during the POR but did not enter the United States until after the POR, which should be excluded from the database.

the exporting country is a viable market; alternatively, if the exporting country is not viable, Commerce “may” calculate NV based on a third-country market if it is viable. Following this rule, there are two exceptions to calculating NV based on either the exporting country or a third country: (1) the existence of a particular market situation; or (2) a third-country price is not representative.

- ZA Sea Foods acknowledges that, while the regulations state that Commerce “will” use a viable exporting country market, the regulations only state that Commerce “may” use a third-country market. ZA Sea Foods argues that this difference is only due to the two noted exceptions. Further, neither exception is present here because Commerce did not determine that a particular market situation exists or that ZA Sea Foods’ prices to Vietnam are not representative.
- Commerce’s reference to 19 CFR 341.404(e)(3) as the basis to disregard ZA Sea Foods’ Vietnamese sales was improper as this regulation deals with which third-country market to select, not whether to use a third-country market at all.
- Commerce’s use of CV for the *Preliminary Results* ignores 19 CFR 351.404(f), which states that Commerce “normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable.” ZA Sea Foods submitted complete, reconciled sales data and was prepared to have the sales data verified before the verification request was withdrawn. ZA Sea Foods’ third-country sales fulfill this requirement of being both available and verifiable, and, given this regulatory preference and the absence of any exceptions, Commerce should have used ZA Sea Foods’ Vietnamese sales as the basis for NV.
- Commerce’s reliance on the “pattern of trade” contradicts its own practice. The company’s knowledge at the time of sale is the defining factor, and, because ZA Sea Foods did not have control of the merchandise after the sale or know at the time of sale that the product would be exported after further processing, ZA Sea Foods did not have knowledge of any irregular patterns of trade at the time of sale. ZA Sea Foods cites to *Welded Line Pipe from Korea*, where Commerce found that the respondent did not have control of the merchandise after a sales nor did it have knowledge that merchandise sold domestically may have been exported without any further processing.²⁵ Therefore, ZA Sea Foods properly considered these as third-country sales that were useable for calculating NV.²⁶
- Record evidence supports use of ZA Seas Foods’ Vietnamese sales to calculate NV. ZA Sea Foods provided information showing that it provides the same documentation accompanying a shipment regardless of destination, as well as purchase orders, health certificates, and bills of lading showing Vietnamese destinations for sales to its Vietnamese customers. The evidence and statements on the record show that, as far as ZA Sea Foods was aware, its sales to Vietnam were destined for Vietnam, although it did recognize that its Vietnamese customers may be processors of shrimp. There is no evidence on the record contradicting its statements or documentation or to indicate that these Vietnamese sales were not *bona fide*. ZA Sea Foods’ prices were negotiated in good faith without knowledge that its sales to Vietnam might ultimately be shipped elsewhere, with or without additional processing. Commerce’s consideration of its

²⁵ See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at Comment 6.

²⁶ See *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1330-31 (CIT 2000) (*Allegheny Ludlum*).

customers' patterns of trade are not applicable to the question of whether ZA Sea Foods' sales to Vietnam were representative, in the ordinary course of trade, and ultimately usable as a basis for NV.

- Additionally, Commerce's consideration of its customers' patterns of trade is only relevant if those customers did not process the shrimp they bought from ZA Sea Foods. There is no record evidence that ZA Sea Foods' Vietnamese customers did not further process the shrimp. Commerce's practice is to consider merchandise to be consumed if it is used to produce non-subject merchandise after ZA Sea Foods sold it.²⁷ Commerce may not presume a pattern of trade of its customers or presume that those customers do not process with shrimp without record evidence.
- Besides the legal and factual reasons, there are also equitable reasons why Commerce should not use CV for the final results. The domestic producers submitted comments regarding the appropriate third-country comparison market, but these comments did not suggest the use of CV. Further, Commerce's supplemental questionnaires did not question the viability or reliability of Vietnam as a third-country market, and, in fact, Commerce's questions, like those in the Sections A through D Supplemental Questionnaire,²⁸ suggested that Commerce intended to use Vietnam as the comparison market. Although ZA Sea Foods recognizes that the respondent bears the burden of providing the requested information and creating an adequate record, this does not "obviate Commerce's obligation to let the respondent know what information it really wants."²⁹
 - Commerce must assure itself that it has asked enough questions to obtain the information needed; in this case, Commerce gave no indication that ZA Sea Foods' Vietnamese sales were not *bona fide* or that it would need to provide an alternate third-country sales listing.
 - Commerce suggested in the *Preliminary Results* that ZA Sea Foods should have provided an alternate third-country sales database, which ZA Sea Foods subsequently indicated a willingness to provide. If Commerce continues to rely on CV, Commerce has denied ZA Sea Foods a meaningful opportunity to submit an alternate third-country sales database by waiting until the month before the *Preliminary Results* to ask about the Vietnamese sales and by not requesting an alternate third-country sales listing.
- Finally, the withdrawal of the request for verification denied ZA Sea Foods the opportunity to demonstrate the reliability of its Vietnamese sales to Commerce. ZA Sea Foods was ready and willing to participate in verification, and it should not be punished due to the coronavirus pandemic, a situation which was outside of its control. The cancellation of verification should not result in Commerce ignoring ZA Sea Foods' Vietnamese sales database due to the purported patterns of trade of its customers.

²⁷ See *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37182 (July 9, 1993); and *Final Determination of Sales at less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15473 (March 23, 1993).

²⁸ See Commerce's Letter, "Certain Frozen Warmwater Shrimp from India: 2018-2019 Administrative Review: Sections A through D Supplemental Questionnaire," dated December 4, 2019 (Sections A through D Supplemental Questionnaire).

²⁹ See *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804 (1999).

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce should use “facts otherwise available” in reaching the applicable determination. Therefore, Commerce should accept ZA Sea Foods’ sales to Vietnam as accurate, legitimate, and complete, and use these sales as the basis for NV.

- ZA Sea Foods also provided comments on CBP’s determination of evasion of the Indian shrimp order by certain Vietnamese companies. Other than how the CBP Enforce and Protect Act (EAPA) decision specifically relates to the Minh Phu group (the Vietnamese companies subject to the evasion investigation), the conclusions made by CBP have no bearing on the selection of a market used to establish normal value in this review.
 - ZA Sea Foods reported that it had no control or knowledge of the ultimate use of the shrimp after making sales to Vietnam, and the record contains no evidence to the contrary. CBP’s EAPA decision does not contradict any of ZA Sea Foods’ claims. These sales to Vietnam were properly classified as third-country sales and usable as a basis for normal value, as ZA Sea Foods did not know that the Vietnamese customers might re-export them after further manufacture.
 - CBP reached its conclusion only after months of investigation; it would therefore be unreasonable to conclude that ZA Sea Foods knew or should have known that its sales to Vietnam would be further processed and ultimately exported to the United States.
 - CBP’s EAPA decision is not relevant in determining whether ZA Sea Foods’ selling prices to Vietnam were representative, outside the ordinary course of trade, or otherwise unusable as a comparison market. Therefore, Commerce should calculate NV using ZA Sea Foods’ sales to Vietnam for the final results.

AHSTAC’s Argument

- Commerce correctly declined to use ZA Sea Foods’ Vietnamese sales for NV in the *Preliminary Results* due to questions regarding the nature of those sales.³⁰ While ZA Sea Foods argued that Commerce lacked the discretionary authority to disregard the Vietnamese sales, the statute grants Commerce the authority to establish NV through CV, regardless of whether a respondent has third-country sales.³¹
- When NV cannot be calculated with home market sales, section 773(e) of the Act permits Commerce to calculate NV based on CV, even when viable third-country markets are available. While 19 CFR 351.404(c)(1)(i) mandates the use of the home market if it is viable, section 19 CFR 351.404(c)(1)(ii) is permissive concerning the use of a third-country market to establish NV. Additionally, 19 CFR 351.404(f) states that Commerce “will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable.”
 - The language of 19 CFR 351.404(f) contradicts ZA Sea Foods’ argument that Commerce may only exercise discretion when a particular market situation is present or when the sales price to the third-country market is “not representative.” The regulations allow Commerce discretion between third-country sales and CV, although the regulations also express a preference for third-country sales when

³⁰ See AHSTAC’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.

³¹ See *Stupp Corp. v. United States*, 413 F. Supp. 3d 1326, 1331 (CIT 2019).

that information is available and verifiable. Thus, Commerce can utilize CV where “adequate information” regarding third-country sales is not available and verifiable, not only if Commerce finds a particular market situation or if the prices are not representative.

- Although ZA Sea Foods argues that adequate information on the record is available and verifiable, this argument ignores the unique facts on this record, including that the Vietnamese customers are also themselves exporters of shrimp. ZA Sea Foods’ arguments underscore the inadequacy of information on the record to show that the Vietnamese customers, acknowledged processors and exporters of shrimp, actually consume the shrimp in Vietnam.
 - ZA Sea Foods misstates the legal standard by arguing that the absence of information regarding the Vietnamese market precludes Commerce from using CV. Instead, the lack of information on the record raises questions about the merchandise being consumed in Vietnam, and the lack of such information regarding the third-country sales is not “adequate.” Additionally, Commerce’s conclusion that it cannot rely on the Vietnamese data due to trade patterns is appropriate because “an agency is permitted to draw an inference in consideration of all record evidence that would bolster or rebut that inference.”³²
- ZA Sea Foods attempts to introduce a number of standards regarding its third-country sales (*i.e.*, *bone fide*, at arm’s length, shipped to Vietnam) that are not present in the statute, regulations, or Commerce’s practice. The law affords Commerce complete discretion of whether to use third-country sales or CV to establish NV. While AHSTAC recognizes that the regulations express a preference for third-country sales, that reliance on third-country sales is discretionary and contingent upon adequate information being available and verifiable. Therefore, Commerce’s decision to use CV for the *Preliminary Results* was lawful, reasonable, and supported by substantial evidence on the record of this proceeding.
- ZA Sea Foods’ “fairness” argument is flawed because the burden of creating an accurate record rests with the interested parties, not Commerce.³³ ZA Sea Foods did not rebut the information concerning the Vietnamese sales nor provide information for an alternate third country.³⁴ ZA Sea Foods requested to submit an alternate third-country sales database, but this request was not made until more than two weeks after the *Preliminary Results*.³⁵ Commerce’s letter denying the request exhaustively addressed ZA Sea Foods’ fairness argument.³⁶
- Given these facts, Commerce’s decision to determine NV based on CV was entirely reasonable, appropriate, and fair. Therefore, Commerce should continue to use CV to establish NV for the final results.

³² See *Rebar Trade Action Coal. v. United States*, 398 F. Supp. 3d 1374, 1382 (CIT 2019).

³³ See *Shandong Rongxin Import & Export Co. v. United States*, 355 F. Supp. 3d 1365, 1374 (CIT 2019).

³⁴ See *ABB Inc. v. United States*, 365 F. Supp. 3d 1206, 1222 (CIT 2018) (*ABB Inc.*); *Nan Ya Plastics Corp. v. United States*, 810 F. 3d 1333, 1337 (Fed. Cir. 2016); *QVD Food Co. v. United States*, 658 F. 3d 1318, 1324 (Fed. Cir. 2011) (*QVD Food*); and *Xipeng Opeck Food Co., Ltd. v. United States*, 378 F. Supp. 3d 1340, 1347 (CIT 2019) (quoting *QVD Food*, 658 F.3d at 1324).

³⁵ See *Seah Steel Vina Corp. v. United States*, 950 F.3d 833, 844 n.7 (Fed. Cir. 2020) (citing *QVD Food*)

³⁶ See Commerce’s Letter, “Antidumping Duty Review of Certain Frozen Warmwater Shrimp from India: Denying Request to Submit Additional Sales Database,” dated March 24, 2020.

- Regarding CBP’s EAPA Decision, AHSTAC supplied information prior to the *Preliminary Results* showing that ZA Sea Foods’ primary customer in Vietnam was the Minh Phu group,³⁷ the subject of the evasion decision by CBP.
 - Commerce concluded in the *Preliminary Results* that there was no adequate information on the record to show that ZA Sea Foods’ Vietnamese customers consume the shrimp in Vietnam.³⁸ Therefore, consistent with Commerce’s regulations, Commerce decided to not use the Vietnamese sales for NV, which was a reasonable decision supported by substantial evidence.
 - CBP’s EAPA Decision provides further evidence of the unsuitability of Vietnamese sales as it finds that “Minh Phu has been co-mingling Indian-origin shrimp with Vietnamese-origin shrimp on imports to the United States.”³⁹ Further, the CBP EAPA Decision provides no support of ZA Sea Foods’ speculation that its shrimp may have undergone further processing in Vietnam prior to export.
 - While Minh Phu argued that it transshipped shrimp from India through Vietnam to markets other than the United States, CBP found that Minh Phu was incapable of tracing specific imports of Indian shrimp through its production facility and ultimately to specific sales.⁴⁰
 - It would be grossly unfair to calculate NV on the basis of sales of shrimp that were used to evade an antidumping duty order. While ZA Sea Foods may be ignorant of Minh Phu’s evasion, it should not be permitted to benefit from the use of these sales to establish a lower NV.

ASPA’s Arguments

- ZA Sea Foods’ rationale against the use of CV is incorrect, and Commerce should continue to use CV to establish NV for the final results. ZA Sea Foods’ assertions that Commerce agreed that Vietnam is the largest third-country market and that products sold to Vietnam were the most similar to those sold to the United States is in fact Commerce’s summary of ZA Sea Foods’ statements on the record and not a finding by Commerce.
- ZA Sea Foods stated that “section 773(a)(4) of the Act permits {NV} to be based on {CV} notwithstanding the existence of third-country sales,” which means that ZA Sea Foods recognizes that the statute does not support its position on the use of CV. When the home market is not viable, section 773(a)(1)(B)(ii) of the Act gives Commerce the ability to use third-country sales data if certain conditions are met. Furthermore, section 773(a)(4) of the Act states that “notwithstanding paragraph (1)(B)(ii), the {NV} of the subject merchandise may be the {CV} of that merchandise,” and Congress placed no restrictions on Commerce’s use of CV.

³⁷ See AHSTAC’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 (AHSTAC Section A Comments) at 3-5 and Exhibit 2. Based on shipment information “available to the public through the subscription service Panjiva.com ...{r}oughly 60 percent of ZASF’s shipments to Vietnam (91 of 152) were to three companies that, in part, comprise the Minh Phu Group.”

³⁸ See *Preliminary Results* PDM at 9.

³⁹ See CBP EAPA Decision at Attachment I, page 10.

⁴⁰ *Id.* at Attachment I, page 7.

- ZA Sea Foods’ argument that Commerce may only use CV if it finds a particular market situation or if third-country prices are not representative is incorrect. The language in 19 CFR 351.404(c)(1)(ii) states only that Commerce “may” use third-country sales data and 19 CFR 351.404(c)(2) states that Commerce “may decline” to use third-country sales data in certain situations.
- Although ZA Sea Foods argues that the two exceptions to 19 CFR 351.404(c)(2) are the only instances where Commerce may decline to use third-country sales data, this interpretation is a misreading of the applicable law, which does not state that Commerce “may decline” to use third-country sales data only if the two exceptions are met.
- The language in 19 CFR 351.405(a) lists seven situations where Commerce may use CV as the basis for NV, including “in other circumstances where the Secretary determines that home market prices or third-country prices are inappropriate,” which Commerce has done here.
- ZA Sea Foods misreads 19 CFR 351.404(f) as requiring Commerce to use third-country sales data if it is available and verifiable. However, this regulation merely states that Commerce “normally” will calculate using third-country sales, meaning that there are situations where data is available and verifiable, but Commerce still will use CV. This language is in accordance with section 773(a)(4) of the Act, which states that notwithstanding the availability of third-country data, Commerce may instead elect to use CV.
- ZA Sea Foods cites the *Preliminary Results* in support of its argument that the product sold to Vietnam was the most similar to that sold to the United States and that sales to Vietnam satisfied 19 CFR 351.404(e)(1) and (2). However, this language was merely Commerce’s restatement of ZA Sea Foods’ position, not Commerce’s own position. As with the other regulations referenced above, 19 CFR 351.404(e)(3) recognizes that there will be situations where the use of third-country sales data is not appropriate, but the regulations do not expressly enumerate these situations. Here, Commerce correctly applied CV due to other factors outside of the “normal” situation.
- While ZA Sea Foods argues that documents on the record show a shipping destination of Vietnam, these documents do not speak to the final destination of the merchandise. ZA Sea Foods’ primary Vietnamese customers are exporters currently known to Commerce under the Vietnamese shrimp dumping order, and one of these customers has previously stated that it buys shrimp from market economy countries that it then repackages as product subject to the Vietnamese dumping order.⁴¹ Such sales are not an appropriate basis for NV.
 - ZA Sea Foods states that these patterns of trade are only relevant if the shrimp was not processed, which is a tacit admission that, if the shrimp are not processed, the patterns of trade are relevant. ZA Sea Foods cites no authority for its contention that Commerce must prove that no processing is occurring before it can reject the Vietnamese sales. ZA Sea Foods did not provide any evidence regarding processing and evidence on the record is sufficient to support Commerce’s rejection of the Vietnamese sales data.

⁴¹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012), and accompanying IDM at 29; see also AHSTAC Section A Comments at 3-5 and Exhibit 2.

- ZA Sea Foods’ argument that a respondent has a “right” to have its third-country sales used if they are reported has no basis in the statute or regulations. The authority to select the most appropriate basis of NV was granted to Commerce, not to respondents. Commerce gave ZA Sea Foods every opportunity to participate in this review, and ZA Sea Foods’ claims that it was denied its request to submit an alternate third-country sales database or to have its Vietnamese data verified supposes that the respondent has the right to determine the basis for NV.
- The Act and Commerce’s regulations recognize CV as a legitimate basis for NV and do not require Commerce to give a respondent multiple opportunities to submit different sources. ZA Sea Foods was not denied its rights because Commerce proceeded according to the Act and its regulations.
- Commerce rejected the Vietnamese sales as a basis for NV in the *Preliminary Results*, a decision which was fully supported by the law and the facts of this review. CBP’s EAPA determination directly connects to this issue as it shows that Minh Phu was evading the Indian shrimp dumping order by co-mingling Indian and Vietnamese-origin shrimp.
 - CBP’s EAPA Decision confirms the concerns that led Commerce to reject the Vietnamese sales as the basis for NV. Although ZA Sea Foods argues that there was no evidence that this shrimp was not processed into merchandise outside the scope of the order, CBP’s EAPA Decision specifically states that no such further manufacturing occurred at Minh Phu.⁴² The period examined by CBP (October 2018 to October 2020) overlaps with this POR, and CBP further notes a “pattern and history” of co-mingling shrimp, meaning that this determination likely holds for all POR shipments to Minh Phu.⁴³
 - ZA Sea Foods also argues that Commerce’s examination of its sales to customers in Vietnam “is relevant only if the customers did not process the shrimp purchased from Z.A. Sea Foods into non-subject merchandise.”⁴⁴ Therefore, since the record now shows that Minh Phu did not process shrimp into non-subject merchandise, by ZA Sea Foods’ own argument, this pattern of trade “is relevant.” Evidence supports Commerce’s decision to reject the third-country sales to Vietnam and to calculate normal value based on constructed value instead.

Commerce’s Position

We disagree with ZA Sea Foods, and we continue to use CV as the basis for NV for these final results. For the *Preliminary Results*, we determined that there were concerns regarding the nature of the Vietnamese sales, and, as a result, disregarded those third-country sales and used CV. Although we found sufficient cause to use CV in the *Preliminary Results*, there is now additional information available on the record supporting the unsuitability of using sales to Vietnam to establish a comparison price for U.S. sales. In light of this additional evidence, we continue to find it appropriate to use CV as the basis of NV for ZA Sea Foods.

⁴² See CBP EAPA Decision Attachment I, pages 5-6.

⁴³ *Id.* at Attachment I, pages 5-6.

⁴⁴ See Indian Producers Case Brief at 13.

In advance of the *Preliminary Results*, AHSTAC placed information on the record showing that ZA Sea Foods' primary customer in Vietnam, the Minh Phu Group, also exported shrimp to the United States.⁴⁵ Because this Vietnamese company was itself a processor and trader of shrimp but excluded from the antidumping order on shrimp from Vietnam, AHSTAC raised concerns that there may be irregularities with these sales. We issued supplemental questionnaires to ZA Sea Foods regarding its sales to Vietnam to ascertain if it had any knowledge that its sales to Vietnam may ultimately be destined for the United States.⁴⁶ In response to the supplemental questionnaire, ZA Sea Foods stated that it had no knowledge that its sales may ultimately be re-exported to the United States.⁴⁷ Although there is no documentation on the record showing that ZA Sea Foods had knowledge that its Vietnamese sales may ultimately be re-exported to the United States,⁴⁸ there is evidence which provides serious concerns with using Vietnamese sales as the basis for NV.

While ZA Sea Foods itself may have been unaware of re-exports to the United States, this does not negate the fact that there is evidence on the record showing an evasion scheme by one of ZA Sea Foods' Vietnamese customers, the Minh Phu Group, to transship Indian shrimp through Vietnam to the United States. Sales that are found to be part of an evasion scheme are not an appropriate basis to use for comparison with sales made directly to the United States. Through its investigation, CBP found that the Minh Phu Group: (1) transshipped Indian-origin shrimp through Vietnam; (2) evaded U.S. duties by claiming the shrimp was of Vietnamese origin; (3) comingled Indian-origin and Vietnamese-origin shrimp; (4) maintained inadequate records to track shrimp from different origins; (5) made numerous conflicting statements about its processing of shrimp in Vietnam; and (6) did not cooperate with CBP's investigation to the best of its abilities.⁴⁹ In light of these facts, CBP determined that "substantial evidence demonstrates that MSeafood {a U.S. importer affiliated with the Minh Phu Group} entered covered merchandise into the customs territory of the United States through evasion."⁵⁰

ZA Sea Foods argues that the record, as well as "fairness" and "equity," dictate that Commerce should use its Vietnamese sales to establish NV. As we noted above, while the record does not indicate that ZA Sea Foods was aware of the evasion scheme, the record now contains evidence that there was an evasion scheme perpetrated by ZA Sea Foods' primary Vietnamese customer.⁵¹ Additionally, ZA Sea Foods claims that its sales to Vietnam were *bona fide*, but Commerce

⁴⁵ See ASHTAC Section A Comments at 3-5 and Exhibit 2.

⁴⁶ 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; Sections A through D Supplemental Questionnaire; and Commerce's Letter, "2018-2019 Administrative Review of Certain Frozen Warmwater Shrimp from India: Second Supplemental Questionnaire," dated January 14, 2020 (Second Supplemental Questionnaire).

⁴⁷ See ZA Sea Foods September 16, 2019 AQR; ZA Sea Foods' Letter, "ZASF 1st Supplemental of Section ABC & D Questionnaire Response of Anti-Dumping Order on Certain Frozen Warmwater Shrimp from India (A-533-840)," dated January 2, 2020 (ZA Sea Foods' January 2, 2020 SQR); and ZA Sea Foods' Letter, "ZASF 2nd Supplemental Questionnaire Response of Anti-Dumping Order on Certain Frozen Warmwater Shrimp from India (A-533-840)," dated January 29, 2020.

⁴⁸ See *Allegheny Ludlum*, 215 F. Supp. 2d at 1330-31.

⁴⁹ See CBP EAPA Decision at pages 3-10 of Attachment I.

⁵⁰ See CBP EAPA Decision at page 10 of Attachment I.

⁵¹ See CBP EAPA Decision at Attachment I. See also AHSTAC Section A Comments at 3-5 and Exhibit 2.

made no finding that the Vietnamese sales were *bona fide*.⁵² Commerce has an established practice for conducting *bona fide* analysis in administrative reviews, but no such analysis was done during this review.⁵³ ZA Sea Foods also argued that Commerce's reliance on "patterns of trade" for the *Preliminary Results* is only relevant if customers in Vietnam did not further process the shrimp into merchandise that is outside the scope of the order and that there is no evidence that this processing did not occur. However, since ZA Sea Foods made those statements, there is now evidence on the record to show that no such further processing was done by its primary Vietnamese customer before the goods were re-exported.⁵⁴

ZA Sea Foods also argues that Commerce gave no indication that it might use CV and instead indicated that it intended to use the Vietnamese sales, *e.g.*, by asking for revisions to the Vietnamese sales database. ZA Sea Foods recognizes that the respondent bears the burden of creating an adequate record,⁵⁵ yet it claims that Commerce has an "obligation to let the respondent know what information it really wants."⁵⁶ However, Commerce informed ZA Sea Foods what information was necessary through the issuance of supplemental questionnaires.⁵⁷ Although we received the information we requested from ZA Sea Foods, this information was analyzed in conjunction with other information on the record. Additionally, we disagree that Commerce gave any indication that we intended to use Vietnamese sales to establish NV. We asked for corrections to the Vietnamese sales database, but we also pursued questions about the appropriateness of Vietnam, in general, because we were considering what would be the appropriate basis to use for NV. Commerce never issued a third-country market selection memorandum affirming that it had selected a comparison market and, thus, made no indication that we would use the Vietnamese sales for NV.

ZA Sea Foods also advances arguments about the timing of Commerce's questionnaires regarding Vietnam and the potential submission of an alternate third-country sales database. ZA Sea Foods argues that it did not know if an unsolicited alternate comparison market submitted in

⁵² When conducting a *bona fide* analysis, Commerce considers: (1) the price of the sale; (2) whether the sale was made in commercial quantities; (3) the timing of the sale; (4) the expenses arising from the transaction; (5) whether the goods were resold at a profit; (6) whether the transaction was made on an arm's-length basis; and (7) any other factor that Commerce considers to be relevant to whether the sale at issue is likely to be typical of those the exporter or producer will make after the completion of the review. Although section 751(a)(2)(B)(iv) of the Act, by its express terms, applies to new shipper review, the factors listed in that provision overlap with the factors we examine in administrative reviews as well.

⁵³ See, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 75 FR 41148 (July 15, 2010) (evaluating the *bona fides* of the single POR sale from a voluntary respondent), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011); *Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part*, 75 FR 24880 (May 6, 2010); and *Windmill Int'l Pte. v. United States*, 193 F. Supp. 2d 1303, 1313-14 (CIT 2002).

⁵⁴ See CBP EAPA Decision at Attachment I (finding that the Minh Phu Group processed Indian and Vietnamese-origin shrimp together and "entered merchandise covered by antidumping (AD) order A-533-840" into the customs territory of the United States, meaning that even after any processing in Vietnam, the merchandise was still in-scope merchandise); see also AHSTAC Section A Comments at 3-5 and Exhibit 2.

⁵⁵ See *ABB Inc.*, 365 F. Supp. 3d at 1222.

⁵⁶ See *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804 (CIT 1999).

⁵⁷ See Sections A through D Supplemental Questionnaire; and Second Supplemental Questionnaire.

response to AHSTAC's Section A Comments would have been acceptable. If ZA Sea Foods was interested in submitting an alternate sales database, but was uncertain of the appropriateness of it, ZA Sea Foods could have asked for guidance prior to the *Preliminary Determination*. Instead, ZA Sea Foods did not ask to submit an alternate third-country sales database until March 2020, more than two weeks after Commerce used CV in the *Preliminary Results*. ZA Sea Foods should have asked for guidance when it first had concerns whether it should submit an alternate sales database in September 2019; its request to submit an alternate sales database in March 2020 was clearly too late.

Regarding the timing of the supplemental questionnaires, ZA Sea Foods notes that Commerce waited four months after its initial section A response and three months⁵⁸ after AHSTAC's comments were filed to issue questions regarding ZA Sea Foods' knowledge of sales to Vietnam. In fact, during the period between ZA Sea Foods' initial section A response and the Second Supplemental Questionnaire, Commerce received and analyzed ZA Sea Foods' sections B, C, and D responses, issued the Third Country Supplemental Questionnaire, issued the Sections A through D Supplemental Questionnaire, and received and analyzed the responses to both supplemental questionnaires.⁵⁹ As Commerce had not yet made a decision regarding the appropriate source of NV, it was important to analyze data related to Vietnam that was contained in ZA Sea Foods' section B response, such as customer names, prices, shipping expenses, and sample documentation, as well as the characteristics of the products sold to Vietnam, provided in response to the Third Country Supplemental Questionnaire. While ZA Sea Foods seems to imply that its section A response, AHSTAC's Section A Comments, and the Second Supplemental Questionnaire were the only components necessary for Commerce's determination to use CV, this disregards the comprehensive analysis of all responses and comments on the record that Commerce undertook in order to determine the appropriate NV source. While ZA Sea Foods argues that by waiting until the month before the *Preliminary Results* to issue the Second Supplemental Questionnaire, Commerce denied ZA Sea Foods a meaningful opportunity to use a comparison market rather than CV, we note that this was a very complex and evolving situation over the course of this review, and we made a decision as to the appropriate NV source as soon as possible after asking all necessary questions and a thorough analysis of all the available information on the record.

ZA Sea Foods makes a final fairness argument regarding the withdrawn verification request, arguing that it should not be penalized for a situation beyond its control that resulted in no verification being conducted. We note that verification was not mandatory for ZA Sea Foods and that the lack of verification is in no way punitive to ZA Sea Foods. Even if we conducted verification and confirmed the accuracy of the record, ZA Sea Foods' Vietnamese sales would

⁵⁸ We are uncertain as to how ZA Sea Foods arrived at four and three months before the January 14, 2020 Second Supplemental Questionnaire, as the section A response and comments were submitted within 10 days of each other (ZA Sea Foods submitted its section A response on September 16, 2019, and AHSTAC submitted comments on that response on September 26, 2019).

⁵⁹ See ZA Sea Foods October 4, 2019 BCDQR; Commerce's Letter, "Certain Frozen Warmwater Shrimp from India: 2018-2019 Administrative Review: Supplemental Questionnaire for Selection of Comparison Market," dated September 25, 2019 (Third Country Supplemental Questionnaire); Sections A through D Supplemental Questionnaire; ZA Sea Food's October 2, 2019 Third Country Supplemental Response; and ZA Sea Foods' January 2, 2020 SQR.

still be inappropriate to use for NV because CBP found that sales by ZA Sea Foods' primary Vietnamese customer are part of an evasion scheme.⁶⁰

Given that CBP found sales made by the Minh Phu Group during the POR were ultimately sold in the United States, it would be unreasonable to use ZA Sea Foods' Vietnamese sales, which include sales to the Minh Phu Group, as the comparison market. Some of these sales ultimately entered the United States and are an unsuitable comparison for ZA Sea Foods' own sales to the United States. Such a comparison would compare U.S. sales to U.S. sales rather than U.S. sales to a third-country market. ZA Sea Foods argues that Commerce was not justified in using CV because we have not demonstrated that the third-country price is not representative. However, the sales that were part of this evasion scheme were first sold to Vietnam shrimp customers and then sold to customers in the United States, meaning that there had to be some price advantage to the Vietnamese sales to make this scheme worthwhile, profitable, and price competitive with direct sales to the United States made by ZA Sea Foods.

ZA Sea Foods makes several arguments related to Commerce's regulations about the permissibility of Commerce's use of CV instead of sales to a third-country market. First, ZA Sea Foods claims that Commerce agreed that products sold to Vietnam were the most similar to those sold to the United States and that Vietnam was ZA Sea Foods' largest third-country market, which satisfied the regulatory criteria found in 19 CFR 351.404(e)(1) and (2). However, as ASPA correctly asserts, the sentence cited by ZA Sea Foods is Commerce's summary of ZA Sea Foods' own statements, not an agreement or finding by Commerce.⁶¹ Second, ZA Sea Foods argues that, while 19 CFR 351.404(c) states that Commerce "will" use sales from the exporting country if that market is viable, the regulations state that Commerce "may" use third-country sales with only two enumerated exceptions. ZA Sea Foods argues that because neither exception is present, Commerce must use its third-country sales for NV. However, as discussed above, there is evidence that the prices of the Vietnamese sales are not representative due to the evasion scheme. The prices to Vietnam are not truly prices for consumption in Vietnam as the shrimp is exported without further processing. Further, in some cases, the prices to Vietnam are in fact prices for sales that eventually become U.S. sales, meaning that they cannot be representative of prices for sales in the third-country market because they are ultimately U.S. sales. Thus, the sales to the Minh Phu Group do not represent prices of sales made for consumption in Vietnam nor do they represent a third country given that they are resold to other countries including the United States. Therefore, under the criteria of section 773(a)(1)(B)(ii)(I) of the Act and 19 CFR 351.404(c)(2)(ii), ZA Sea Foods' prices to Vietnam are not representative.

ZA Sea Foods also argues that Commerce improperly cited 19 CFR 351.404(e)(3), as that regulation refers to the selection of a third-country market when more than one market satisfies the criteria of section 773(a)(1)(B)(ii) of the Act. We agree with ZA Sea Foods that we erroneously cited this regulation in the *Preliminary Results* as there is only data for one third-country market available on the record. However, as noted both above and below, other regulations under 19 CFR 351.404 support the use of CV rather than third-country sales for NV. The language in 19 CFR 351.404(a) states that, while Commerce generally prefers to use home market sales, section 773 of the Act "also permits use of sales to a third country or constructed

⁶⁰ See CBP EAPA Decision at Attachment I; see also AHSTAC Section A Comments at 3-5 and Exhibit 2.

⁶¹ See *Preliminary Results* PDM at 9.

value as the basis for normal value” and does not specify a preference for third-country sales over CV. Further, 19 CFR 351.404(c)(2)(ii) states that, if Commerce cannot use home market sales, it “may” use third-country sales absent two exceptions. As noted above, the prices to Vietnam are not representative, which is an exception that allows Commerce to decline to use third-country sales under 19 CFR 351.404(c)(2)(ii).

Additionally, 19 CFR 351.404(d) provides for allegations concerning market viability and the basis for determining a price-based NV, and it states that allegations regarding the exceptions in paragraph 19 CFR 351.404(c)(2) must be filed in accordance with 19 CFR 351.301(d)(1).⁶² ZA Sea Foods submitted its initial response to section A of Commerce’s questionnaire, in which it noted that Vietnam was its largest third-country market, on September 16, 2019.⁶³ Ten days later, on September 26, 2019, pursuant to 19 CFR 351.301(c)(2)(i), AHSTAC timely submitted comments regarding the appropriateness of Vietnam as the third-country market and specifically noted issues regarding sales to the Minh Phu Group.⁶⁴ Thus, these comments regarding the appropriateness of using Vietnamese sales for NV were filed in accordance with Commerce’s regulations. The comments led Commerce to issue supplemental questionnaires to ZA Sea Foods to obtain more information regarding these Vietnamese sales and ultimately resulted in Commerce disregarding the Vietnamese sales in favor of CV for the *Preliminary Results*.

Finally, ZA Sea Foods argues that Commerce’s *Preliminary Results* ignored 19 CFR 351.404(f), which states that Commerce “normally will calculate {NV} based on sales to a third country rather than on {CV} if adequate information is available and verifiable.” ZA Sea Foods argues that it submitted reconciled sales responses and was prepared for verification, had the verification request not been withdrawn. While ZA Sea Foods argues that Commerce unreasonably departed from 19 CFR 351.404(f), ZA Sea Foods ignores the word “normally” in this regulation. Normally, we would use third-country sales as a comparison market, but, during the review, we received record evidence showing that ZA Sea Foods’ Vietnam sales were a part of an evasion scheme involving the precise market and customer in question. In fact, these sales were not consumed in Vietnam and thus were not third-country sales as the regulations conceive of the term. It is for exceptional situations, such as the facts surrounding ZA Sea Foods’ Vietnamese sales, that 19 CFR 351.404(f) dictates that the use of a third-country market only applies to “normal” situations and why 19 CFR 351.404(c)(2)(ii) states that Commerce “may” rather than “will,” use prices for third-country markets.

In summary, while there is no evidence on the record showing that ZA Sea Foods knew of the evasion scheme or knew that these sales may ultimately be destined for the United States, that does not mean that the Vietnamese sales are a permissible basis for NV. For sales made during the POR, CBP has now found that ZA Sea Foods’ main Vietnamese customer⁶⁵ evaded the Indian shrimp antidumping duty order by re-exporting shrimp purchased from India to the United States. We note that the use of CV is not intended to be punitive or adverse; it is simply

⁶² While this section cites to 19 CFR 351.301(d)(1), this section of the regulations no longer exists. Instead, the language that was previously found in (d)(1) is now found in 19 CFR 351.301(c)(2)(i). We further note that the change in the regulations also shortened the allegation submission period from 40 days to 10 days.

⁶³ See ZA Sea Foods September 16, 2019 AQR.

⁶⁴ See ASHTAC Section A Comments.

⁶⁵ *Id.* at 3-4.

another option when the home market is not viable and there are issues with the third-country market. Because serious issues were discovered during the course of this review with Vietnamese sales and the sales to Vietnam were the only third-country sales data available on the record, Commerce used CV for NV in accordance with 19 CFR 351.404(a) and section 773 of the Act. Moreover, since the *Preliminary Results*, we have additional information on the record confirming the unsuitability of sales made to the Minh Phu Group. Accordingly, we continue to find it inappropriate to use ZA Sea Foods' Vietnamese sales as the basis for NV and continue to use CV to calculate NV for these final results.

Comment 3: Methodology for Constructed Value Profit and Selling Expenses

ZA Sea Foods' Argument

- Because ZA Sea Foods did not have a viable comparison market on which to base profit and selling expenses, Commerce based CV profit and selling expenses on the weighted average of the ratios from the two respondents in the 2016-17 review of this proceeding. If Commerce continues to use CV for the final results, it should revise its methodology to instead use ZA Sea Foods' actual profit and selling expenses.⁶⁶ This represents the best available information on the record. Alternatively, Commerce could revise its methodology to use the ratios from whichever 2016-17 respondent had the lowest total CV profit and selling expenses.
- Commerce's regulations, practice, and preference is to use the respondent's own actual profit and selling expenses. If Commerce will not use ZA Sea Foods' own profit and selling expenses, the antidumping statute directs Commerce to use one of three options: (1) the actual amounts incurred by the exporter or producer for the sale of merchandise in the same general category as the subject merchandise; (2) the weighted average of the actual amounts incurred by other respondents in the proceeding; or (3) any other reasonable method (with the profit cap).⁶⁷
 - Given these options, profit and selling expenses should be calculated using ZA Sea Foods' own information from its 2017-18 financial statements. This data is specific to the exporter or producer in question and is more contemporaneous than data from the 2016-17 respondents.
 - Alternatively, Commerce may use data from the 2016-17 respondents under section 773(e)(2)(B)(iii) of the Act, but it must use data only for the respondent with the lower profit rate. Commerce may not use the average from two respondents because it violates the profit cap given that one of the two companies necessarily has a higher profit than the other; this calculation methodology therefore "exceed{s} the amount normally realized by exporters or producers."

AHSTAC's Argument

- While ZA Sea Foods proposes alternate options for the calculation of CV profit and selling expenses, Commerce should continue to calculate these values using the weighted average of the values for the two respondents from the 2016-17 review. ZA Sea Foods argues that, according to the statute, Commerce may use ZA Sea Foods' own values under section 773(e)(2)(B)(i) of the Act; however, pursuant to section 773(e)(2)(B)(i) of the

⁶⁶ See Indian Producers Case Brief at Exhibit 1.

⁶⁷ See section 773(e)(2)(B) of the Act.

Act, expenses for the company being examined must be “in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.”⁶⁸ The values from ZA Sea Foods’ 2017-18 financial data do not relate to sales in the foreign country and therefore cannot be used.

- ZA Sea Foods itself admits that the weighted average of the 2016-17 respondents’ values satisfies the statutory preference under section 773(e)(2)(B)(iii) of the Act, and, accordingly, Commerce should continue to use this method to calculate CV profit and selling expenses for the final results.
- ZA Sea Foods presented no legal authority to support its interpretation of the statute that Commerce may only use data from one of the 2016-17 respondents, but not both. ZA Sea Foods’ argument lacks merit because the court has previously held a weighted average of two respondents’ data to be a reasonable method.⁶⁹
 - Further, ZA Sea Foods did not explain why its inaccurate reading of the statute would require Commerce to use only the data from the respondent with the lower profit rate. ZA Sea Foods argues that, by default, one of the two companies will have a profit higher than the weighted-average, but even if Commerce were to use only the higher profit, this would still be allowable because it was the actual profit realized by a company. The use of only the higher profit would satisfy clause (iii) as Commerce is only obligated to review the record before it to determine whether there are other “facts available” to calculate a profit cap that would limit the use of these data.⁷⁰
 - In this case, the only information available to determine a profit cap is from the two 2016-17 respondents, and it would be just as reasonable to use only the higher profit as it is to use only the lower profit as ZA Sea Foods argues. The exclusion of either profit value from the 2016-17 review would be arbitrary and therefore cannot be justified.

ASPA’s Argument

- ZA Sea Foods’ proposals of alternate CV profit and selling expense methodologies are without merit. The Statement of Administrative Action (SAA) states that when calculating selling expenses and profits, “Commerce may ignore sales that it disregards as a basis for {NV}.”⁷¹ Therefore, ZA Sea Foods’ proposal to calculate CV profit and selling expenses based on its own sales data is inappropriate.
- ZA Sea Foods proposes requirements that are not present in section 773(e)(2)(B)(iii) of the Act. The language requires a profit rate that is “normally realized” by producers, not a profit rate that is the lowest realized by any one producer. Further, the statute itself uses the plurals of exporters and producers, indicating that the statute did not intend use of a single producer’s data.

⁶⁸ See section 773(e)(2)(B)(i) of the Act; see also *Thai I-Mei Frozen Foods Co. v. United States*, 572 F. Supp. 2d 1353, 1356 (CIT 2008) (reversed on other grounds, *Thai I-Mei Frozen Foods Co. v. United States*, 616 F.3d 1300, 1306 (Fed. Cir. 2010) (*Thai I-Mei III*)).

⁶⁹ See *Thai I-Mei Frozen Foods Co. v. United States*, 477 F. Supp. 2d 1332, 1341-18 (CIT 2007); *Thai I-Mei III*; and *Atar S.r.l. v. United States*, 730 F.3d 1320, 1326-1329 (Fed. Cir. 2013).

⁷⁰ See *Mid Continent Steel & Wire, Inc. v. United States*, 941 F.3d 530, 545-46 (Fed. Cir. 2019).

⁷¹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol.1 (1994) at 839.

- Commerce has previously used an average of two respondents' data to calculate CV profit and selling expenses,⁷² and ZA Sea Foods provides no argument against Commerce's interpretation. ZA Sea Foods has not shown that the average profit ratio exceeds normal profitability, and, therefore, Commerce should continue to use average CV profit and selling expenses for the final results.

Commerce's Position

We disagree with the arguments that ZA Sea Foods presents for its two proposed alternate CV profit and selling expense sources. Neither methodology is appropriate for use in these final results; however, we have revised CV profit and selling expenses to use an alternate source from that used in the *Preliminary Results*.

The sources argued for by ZA Sea Foods are not appropriate sources or methodologies for CV profit and selling expenses in these final results. First, ZA Sea Foods proposes that Commerce should use ZA Sea Foods' own profit and selling expenses, as contemplated in section 773(e)(2)(A) of the Act. While Commerce's preference is to use a respondent's own profit and selling expenses, and the Act directs us to use the alternate options in section 773(e)(2)(B) only if the actual amounts are not available, for these final results Commerce continues to find that ZA Sea Foods' Vietnamese sales are not a viable basis for NV. As noted in the SAA, "Commerce may ignore sales that it disregards as a basis for {NV}" when calculating CV profit and selling expenses.⁷³ Therefore, because Commerce continues to find that ZA Sea Foods' Vietnamese sales are not a viable basis for NV, we also cannot use those sales to calculate CV profit and selling expenses under section 773(e)(2)(A) of the Act.

Because Commerce cannot use ZA Sea Foods' own CV profit and selling expenses, we then proceeded to calculate CV profit and selling expenses under section 773(e)(2)(B) of the Act. We note that no party argued for the alternative profit and expense sources found in sections 773(e)(2)(B)(i) or (ii). We continue to find that neither of those alternate options is available in this case and proceed to using the option from 773(e)(2)(B)(iii) of the Act, *i.e.*, "the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers." Commerce employed this methodology in the *Preliminary Results*, selecting a weighted average of the CV profit and selling expense rates from the respondents in the 2016-2017 administrative review. However, ZA Sea Foods argues that Commerce should use only the profit from the respondent with the lower profit rate in the 2016-2017 administrative review, rather than the weighted average of both respondents' rates.

⁷² See, *e.g.*, *Certain Lined Paper Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60628 (October 7, 2015), and accompanying IDM at 19 ("we calculated the CV ratios used... based on a simple average of the CV selling expense and profit ratios of Sundaram and Vata"), unchanged in *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 5986 (February 4, 2016); *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015), and accompanying IDM at 5 ("We based CV profit on the... financial statements for two Taiwanese producers").

⁷³ See SAA at 839.

ZA Sea Foods proposes the use of only the lower profit rate because the profit from the respondent with the higher rate “exceed{s} the amount normally realized by exporters or producers.” However, this argument is without merit as neither the average of the two companies’ profit rates, nor even the higher profit rate itself, exceeds the amount normally realized by an exporter or producer. Even the rate from the respondent with the higher profit rate was, in fact, an actual rate realized by an exporter or producer. By definition, an average of two profit rates will be higher than the lower rate and lower than the higher rate. The average of the two rates cannot result in a rate greater than the higher rate, and, thus, does not exceed the amount normally realized by an exporter or producer.

Nevertheless, we have modified our calculation of CV profit and selling expenses for the final results. For the *Preliminary Results*, we calculated CV profit and selling expenses using a public average of the ratios from the two respondents in the 2016-17 review. However, Commerce has previously calculated an aggregate CV profit and selling expense ratio using the data from a single respondent that we can disclose in our public documents.⁷⁴ Given that Commerce has previously used this methodology, we calculated a public CV profit and selling expense ratio using the data from the sole respondent with a calculated rate in the 2017-18 review to use in these final results.⁷⁵ This methodology benefits from being more contemporaneous to the current review than that 2016-17 data. Therefore, because the data from the 2017-18 review is more contemporaneous, we have revised the CV profit and selling expense ratio used for ZA Sea Foods to use an aggregate public ratio based on the data from the respondent in the 2017-18 review. For further discussion, *see* the Final CV Calculation Memorandum.⁷⁶

Although we have revised our source for the CV profit and selling expenses, as noted above, as in the *Preliminary Results*, we are still calculating CV profit and selling expenses consistent with section 773(e)(2)(B)(iii) of the Act. The revised methodology still provides CV profit and selling expense rates that are normally realized by an exporter and producer and are able to be publicly disclosed in our calculations; additionally, the revised rate is more contemporaneous. For these reasons, we have revised our calculation of CV profit and selling expenses for ZA Sea Foods to use a public aggregate ratio based on data from the respondent in the 2017-18 review.

Comment 4: Names in Customs Instructions

ZA Sea Foods’ Argument

- In the draft customs instructions issued by Commerce, ZA Sea Foods’ name is listed as “Z A Sea Foods Pvt. Ltd.” Out of caution, the name should be changed to “Z.A. Sea Foods Pvt. Ltd.” Throughout this review there have been many variations of ZA Sea Foods’ name used by itself, Commerce, and other parties. However, the name that appears on the company’s letterhead is “Z.A. Sea Foods Pvt. Ltd.,” and this name should be used in the customs instructions.

⁷⁴ *See, e.g.*, Memorandum, “2017-2018 Administrative Review of Welded Line Pipe from the Republic of Korea: Final Results Constructed Value Selling Expenses and Profit Ratio for NEXTEEL Inc. (NEXTEEL),” dated November 20, 2020.

⁷⁵ *See* Memorandum, “Calculation of Constructed Value Ratios for the Final Results of the 2018-19 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India,” dated December 21, 2020.

⁷⁶ *Id.*

AHSTAC's Argument

- ZA Sea Foods' name has consistently been listed in customs instructions as "Z A Sea Foods Pvt. Ltd." since the seventh administrative review.⁷⁷ Given that entries have been made under this name since the seventh administrative review, such a change, although minor, seems unnecessary. While ZA Sea Foods has referred to itself as "Z.A. Sea Foods Pvt. Ltd.," entries, including those from this review, have been attributed to "Z A Sea Foods Pvt. Ltd." ZA Sea Foods has failed to show what practical significance the proposed name change has, and, therefore, Commerce should decline to change the name absent additional explanation from ZA Sea Foods.

Commerce's Position

Many of the customs instructions for this proceeding, including several of those in the draft customs instructions referenced by ZA Sea Foods,⁷⁸ note that "many of these companies have alternate company names which are listed in {CBP Automated Commercial Environment (ACE)} notes." Precisely because there are numerous variations in spacing, punctuation, and abbreviations in the names of many Indian shrimp companies, Commerce routinely adds alternate company names to company numbers in ACE. Accordingly, we added "Z.A. Sea Foods Pvt. Ltd." as an alternate name under ZA Sea Foods's company number in ACE, *i.e.*, A-533-840-358, and, thus, "Z A Sea Foods Pvt. Ltd." and "Z.A. Sea Foods Pvt. Ltd." are both included under this company number. Therefore, there is no need to change the name as ZA Sea Foods proposes, and AHSTAC's arguments are moot.

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

⁷⁷ See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013); *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 51309 (August 28, 2014); *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 54524 (September 10, 2015); *Shrimp from India AR10 Final Results; Shrimp from India AR11 Final Results*.

⁷⁸ See Memorandum, "2018-2019 Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from India: Draft Customs Instructions," dated April 6, 2020.

12/21/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance