



A-533-840  
Administrative Review  
POR: 2/1/2019 – 1/31/2020  
**Public Document**  
E&C/OII: Team

June 21, 2021

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

**FROM:** Jill E. Pollack  
Director, Office II  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2019-  
2020 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 155 producers and/or exporters of the subject merchandise. The period of review (POR) is February 1, 2019, through January 31, 2020. 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 3, 2020, 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 POR.<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 April 8,

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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*, 85 FR 19730 (February 3, 2020).



2020, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for 232 companies.<sup>3</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>4</sup>

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 individually examine all exporters/producers of subject merchandise for which a review was requested.<sup>5</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, Devi Fisheries Group<sup>6</sup> (Devi), and Falcon Marine Exports Limited and its affiliate K.R. Enterprises (collectively, Falcon).<sup>7</sup> Accordingly, we issued the AD questionnaire to these companies.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>8</sup>

In July 2020, we received responses from Devi and Falcon to section A of the questionnaire (*i.e.*, the section related to general information).<sup>9</sup> Also in July 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>10</sup>

In August 2020, we received timely submissions withdrawing all review requests for 77 companies, including Devi and Falcon. Therefore, we rescinded the review for the 77 companies for which the review requests were withdrawn.<sup>11</sup> In September 2020, we selected new respondents from those companies with remaining, active review requests; these respondents are HN Indigos Private Limited (HN Indigos) and RSA Marines.<sup>12</sup> In the same month, we issued questionnaires to HN Indigos and RSA Marines.

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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> *Id.*

<sup>5</sup> See Memorandum, “Respondent Selection,” dated April 22, 2020.

<sup>6</sup> The Devi Fisheries Group consists of the following companies: Devi Aquatech Private Ltd., Devi Fisheries Limited, Satya Seafoods Private Limited, and Usha Seafoods.

<sup>7</sup> See Memorandum, “Respondent Selection,” dated April 22, 2020.

<sup>8</sup> 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.

<sup>9</sup> See Devi’s Letter, “Devi Fisheries Group Response to Section A Questionnaire,” dated July 6, 2020; and Falcon’s Letter, “Falcon Marine Response to Section A Questionnaire,” dated July 6, 2020.

<sup>10</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>11</sup> See *Certain Frozen Warmwater Shrimp from India: Rescission of Antidumping Duty Administrative Review; 2019-2020, In Part*, 85 FR 65379 (October 15, 2020).

<sup>12</sup> See Memorandum, “Selection of Additional Respondents for Individual Review,” dated September 15, 2020.

On September 29, 2020, HN Indigos requested to align its reported costs with its fiscal year (*i.e.*, April 1, 2019, through March 31, 2020).<sup>13</sup> We issued a supplemental questionnaire to HN Indigos regarding this revised cost period and after reviewing its response, we allowed HN Indigos to align its costs with its fiscal year.<sup>14</sup> In October 2020, we received RSA Marines' and HN Indigos' response to section A of the questionnaire.<sup>15</sup> Because RSA Marines' and HN Indigos' responses to section A of the questionnaire indicated that they did not have viable home markets, in October 2020, we issued supplemental questionnaires related to their third country market sales,<sup>16</sup> the responses to which we received in the same month.<sup>17</sup> After analyzing these responses, we selected France and Spain as the third country comparison markets for RSA Marines and HN Indigos, respectively.<sup>18</sup>

In November 2020 and December 2020, we received responses from RSA Marines and HN Indigos 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>19</sup>

In January 2021, we extended the preliminary results of this review to no later than June 18, 2021.<sup>20</sup> Accordingly, the deadline for the preliminary results of this review is June 21, 2021.<sup>21</sup>

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<sup>13</sup> See HN Indigos' Letter, "Request to Consider Cost Reporting Period from April 01, 2019 to March 31, 2020 instead of February 01, 2019 to January 31, 2020," dated September 29, 2020.

<sup>14</sup> See Commerce's Letter, "Request to Align Cost Reporting Period with Fiscal Year," dated October 1, 2020; HN Indigos' Letter, "HN Indigos Private Limited's (HN Indigos) Response to Questionnaire on Request to Align Cost Reporting Period with Fiscal Year," dated October 8, 2020; and Commerce's Letter, Granting Shift in Cost Reporting, dated October 26, 2020.

<sup>15</sup> See RSA Marines' Letter, "RSA Marines Response for Section A Questionnaire Response," dated October 16, 2020 (RSA Marines AQR); HN Indigos' Letter, "HN Indigos Private Limited response for Section A Questionnaire," dated October 16, 2020 (HN Indigos AQR).

<sup>16</sup> See Commerce's Letter, Supplemental Questionnaire for Selection of Comparison Market, dated October 2, 2020; and Commerce's Letter, Supplemental Questionnaire for Selection of Comparison Market, dated October 5, 2020.

<sup>17</sup> See RSA Marines' Letter, "Response to Supplemental Questionnaire – Third Country Market," dated October 9, 2020; and HN Indigos' Letter, "Response to Supplemental of Third Country Market- Viable Market of Certain Frozen Warmwater Shrimp from India (A-522-840)," dated October 13, 2020.

<sup>18</sup> See Commerce's Letter, Selecting France as the Third Country Market for RSA Marines, dated October 29, 2020 (RSA Marines Market Selection Letter); *see also* Memorandum, "Selection of an Appropriate Third Country Market," dated November 30, 2020 (HN Indigos Market Selection Memo).

<sup>19</sup> See RSA Marines' Letter, "RSA Marines Response for Section B Questionnaire," dated November 12, 2020 (RSA Marines BQR); RSA Marines' Letter, "RSA Marines response for Section C Questionnaire Response," dated November 12, 2020 (RSA Marines CQR); RSA Marines' Letter, "RSA Marines Response for Section D Questionnaire Response," dated November 27, 2020; *see also* HN Indigos' Letter, "HN Indigos Response for Section C Questionnaire," dated November 5, 2020 (HN Indigos CQR); HN Indigos' Letter, "HN Indigos Response for Section D Questionnaire," dated November 27, 2020; and HN Indigos' Letter, "HN Indigos Response for Section B Questionnaire," dated December 15, 2020 (HN Indigos BQR).

<sup>20</sup> See Memorandum, "Extension of Deadline for Preliminary Results of the 2019-2020 Antidumping Duty Administrative Review," dated January 26, 2021.

<sup>21</sup> On June 17, 2021, the President signed into law the Juneteenth National Independence Day Act, making June 19 a Federal holiday. *See* Juneteenth National Independence Day Act, S. 475, Pub. L. No. 117-17 (2021). Because the Federal holiday fell on a Saturday, it was observed on Friday, June 18, 2021. Where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for these preliminary results is on June 21, 2021.

In April 2021, we issued supplemental sales and cost questionnaires to RSA Marines and HN Indigos, and we received responses to these supplemental questionnaires in May 2021.<sup>22</sup>

On June 11, 2021, we issued a memorandum analyzing the information on the record and determining that RSA Marines should be collapsed with its affiliated producer Royal Oceans and treated as a single entity in this administrative review.<sup>23</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>24</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 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)

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<sup>22</sup> See RSA Marines’ Letter, “RSA Marines 1<sup>st</sup> Supplemental of Section ABC Questionnaire Response,” dated May 5, 2021 (RSA Marines ACQR); HN Indigos’ Letter, “HN Indigos Private Limited Response for 1<sup>st</sup> Supplemental of Section ABC Questionnaire Response,” dated May 7, 2021; RSA Marines’ Letter, “RSA Marines 1<sup>st</sup> Supplemental of Section D Questionnaire Response,” dated May 24, 2021; and HN Indigos’ Letter, “HN Indigos Private Limited Response for 1<sup>st</sup> Supplemental of Section D Questionnaire Response,” dated May 24, 2021.

<sup>23</sup> See Memorandum, “Collapsing Analysis Memorandum for RSA Marines and Royal Oceans,” dated June 11, 2021.

<sup>24</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

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>25</sup>

#### IV. DISCUSSION OF THE METHODOLOGY

##### A. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” The regulation provides further that Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>26</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>27</sup>

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<sup>25</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 France: 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 France* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

<sup>26</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>27</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

HN Indigos and RSA Marines reported the invoice date as the date of sale for both their third country and U.S. sales.<sup>28</sup> We preliminarily find that the invoice date is the most appropriate date of sale for both HN Indigos' and RSA Marines' third country and U.S. sales.

## B. 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 RSA Marines' and HN Indigos' 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.

### *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average normal values with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.<sup>29</sup>

In numerous AD investigations and reviews, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-average 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>30</sup> Commerce finds that the differential pricing analysis used in 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.

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<sup>28</sup> HN Indigos and RSA Marines reported that the invoice date and shipment date are the same for their third country and U.S. sales. See RSA Marines BQR at B-26; and RSA Marines CQR at C-23-C-24; see also HN Indigos AQR at A-19; HN Indigos BQR at B-25; and HN Indigos CQR at C-24.

<sup>29</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 IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>30</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).

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) 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 POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

### *Results of the Differential Pricing Analysis*

#### RSA Marines

For RSA Marines, based on the results of the differential pricing analysis, Commerce preliminarily finds that 39.58 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>31</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for RSA Marines.

#### HN Indigos

For HN Indigos, based on the results of the differential pricing analysis, Commerce preliminarily finds that 21.04 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>32</sup> which does not

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<sup>31</sup> See Memorandum, "Preliminary Results Calculations for RSA Marines," dated June 18, 2021 (RSA Marines Prelim Calc Memo).

<sup>32</sup> See Memorandum, "Preliminary Results Calculations for HN Indigos," dated June 18, 2021 (HN Indigos Prelim Calc Memo).

confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method. Accordingly, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for HN Indigos.

### C. Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by RSA Marines and HN Indigos covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(f), we compared RSA Marines' and HN Indigos' U.S. sales of shrimp to sales of their shrimp made in the third country comparison market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of non-broken shrimp to sales of the most similar non-broken foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) cooked form; (2) head status; (3) count size; (4) organic certification; (5) shell status; (6) vein status; (7) tail status; (8) other shrimp preparation; (9) frozen form; (10) flavoring; (11) container weight; (12) presentation; (13) species; and (14) preservatives. Where there were no sales of identical or similar non-broken merchandise, we made product comparisons using CV, as discussed in the "Calculation of Normal Value Based on Constructed Value" section below.<sup>33</sup>

### D. Export Price

For all U.S. sales made by RSA Marines and HN Indigos, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of record.

### RSA Marines

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for late payment fees, in accordance with 19 CFR 351.401(c). We made deductions from the starting price for foreign inland freight expenses, foreign warehousing expenses, marine insurance expenses, export insurance expenses, foreign brokerage and handling expenses, international freight expenses, U.S. brokerage and

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<sup>33</sup> See section 773(a)(4) of the Act.

handling expenses, U.S inland freight expenses, and U.S. customs duties, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

### HN Indigos

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight expenses, marine insurance expenses, foreign brokerage and handling expenses, international freight expenses, U.S inland freight expenses, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

### E. Normal Value

#### *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) of the Act, 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 RSA Marines' and HN Indigos' respective home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that the aggregate volume of home market sales of the foreign like product for each of the respondents was insufficient to permit a proper comparison with U.S. sales of the subject merchandise, pursuant to 773(a)(1)(C)(ii).

For RSA Marines and HN Indigos, we selected France and Spain, respectively, as the comparison markets because, among other things, RSA Marines' and HN Indigos' sales of foreign like product in France and Spain were the most similar to the subject merchandise and both were viable comparison markets.<sup>34</sup> Therefore, we used sales to France and Spain as the basis for comparison market sales for RSA Marines and HN Indigos, respectively, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

#### *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>35</sup> Substantial

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<sup>34</sup> See RSA Marines Market Selection Letter; *see also* HN Indigos Market Selection Memorandum.

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

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 were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<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 U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>39</sup>

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

### RSA Marines

In the third country market, RSA Marines reported that it made sales through a single channel of distribution (*i.e.*, direct sales to unaffiliated companies).<sup>40</sup> We examined the selling activities performed for third country sales and found that RSA Marines performed the following selling functions: inventory maintenance at factory, inventory maintenance at third party warehouse, packing, freight and delivery, order input/processing, and quality claims.

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<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, 51001 (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 expenses, general, and administrative (SG&A) expenses, and profit for CV, where possible.

<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 RSA Marines ACQR at 10.

Selling activities can be generally grouped into five selling function categories for analysis: (1) provision of sales support;<sup>41</sup> (2) provision of training services;<sup>42</sup> (3) provision of technical support;<sup>43</sup> (4) provision of logistical services;<sup>44</sup> and (5) performance of sales-related administrative activities.<sup>45</sup> Based on these selling function categories, we find that RSA Marines performed logistical services and sales-related administrative activities for its reported sales to customers in the third country market.<sup>46</sup> Because RSA Marines performed the same selling functions at the same relative level of intensity for all of its third country sales, we preliminarily determine that all third country sales are at the same LOT.

With respect to the U.S. market, RSA Marines reported that it made sales through one channel of distribution (*i.e.*, direct sales to unaffiliated companies).<sup>47</sup> We examined the selling functions performed for U.S. sales and found that RSA Marines performed the following selling functions: inventory maintenance at factory, inventory maintenance at third party warehouse, packing, freight and delivery, order input/processing, and quality claims.<sup>48</sup>

Based on the selling function categories noted above, we find that RSA Marines performed logistical services and sales-related administrative activities for its U.S. sales. Because RSA Marines performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we preliminarily determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the third country market LOT and found that the selling functions RSA Marines performed for its U.S. and third country market customers do not differ. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that RSA Marines' third country market LOT is at the same stage of distribution as its U.S. LOT. As a result, we preliminarily find that no LOT adjustment is warranted for RSA Marines.

### HN Indigos

In the third country market, HN Indigos reported that it made sales through a single channel of distribution (*i.e.*, direct sales to unaffiliated distributors/traders).<sup>49</sup> We examined the selling activities performed for third country sales and found that HN Indigos performed the following

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<sup>41</sup> The provision of sales support may include sales forecasting strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. *See Acetone from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 49999 (September 24, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 17.

<sup>42</sup> The provision of training services may include personnel training/exchange, distributor/dealer training, and other related activities. *Id.*

<sup>43</sup> The provision of technical support may include engineering services, technical assistance, and other related activities. *Id.*

<sup>44</sup> The provision of logistical services may include inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*

<sup>45</sup> The performance of sales-related administrative activities may include order input/processing, rebate programs, warranty service, and other related activities. *Id.*

<sup>46</sup> *See* RSA Marines ACQR at Exhibit Revised A-5-A.

<sup>47</sup> *See* RSA Marines AQR at A-22.

<sup>48</sup> *See* RSA Marines ACQR at Exhibit Revised A-5-A.

<sup>49</sup> *See* HN Indigos AQR at A-14, A-17, and A-19.

selling functions: inventory maintenance at factory; freight and delivery; packing; order input/processing; and warranty service.<sup>50</sup>

Based on the selling function categories noted above, we find that HN Indigos performed logistical services and sales-related administrative activities for its third country market sales. Because HN Indigos performed the same selling functions at the same relative level of intensity for all of its third country market sales, we preliminarily determine that all third country market sales are at the same LOT.

In the U.S. market, HN Indigos reported that it made sales through a single channel of distribution (*i.e.*, direct sales to unaffiliated distributors/traders).<sup>51</sup> HN Indigos reported that it performed the following selling functions for all sales to U.S. customers: inventory maintenance at factory; freight and delivery; packing; order input/processing; and warranty service.<sup>52</sup> Accordingly, based on the selling function categories noted above, we find that HN Indigos performed logistical services and sales-related administrative activities for all of its reported U.S. sales. Because HN Indigos performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

We compared the U.S. LOT to the third country market LOT and found that the selling functions HN Indigos performed for its U.S. and third country market customers do not differ. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that HN Indigos' third country market LOT is at the same stage of distribution as its U.S. LOT. Consequently, we preliminarily find that no LOT adjustment is warranted for HN Indigos.

#### *Cost of Production Analysis*

Pursuant to section 773(b)(2)(A)(ii) of the Act, Commerce required that respondents provide CV and COP information to determine if there were reasonable grounds to believe or suspect that sales of the foreign like product had been made at prices that represented less than the COP of the product. We examined RSA Marines and HN Indigos cost data and determined that our quarterly cost methodology was not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

#### *Calculation of Cost of Production*

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of materials and conversion cost for the foreign like product, plus amounts for general and administrative expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses).

We relied on the COP data submitted by RSA Marines without adjustment. We relied on the COP data submitted by HN Indigos, except as follows:<sup>53</sup>

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<sup>50</sup> *Id.* at Exhibit A-5.

<sup>51</sup> *Id.* at A-14, A-17, and A-19.

<sup>52</sup> *Id.* at Exhibit A-5.

<sup>53</sup> *See* HN Indigos Prelim Calc Memo.

- We made a major input adjustment to HN Indigos’ total cost of manufacturing to reflect certain purchases it made of raw shrimp from an affiliate.

Commerce has a longstanding practice of collecting POR COP data,<sup>54</sup> even though companies may have produced certain products – sold in the U.S. or foreign markets during the POR – only in prior periods. In such cases, instead of collecting pre-POR cost data for the non-produced products, Commerce simply assigns them the COPs of the most physically-similar merchandise produced during the POR.<sup>55</sup>

### Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(ii) of the Act, we compared the weighted-average COP to the third country sales prices of the foreign like product, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses.

### Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: (1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent’s third country sales of a given product are at prices less than the COP, we disregard none of the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) the sales were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs

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<sup>54</sup> See, e.g., Commerce’s standard cost questionnaire at I.C., which directs respondents to calculate “reported COP and CV figures based on the actual costs incurred by your company during the {POR},” as recorded under your company’s normal accounting system.” (emphasis added).

<sup>55</sup> See, e.g., *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 81 FR 79423, (November 14, 2016), and accompanying PDM at 18-19 (stating, “Where NVR reported sales of products produced prior to the POI, we assigned costs to these products using the costs reported for the most similar product produced during the POI.”), unchanged in *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017); and *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2015-2016*, 82 FR 30836 (July 3, 2017), and accompanying IDM at Comment 3 (stating, “Further, it is the Department’s practice in assigning surrogate costs (where a respondent did not produce a product during the reporting period) to use the most similar product available in establishing those surrogates ...”).

within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual-average cost test in these preliminary results, we also applied our standard cost recovery test with no adjustments.

We found that, for certain products, more than 20 percent of RSA Marines' and all of HN Indigos' comparison market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no comparable third country sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Act. *See* "Calculation of Normal Value Based on Constructed Value" section below.

#### *Calculation of Normal Value Based on Comparison Market Prices*

##### RSA Marines

We calculated NV for RSA Marines based on the reported packed, delivered prices to unaffiliated customers in France. We made deductions for warehousing expenses, foreign inland freight expenses, foreign brokerage and handling expenses, marine insurance expenses, and international freight expenses, under section 773(a)(6)(B) of the Act.

In addition, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Specifically, we deducted direct selling expenses incurred for third country market sales (including bank charges, inspection fees, imputed credit expenses, commissions, and discounting interest) and added U.S. direct selling expenses (including commissions, inspection fees, bank charges, imputed credit expenses, and discounting interest). We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the third country market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

We adjusted RSA Marines' reported comparison market and U.S. indirect selling expenses to include expenses incurred on a cancelled sale.<sup>56</sup>

We added U.S. packing costs and deducted third country packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19

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<sup>56</sup> *See* RSA Marines Prelim Calc Memo.

CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>57</sup>

### HN Indigos

We calculated NV for HN Indigos based on the reported packed, delivered prices to unaffiliated customers in Spain. Where appropriate, we made deductions from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We made deductions for foreign inland freight expenses, foreign brokerage and handling expenses, marine insurance expenses, and international freight expenses, under section 773(a)(6)(B) of the Act.

In addition, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Specifically, we deducted direct selling expenses incurred for third country market sales (including bank charges, inspection fees, imputed credit expenses, commissions, and discounting interest) and added U.S. direct selling expenses (bank charges, other direct selling expenses, testing and inspection charges, imputed credit expenses, and commissions). We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the third country market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

We added U.S. packing costs and deducted third country packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>58</sup>

### *Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those shrimp products for which we could not determine the NV based on comparison market sales because, as noted in the “Results of the COP Test” section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the

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<sup>57</sup> See 19 CFR 351.411(b).

<sup>58</sup> See 19 CFR 351.411(b).

ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to HN Indigos' EP sales, we made circumstance-of-sale adjustments by deducting the CV direct selling expenses and imputed credit expenses from, and adding U.S. direct selling expenses (*i.e.*, bank charges, other direct selling expenses, testing and inspection charges, and commissions) and imputed credit expenses to, CV.<sup>59</sup> Where commissions were granted on HN Indigos' U.S. sales, we made a commission offset for HN Indigos' comparison market indirect selling expenses, in accordance with 19 CFR 351.410(e).

For comparisons to RSA Marines' EP sales, we made circumstance of sale adjustments by deducting the CV direct selling expenses and imputed credit expenses from, and adding U.S. direct selling expenses (including commissions, inspection fees, bank charges, imputed credit expenses, and discounting interest) and imputed credit expense to, CV.<sup>60</sup> Where commissions were granted on RSA Marines' U.S. sales, we made a commission offset for RSA Marines' comparison market indirect selling expenses, in accordance with 19 CFR 351.410(e).

## 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

6/21/2021

X

*James Maeder*

Signed by: JAMES MAEDER

James Maeder

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

<sup>59</sup> See 19 CFR 351.410(c).

<sup>60</sup> See 19 CFR 351.410(c).