

DATE: July 7, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review on Certain Frozen Warmwater Shrimp
from India – February 1, 2007, through January 31, 2008

Summary

We have received comments from interested parties in the 2007-2008 administrative review of the antidumping duty order covering certain frozen warmwater shrimp (shrimp) from India. After analyzing these comments, we have made no changes in the margin calculations from the preliminary results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

General Issues

1. Offsetting of Negative Margins
2. Using U.S. Customs and Border Protection (CBP) Data for Respondent Selection
3. The Calculation of the Assessment Rate Assigned to Companies Receiving the Review-Specific Average Rate
4. Model Matching Methodology

Company-Specific Issues

5. The Calculation of Falcon Marine Export Limited’s (Falcon’s) General and Administrative (G&A) Expense Ratio

Background

On March 9, 2009, the Department of Commerce (the Department) published the preliminary results of the 2007-2008 administrative review of the antidumping duty order on shrimp from

India. See Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 74 FR 9991 (Mar. 9, 2009) (Preliminary Results). The period of review (POR) is February 1, 2007, through January 31, 2008.

We invited parties to comment on our preliminary results of review. The following interested parties submitted case and rebuttal briefs: the Ad Hoc Shrimp Trade Action Committee (the petitioner), a group of 32 U.S. shrimp processors¹ (the processors), Devi Sea Foods, Ltd. (Devi), and Falcon. After analyzing the comments received, we have not changed the results from those presented in the preliminary results.

Margin Calculations

For the final results we have calculated constructed export price (CEP), export price (EP) and normal value (NV) using the same methodology stated in the preliminary results. See Preliminary Results, 74 FR 9991.

Discussion of the Issues

General Issues

Comment 1: *Offsetting of Negative Margins*

In the preliminary results, we followed our standard methodology of not using non-dumped comparisons to offset or reduce the dumping found on other comparisons (commonly known as “zeroing”). Falcon maintains that the World Trade Organization (WTO) has found that “zeroing” in administrative reviews is inconsistent with Articles 2.4 and 9.3 of the Antidumping Agreement and Article VI:2 of the General Agreement on Tariffs and Trade (1994). As support for this assertion, Falcon cites United States – Measure Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (Jan. 2007) at Para. 190(c) (US-Zeroing (Japan) I) and United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R at Paras. 197-198 (US-Zeroing (EC) II). Further, while Falcon concedes that the Court of Appeals for the Federal Circuit (CAFC) has found that the Department’s “zeroing” practice is within its discretion, Falcon argues that the CAFC also held that the Act was ambiguous as to the methodology to be used in calculating the dumping margin. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (Timken I); Chevron, U.S.A., Inc. v. Natural Res. Def.

¹ These companies are: 1) Bayou Shrimp Processors, Inc.; 2) Biloxi Freezing & Processing Co.; 3) CF Gollot and Son Seafood, Inc.; 4) Carson and Co., Inc.; 5) Custom Pack, Inc.; 6) Deep Sea Foods Inc./Jubilee Foods; 7) Dominick’s Seafood, Inc.; 8) Dunamis Towing, Inc.; 9) Fisherman’s Reef Shrimp Co., Inc.; 10) Golden Gulf Coast Pkg. Co., Inc.; 11) Gollott’s Oil Dock and Ice House, Inc.; 12) Graham Fisheries; 13) Gulf Crown Seafood Co., Inc.; 14) Gulf Fish, Inc.; 15) Gulf Pride Enterprises, Inc.; 16) Gulf Island Shrimp & Seafood, L.L.C.; 17) Hi Seas of Dulac, Inc.; 18) JBS Packing Co., Inc.; 19) Lafitte Frozen Foods Corp.; 20) Louisiana Newpack Shrimp Co., Inc.; 21) Louisiana Shrimp & Packing Co., Inc.; 22) M&M Seafood; 23) Ocean Springs Seafood, Market, Inc.; 24) Pascagoula Ice & Freezer Co., Inc.; 25) Paul Piazza and Son, Inc.; 26) Pearl, Inc. d/b/a Indian Ridge Shrimp Co.; 27) Price Seafood, Inc.; 28) RA Lesso Brokerage Co., Inc.; 29) Sea Pearl Seafood Company, Inc.; 30) Tideland Seafood Co., Inc.; 31) Vincent Piazza Jr., & Sons Seafood, Inc.; and 32) Woods Fisheries and Country, Inc.

Council, 467 U.S. 837, 104 S. Ct. 2778 (1984). Falcon notes that the Department itself determined that it had the discretion to change the practice of “zeroing” in investigations, stating that the courts have held that the denial of offsets is not required by the Tariff Act of 1930 (the Act), but rather is an interpretation of the Act. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77723 (Dec. 27, 2006) (Zeroing Notice). Thus, Falcon contends that the Department has the discretion under the Act not to use its “zeroing” methodology in administrative reviews. Moreover, Falcon states that at the February 20, 2007, meeting of the WTO Dispute Settlement Body, the United States agreed to implement the Body’s decision regarding “zeroing” in administrative reviews. See United States – Measures Relating to Zeroing and Sunset Reviews, Request by Japan for Arbitration under Article 21.3(c) of the DSU, WT/DS322/17 (Mar. 2007) (US-Zeroing (Japan) II). Consequently, Falcon requests that the Department abandon its “zeroing” methodology in the final results margin calculations.

According to Devi, in the first two administrative reviews of this proceeding, the Department interpreted section 771(35)(A) of the Act, to mean that a dumping margin exists only when NV exceeds the EP or CEP. See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (Sept. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (2004-2006 Final Results); and Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 40492 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 1 (2006-2007 Final Results). Devi argues that section 771(35)(A) of the Act defines the dumping margin with specific reference to the subject merchandise. Further, Devi claims that the definition of subject merchandise under section 771(25) of the Act makes it clear that it is the merchandise in totality which is alleged to be dumped, rather than individual imports, transactions, or models of such merchandise. Devi contrasts the language in the sections of the Act referenced above with that in sections 777A(d)(1)(A)(i) and (ii) of the Act, which mandates the comparison of weighted-average NVs to the weighted-average EPs of “comparable merchandise.” Moreover, Devi states that section 777A(d)(2) of the Act, which relates to administrative reviews, refers to the EPs (or CEPs) of “individual transactions,” rather than subject merchandise. According to Devi, this means that the Act distinguishes between models created for comparison purposes and the individual sales transactions, versus the subject merchandise itself. Therefore, Devi argues that the definition of the dumping margin in section 771(35)(A) of the Act can only mean that the dumping margin is the difference between NV and EP calculated in relation to the subject merchandise, and not for individual transactions, models, or imports. As a result, Devi claims that the dumping margin for the subject merchandise can only be determined when all NVs and EPs are aggregated and the overall difference is ascertained.

Finally, Devi asserts that section 771(35) of the Act requires the Department to calculate separate dumping margins for EP and CEP. Devi states that, because of these separate margins, section 771(35)(B) of the Act requires that the Department aggregate these margins when calculating the weighted-average dumping margin. Similarly, Devi states that the denominator of the weighted-average dumping margin is the aggregate of the EPs and CEPs. According to Devi, the plain language of the Act, requiring that the Department aggregate the dumping margins calculated on

individual sales, does not instruct the Department to zero out negative margins from its calculations. Thus, Devi argues that the Department should refrain from “zeroing” in its calculations for the final results. Devi maintains that such an approach would be consistent with both the Department’s current methodology in investigations, where it does not practice zeroing, and the provisions of section 731 of the Act, which is the foundation of the antidumping duty law.

The petitioner and the processors maintain that the Department should continue its practice of “zeroing” for the final results of this proceeding. The petitioner and the processors assert that the CAFC has held that the Department’s practice of “zeroing” in administrative reviews is a reasonable interpretation of the Act. As support for this assertion, they cite Koyo Seiko Co. v. United States, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); SKF USA Inc. v. United States, 537 F.3d 1373, 1382 (Fed. Cir. 2008); Timken I, 354 F.3d at 1342; and Corus Staal BV v. Dep’t of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (2006) (Corus I). According to the petitioner and the processors, the Department has modified its calculation of the weighted-average dumping margin only when making average-to-average comparisons in investigations. See Zeroing Notice, 71 FR at 77724. Further, the petitioner and the processors assert that the Department has repeatedly declined to modify its “zeroing” methodology in any proceeding other than an investigation, including administrative reviews,² and it has repeatedly rejected arguments similar to those of Devi and Falcon in numerous recent administrative reviews.³ The petitioner and the processors additionally maintain that the CAFC recently affirmed the Department’s use of “zeroing” in administrative reviews, citing Corus Stall BV v.

² In support of this assertion the petitioner cites the following administrative determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 73 FR 15132 (Mar. 21, 2008), and accompanying Issues and Decision Memorandum at Comment 2; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (Mar. 17, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Carbon and Certain Alloy Steel Wire Rod from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 13532 (Mar. 13, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 73 FR 7710 (Feb. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 2; Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (Jan. 2, 2008), and accompanying Issues and Decision Memorandum at Comment 18; and Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 71357 (Dec. 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

³ In support of this assertion the petitioner cites the following administrative determinations: Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Duty Administrative Review, 74 FR 14519 (Mar. 31, 2009) and accompanying Issues and Decision Memorandum at Comment 10; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (Mar. 16, 2009), and accompanying Issues and Decision Memorandum at Comment 2; Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (Feb. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (Feb. 9, 2009), and accompanying Issues and Decision Memorandum at Comment 2; and Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (Dec. 11, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (Corus II); and NSK Ltd. v. United States, 510 F.3d 1375, 1380 (Fed. Cir. 2007) (NSK). Additionally, citing to Alexander Murray v. Schooner Charming Betsey, 6 U.S. 64, 118 (1804), the processors note that Congress has enacted a process to adopt WTO decisions, and there has not yet been any decision at the Congressional level to adopt the WTO's rulings on zeroing in administrative reviews. Finally, the processors argue that a departure from the Department's practice of "zeroing" in administrative reviews would be contrary to the statements of the United States before the WTO, citing Final Antidumping Measures on Stainless Steel from Mexico, WT/DS344/11 Communication from the United States (June 12, 2008). Consequently, the petitioner and the processors argue that the Department should continue to employ its "zeroing" methodology in the calculations for the final results.

Department's Position:

We have not changed our calculation of the weighted-average dumping margin, as suggested by Devi and Falcon, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. We disagree with Devi that the Department's zeroing practice is an inappropriate interpretation of the Act. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken I, 354 F.3d at 1342; and Corus I, 395 F.3d at 1347-49.

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Falcon has cited WTO dispute-settlement reports finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (URAA). See Corus I, 395 F.3d at 1347-49; accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (Corus II); and NSK, 510 F.3d at 1380.

While the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations, the Department has not adopted any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Zeroing Notice, 71 FR at 77724.

With respect to US-Zeroing (Japan) I and US-Zeroing (Japan) II, Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. 3533(g); see also Zeroing Notice, 71 FR at 77724. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US-Zeroing (Japan) I and US-Zeroing (Japan) II, it is the position of the United States that appropriate steps have been taken in response to that report and those steps do not involve a change to the Department’s approach of calculating weighted-average dumping margins in the instant administrative review. Furthermore, in response to US-Zeroing (Japan) I, the CAFC has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus II, 502 F.3d at 1374-75; and NSK, 510 F.3d at 1380. With respect to US-Zeroing (EC) II, such reports are not self-executing under U.S. law and there has been no implementation action taken by the United States pursuant to U.S. law that would require the Department to adopt a different methodology in this instance.

For all these reasons, the various WTO Appellate Body reports regarding “zeroing” do not establish whether the Department’s denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department’s interpretation of the Act described above, the Department has continued to deny offsets to dumping based on EPs that exceed NV in this review.

For the foregoing reasons, we have not changed the methodology employed in calculating Devi’s or Falcon’s weighted-average dumping margins for the final results.

Comment 2: Using CBP Data for Respondent Selection

In our initiation notice, we stated that we intended to select respondents for individual review in this proceeding based upon CBP entry data, and we invited interested parties to comment on our respondent selection methodology. See Certain Frozen Warmwater Shrimp from Brazil,

Ecuador, India and Thailand: Notice of Initiation of Administrative Reviews, 73 FR 18754, 18765 (Apr. 7, 2008) (Initiation Notice). In determining which two producers/exporters accounted for the largest volume of imports of subject merchandise, we relied on CBP entry data for all “type 3” (i.e., AD/CVD entries for consumption) entries of frozen warmwater shrimp from India entering under the United States Harmonized Tariff Schedule (HTS) numbers included in the scope of the antidumping duty order on certain frozen warmwater shrimp from India. See the April 9, 2008, memorandum from Elizabeth Eastwood, Senior Analyst, to the file, entitled, “Release of Customs Entry Data from U.S. Customs and Border Protection” (CBP Data Release). After releasing the relevant CBP entry data to interested parties and analyzing comments from them, we selected the two largest producers/exporters according to CBP entry data as the mandatory respondents in this administrative review. For further discussion, see the May 27, 2008, memorandum from Elizabeth Eastwood, Senior Analyst, to James Maeder, Office Director, entitled “Selection of Respondents for Individual Review” (Respondent Selection Memo).

The petitioner argues that the Department impermissibly relied on CBP entry data for purposes of selecting mandatory respondents in this administrative review because CBP data is inaccurate. Specifically, the petitioner contends that the CBP data is unreliable and its accuracy has been questioned in other instances before the Department, as the data is compiled from CBP Form 7501 (CF-7501) entry summary forms, which the petitioner alleges are prone to errors and inconsistencies.

The petitioner also contends that use of CBP data to select respondents is contrary to the Department’s practice, which is to issue quantity and value (Q&V) questionnaires to respondents in order to determine which respondents to select for mandatory review.⁴ The petitioner claims that the Department did not provide adequate explanation for why it departed from this practice despite the fact that the courts have required the Department to explain changes in practice. In support of this assertion, the petitioner cites NSK, 510 F.3d 1375, 1381 and Save Domestic Oil, Inc. v. United States, 357 F.3d 1278, 1283 (Fed. Cir. 2004), which, according to the petitioner, stands for the proposition that the Department must either follow its settled practice or provide

⁴ In support of this assertion the petitioner cites the following administrative determinations: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Final Partial Rescission of the Second Administrative Review, 73 FR 12127 (Mar. 6, 2008) (Shrimp from Vietnam Preliminary Results), unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273 (Sept. 9, 2008) (Shrimp from Vietnam Final Results); Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal From the People's Republic of China, 69 FR 59187 (Oct. 4, 2004), unchanged in Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China, 70 FR 9037 (Feb. 24, 2005); Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, 69 FR 5127 (Feb. 3, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 35296 (June 24, 2004); Notice of Preliminary Results and Preliminary Partial Rescission of the Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China, 68 FR 53109 (Sept. 9, 2003), unchanged in Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 69 FR 12121 (Mar. 15, 2004).

an explanation for why it has departed from it. The petitioner also asserts that the Department has not explained why Q&V questionnaires are an appropriate basis for selecting mandatory respondents in some reviews but not others. To demonstrate this inconsistency, the petitioner cites Initiation of Antidumping Duty Administrative Review, 74 FR 8776, 8777 (Feb. 26, 2009) (where the Department selected respondents based upon Q&V questionnaires in the most recently initiated administrative review of wooden bedroom furniture from the People's Republic of China). The petitioner argues that, in order to correct these deficiencies, the Department must issue Q&V questionnaires to all respondents in this review.

Finally, the petitioner maintains that the Department must also make "type 1" (i.e., entries of shrimp not covered by the antidumping duty order) CBP entry data, available to parties, in addition to the "type 3" CBP entry data that it did provide to parties, in the event that it continues to find it appropriate to use CBP data to select respondents. Further, the petitioner urges the Department to take any corrective action necessary if it discovers that its reliance on CBP data resulted in the selection of mandatory respondents in a manner inconsistent with 777A(c)(2)(B) of the Act.

Devi and Falcon (collectively, "the respondents") maintain that the Department correctly relied on CBP data in selecting mandatory respondents in this review. The respondents assert that, although the petitioner claims that CBP data is inaccurate, the petitioner has not pointed to any inconsistency in the data in this case or any reason why relying on CBP data resulted in a wrongful selection of mandatory respondents in this review. Devi notes that the Department's use of CBP data in this review caused the Department to select the same two mandatory respondents as it did in the previous administrative review, where it relied on Q&V data. The respondents maintain that the Department's reliance on CBP data is consistent with the Department's practice, citing Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 58540, 58540 (Oct. 7, 2008); Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan, 72 FR 59071, 59075 (Oct. 18, 2007); Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews, 72 FR 38057, 38059 (July 12, 2007); Stainless Steel Wire Rod from India: Notice of Initiation of Antidumping Duty New-Shipper Review, 72 FR 13088, 13088 (Mar. 20, 2007); and Silicon Metal from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 67 FR 38255, 38256 (June 3, 2002). Falcon also argues that it is reasonable for the Department to rely on CBP data showing entries of subject merchandise because the Act requires that antidumping duties be assessed on entries of subject merchandise. Therefore, the respondents assert that the Department's selection of respondents in this administrative review using CBP data was within its discretion.

Further, Falcon maintains that the Department correctly relied only on "type 3" entries, and should not entertain the petitioner's request that the Department release "type 1" entry data. In support of this assertion Falcon cites NSK v. United States, 245 F.Supp.2d 1335, 1377 (CIT 2003), noting that dumping duties are assessed using the entered value of subject merchandise, which comes directly from the CF-7501 forms for "type 3" entries. Falcon also argues that "type 1" entries are, by definition, outside the scope of the order, and it would be outside the

Department's statutory mandate to review these entries or to release them to parties in this review. Thus, Falcon maintains that the Department should not release additional CBP data in this administrative review.

Department's Position:

We continue to find that it was appropriate to base our respondent selection decision on CBP data. Where it is not practicable to examine all known exporters/producers of subject merchandise, section 777A(c)(2)(B) of the Act permits us to examine "exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined." In this review, the Department exercised its discretion under section 777A(c)(2)(B) of the Act and selected the top two producers/exporters for individual examination. As outlined above, in determining which two producers/exporters accounted for the largest volume of imports of subject merchandise, we relied on CBP entry data for all "type 3" entries of frozen warmwater shrimp from India entering under the HTS numbers included in the scope of the antidumping duty order on certain frozen warmwater shrimp from India. See CBP Data Release.

Although the petitioner alleges that the individual entry forms are subject to human error, and therefore that the data in the aggregate may be inaccurate, the petitioner has not presented any evidence demonstrating that inaccuracies existed in the CBP data at issue here. Similarly, the petitioner has failed to demonstrate that using these data would yield an outcome different from using Q&V data. Rather, the petitioner's argument relies solely upon speculation that errors may have occurred. We also note that the petitioner makes no argument of error based upon the information provided by the respondents in their responses on the record. Absent any evidence of error with respect to the CBP data pertaining to this case, we find no basis to reject CBP data here. See, e.g., Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (CIT 1999) at 471- 472; Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 73 FR 6932 (Feb. 6, 2008), and accompanying Issues and Decision memorandum at Comment 1.

We note that the petitioner also raised its concerns over the use of CBP data prior to the selection of respondents in this case, and we addressed them in our respondent selection memo. Specifically, we stated:

The CBP data on which the Department's respondent selection methodology is based represents reliable data on entries of subject merchandise readily available to the Department. The data is compiled from actual entries of merchandise subject to the order based on information required by and provided to the U.S. government authority responsible for permitting goods to enter into the United States. Further, the entries compiled in this database are the same entries upon which the antidumping duties determined by this review will be assessed.

See the Respondent Selection Memo at pg. 6.

Moreover, significant penalties can be imposed on parties that report entry information inaccurately. See 19 USC 1592. Accordingly, we continue to find that CBP data is sufficiently reliable to use for purposes of respondent selection.

We also disagree that the Department failed to provide adequate explanation for why it chose to rely on CBP data instead of Q&V questionnaires to determine the largest exporters/producers of subject merchandise. We stated our intention to use CBP data in the Initiation Notice, where we said:

We intend to release the CBP data under administrative protective order (APO) to all parties having an APO within five days of publication of this Federal Register notice, and to make our decisions regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this Federal Register notice.

See Initiation Notice, 73 FR at 18765 - 18766. As noted above, following that announcement we received and analyzed comments from interested parties, and issued a reasoned memorandum in which we addressed the very concerns expressed here by the petitioner. See the Respondent Selection Memo at 6.

In any event, we disagree that we departed from Department practice in selecting mandatory respondents based upon CBP data. Section 777A of the Act does not require the Department to use any specific method for determining which producers/exporters account for the largest volume of subject merchandise. Rather, section 777A(c)(2)(B) of the Act requires the Department to examine “exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.” The Act is silent as to how the Department is permitted to determine which exporters and producers account for the largest volume of subject merchandise, and the Department has discretion to choose which particular method to use in determining which respondents account for the “largest volume of the subject merchandise.” While the Department has selected respondents based upon Q&V questionnaires in certain proceedings based on case-specific facts,⁵ the Department’s current practice is to select

⁵ See, e.g., Shrimp from Vietnam Preliminary Results, 73 FR at 12128, unchanged in Shrimp from Vietnam Final Results, 73 FR 52273.

respondents using CBP data,⁶ which we determine accurately identifies the two producers/exporters accounting for the largest volume of imports of subject merchandise that could reasonably be examined.

Moreover, while we acknowledge that the Department relied on Q&V data to select respondents in prior segments of this proceeding, selecting respondents from CBP data provides an alternative that is as accurate and reliable as Q&V data and is much more administratively practicable, given that relying on Q&V responses requires significant resources to send and track the delivery of Q&V questionnaires and responses and to aggregate and analyze the numerous responses.

Although we are rejecting the petitioner's argument on its merits, additionally we note that it would be impossible to issue Q&V questionnaires at this late stage of the proceeding and complete the review within the statutory deadline for administrative reviews. Specifically, at the case brief stage, it is too late in the proceeding to issue Q&V questionnaires, receive and analyze the responses from the 156 respondents⁷ in this review, perform a new respondent-selection exercise, and potentially conduct a full review of those respondents. Further, as noted above, the petitioner has provided no evidence that the largest volume respondents based upon their Q&V responses would be any different than those selected using CBP data.

Regarding the petitioner's request that the Department release "type 1" entry data, we disagree that the release of this data would prove beneficial in this case. Indeed the petitioner itself did not articulate a reason for the Department to do so. Further, the petitioner has put forth no evidence that would indicate these "type 1" entries were misreported to CBP as entries of non-subject merchandise, or that there has otherwise been any sort of systematic misclassification of entries which would cast doubt upon the veracity of the CBP data as a whole. Therefore, we continue to find that it was appropriate to base our respondent selection decision on CBP data of "type 3" entries.

⁶ See, e.g., Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 37409 (July 1, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews, 73 FR 50308 (Aug. 26, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 56795 (Sept. 30, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review, 73 FR 64305 (Oct. 29, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews, 73 FR 70964 (Nov. 24, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 73 FR 79055 (Dec. 24, 2008); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 74 FR 5821 (Feb. 2, 2009); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 74 FR 12310 (Mar. 24, 2009); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 74 FR 19042 (Apr. 27, 2009); Initiation of Antidumping and Countervailing Duty Administrative Reviews, 74 FR 25711 (May 29, 2009).

⁷ Collapsed entities are treated as one producer/exporter.

Comment 3: *The Calculation of the Assessment Rate Assigned to Companies Receiving the Review-Specific Average Rate*

As the assessment rate for companies not selected for individual examination, we stated in the Preliminary Results that, “we {would} calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual examination excluding any which are de minimis or determined entirely on AFA.” See Preliminary Results, 74 FR at 10000. Further, because we calculated a de minimis cash deposit rate for Devi in our preliminary results, we based the assessment rate for companies not selected for individual examination solely on the cash deposit rate calculated for Falcon. The petitioner argues that the rate should be based on the assessment rate calculated for Falcon.

The petitioner quotes language from 19 CFR 351.212(b)(1) stating that the Department normally will “calculate the assessment rate by dividing the dumping margin found on the subject merchandise by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.” According to the petitioner, because the Department has neither a calculated dumping margin nor the entered value of subject merchandise for the companies not selected for individual examination, it must employ a proxy to determine the assessment rate for the non-examined companies. While the petitioner agrees that the dumping margin calculated on Falcon’s sales of subject merchandise is the correct proxy for the dumping margin for sales of subject merchandise sold by non-examined companies, the petitioner argues that it is grossly inappropriate for the Department to use Falcon’s U.S. sales value as the proxy for the entered value of subject merchandise sold by the non-examined companies. Thus, the petitioner contends that the Department’s assignment to non-examined companies of a liquidation rate directly equal to the cash deposit rate assigned to those companies directly contradicts 19 CFR 351.212(b)(1) and, thus, that the methodology should be changed for the final results.

Further, the petitioner contends that assigning a liquidation rate to non-examined companies equal to the cash deposit rate results in differential treatment to these companies and provides an incentive for foreign companies to request administrative reviews with the intention of avoiding individual examination by the Department.

Therefore, for the final results, the petitioner requests that the Department base the liquidation rate assigned to non-examined companies on the weighted-average assessment rate calculated for Falcon, in accordance with 19 CFR 351.212(b)(1).

We received no rebuttal comments on this issue.

Department’s Position:

We have continued to base the assessment rate for companies not selected for individual examination on Falcon’s cash deposit rate. As the petitioner correctly notes, for the companies not selected for individual examination, we do not have the information on the record to

determine either the calculated dumping margin or the entered value of subject merchandise during the POR. Further, 19 CFR 351.212(b)(1) is silent as to which methodology the Department should use to calculate the assessment rate for non-examined companies. Thus, we believe that the weighted-average cash deposit rate (excluding any cash deposit rates which are *de minimis* or based entirely on adverse facts available) is a reasonable proxy for the assessment rate to be applied to non-examined companies.

Our consistent practice in every administrative review of this proceeding, as the well as in each of the companion shrimp orders on Brazil, Ecuador, and Thailand, has been to use this same methodology to calculate the assessment rate for non-examined companies. See Preliminary Results, 74 FR at 10000; 2004-2006 Final Results, 72 FR at 52060; 2006-2007 Final Results, 73 FR at 40498; Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061, 52065 (Sept. 12, 2007); Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 39940, 39944 (July 11, 2008); Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review, 72 FR 52070, 52073 (Sept. 12, 2007); Certain Frozen Warmwater Shrimp from Ecuador: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 39945, 39947 (July 11, 2008); Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065, 52069 (Sept. 12, 2007); and Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933, 50938 (Aug. 29, 2008). In addition, we have based the assessment rate for non-examined companies on the weighted-average dumping margins of respondents selected for individual review in several other recent proceedings. See, e.g., Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 64580, 64582 (Nov. 16, 2007); Certain Steel Concrete Reinforcing Bars From Turkey: Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part, 73 FR 66218, 66220 (Nov. 7, 2008); and Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review, 74 FR 17149, 17153 (Apr. 14, 2009).

Although the petitioner has requested that we depart from this practice, the petitioner has provided no valid reasons for the Department to do so. Specifically, the petitioner's reliance on 19 CFR 351.212(b)(1) is misplaced because this section of the regulations does not address the calculation of an assessment rate for companies which have not submitted full questionnaire responses. Rather, 19 CFR 351.212(b)(1) merely provides guidance on the computation of the assessment rate for mandatory respondents participating in an administrative review. Therefore, we have continued to base the assessment rate for companies not selected for individual review on Falcon's cash deposit rate for purposes of the final results.

Comment 4: Model Matching Methodology

In the LTFV investigation, the Department defined "models" of shrimp by reference to 14 physical characteristics, one of which was count size. We also placed these 14 physical

characteristics in a hierarchy, with count size as the third characteristic, which was then used to determine which foreign models were most similar to U.S. products. The Department relied on this hierarchy without alteration in all subsequent segments of this proceeding, as well as in all segments of the companion proceedings on shrimp from Brazil, Ecuador, and Thailand.

In their case brief, the processors argue that the Department's methodology for model matching does not yield representative or accurate product comparisons, because it permits the comparison of shrimp products of widely different count sizes. According to the processors, count size is the primary factor determining price; thus they argue shrimp in count sizes which differ by more than one category (e.g., 10-12 shrimp per lb., 16-20 shrimp per lb., 21-25 shrimp per lb., etc.) cannot be reasonably compared because the difference in merchandise adjustment does not adequately capture the difference in value between these products. Therefore, the processors request that the Department revise its model matching methodology to reflect the importance of count size to the price of shrimp by limiting the permissible variance in count size in matched models to one category.⁸

In support of their assertion that count size is an important factor influencing the price of shrimp, the processors cite to information from the original investigation demonstrating that shrimp is generally traded by size. See Certain Frozen and Canned Warmwater Shrimp from India: Final Determination of Sales at Less Than Fair Value, 69 FR 76916 (Dec. 23, 2004) (Shrimp from India LTFV), and accompanying Issues and Decision Memorandum at Comment 13. Further, the processors analyzed data from both respondents in this administrative review and maintain that this data demonstrates that count size is an important factor in the differences of the cost and price of frozen warmwater shrimp.⁹ The processors contend that, because there is no limit on the extent to which specific product characteristics can differ in this proceeding (except as constrained by the difference in merchandise test), dissimilar merchandise may be treated as the most similar match. Thus, the processors argue that, changing the model matching methodology to limit the count sizes deemed similar will produce more accurate and reliable margins.

According to the processors, the Court of International Trade (CIT) has held that the Department must choose the most similar merchandise for comparison purposes when more than one product meets the definition of similar merchandise. See Timken Company v. United States, 10 CIT 86, 96, 630 F. Supp. 1327, 1337 (1986) (Timken II). The processors contend that this ruling is consistent with the mandate in the statute to make fair, "apples to apples" comparisons and to achieve the most accurate results. As support for this assertion, the processors cite Hussy Copper, Ltd. V. United States, 834 F. Supp. 413, 417 (CIT 1993) (citing, inter alia, Smith Corona Group v. United States, 713 F.2d 1568, 1578 (Fed. Cir. 1983)).

⁸ For example, the processors claim that shrimp in a count size of 9 or less shrimp per lb. (i.e., with a count size code of "1") should only be matched to shrimp of the same count size or of a count size of no more than 10-12 shrimp per lb. (i.e., with a count size of "2").

⁹ Because this analysis is based on the respondents' proprietary data, we are unable to discuss the specifics of it in this memo.

The processors note that the Department has the discretion to update and revise its model matching methodology as appropriate based on new information, changes in the industry, and improvements in the Department's own technological capabilities. See, e.g., Koyo Seiko Co Ltd. v. United States, 516 F. Supp. 2d 1323 (CIT 2007) (Koyo Seiko) (affirming the Department's change to the model matching methodology based in part on technological advances permitting selection of the single most-similar model rather than reliance on averaging groups of models together); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759, 56769 (Oct. 21, 1999) (Pipes and Tubes from Thailand) (changing the product matching criteria to reflect a wider array of sizes sold); and Roller Chain, Other than Bicycle, from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 60472, 60475 (Nov. 10, 1997) (Roller Chain from Japan) (reviewing and modifying the model matching methodologies employed in prior segments of the proceeding).

The processors assert that the Department should change its model matching methodology in this case to weigh the relative significance of the physical characteristics of the product, consistent with its stated intent in the preamble to the Department's regulations. See Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27378 (May 19, 1997). The processors assert that adopting this type of change would be in line with the Department's practice in other cases. Specifically, the processors argue that in Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (Sept. 16, 2005) and accompanying Issues and Decision Memorandum at Comment 2, the Department has required closer matches for more fundamental characteristics, while allowing wider deviation for less fundamental characteristics.

The respondents contend that the model matching methodology used by the Department in this proceeding should not be changed. Devi acknowledges that the Department has the discretion to modify the model matching methodology from one segment of a proceeding to another, but it asserts that the processors have not given a compelling reason for making their proposed methodological change in this case.

The respondents state that the processors have failed to address how their proposed change, which respondents claim would decrease the number of price-to-price comparisons, is consistent with the Department's preference for price-to-price comparisons. Moreover, the respondents claim that the processors have based their analysis on only 10 of the 14 product characteristics used for model matching purposes without explanation for why the remaining product characteristics were not included.

Further, the respondents assert that none of the cases cited by the processors support the argument that the model matching methodology should be modified at this time in this case. First, Devi points out that, in Koyo Seiko, the Department decided to change its model matching methodology because the change resulted in more similar product comparisons, was warranted by technological advances within the Department allowing employment of a methodology that would yield more accurate product comparisons, and would increase the number of price-to-price comparisons. See Koyo Seiko, 516 F. Supp. 2d at 1328. However, the respondents

contend that the processors have not given any similar reasons for their proposed change in methodology in this case. In addition, the respondents note in Koyo Seiko, the change in the Department's methodology was proposed in the preceding administrative review of the ball bearings order. According to the respondents, the Department did not change the model matching methodology until the following administrative review so that interested parties would have adequate time to analyze and comment on the proposed changes. Id. The respondents contrast the facts in Koyo Seiko with those of the instant proceeding, where the processors have raised their model matching methodology argument for the first time in their case brief. According to the respondents, this is too late for interested parties to meaningfully comment on the proposed change in this proceeding.

Similarly, Falcon maintains that the processors' reliance on Roller Chain from Japan is misplaced. Falcon notes that, in Roller Chain from Japan, the Department changed the model matching methodology in the preliminary results, and after receiving comments from interested parties, the Department reverted in part to its previous model matching methodology. See Roller Chain from Japan, 62 FR at 60473. See also Pipes and Tubes from Thailand, 64 FR at 56769. Therefore, Falcon maintains that changing the model matching methodology at this stage in the proceeding would go against the Department's practice.

Therefore, the respondents assert that the Department should not change the model matching methodology used in the final results.

Department's Position:

We determine that it would be inappropriate to make such a substantial (or fundamental) change in the model matching methodology at this late stage in the administrative review. During the LTFV investigation in this proceeding, the Department, in consultation with all parties, established the physical characteristics to be used in the model matching hierarchy in all of the concurrent antidumping duty investigations involving shrimp. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 47111, 47114 (Aug. 4, 2004), unchanged in Shrimp from India LTFV; Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 47100, 47103 (Aug. 4, 2004), unchanged in 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 (Dec. 23, 2004). In this administrative review, the Department issued questionnaires based on the same model matching hierarchy as in the investigation (and all prior administrative reviews) and all parties fully responded to the questionnaire. See the May 28, 2008, letters to Devi and Falcon, entitled "Request for Information." No party in this proceeding raised any objection to the Department's model matching methodology either prior to the issuance of these questionnaires or in the context of supplemental questionnaire responses. Although the processors argue that re-examining the model matching hierarchy is now warranted in this case, such re-examination would be a

fundamental change that would affect all parties participating in this proceeding and in the companion proceedings on frozen warmwater shrimp from Brazil, Ecuador, and Thailand.

We note that the issue of revising the model matching methodology has been raised by the processors for the first time in this review during the briefing stage, timing which stands in marked contrast to that in the cases the processors cited as support for their position. In Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 69 FR 55574 (Sep. 15, 2004), and accompanying Issues and Decision Memorandum at Comment 2, the Department declined to consider the issue of making a fundamental change to the model match when it was first raised in the fourteenth administrative review. Instead the Department decided to allow further time for comment and analysis of the issue in the context of the next administrative review and to ensure that all parties in the companion bearings cases were provided ample opportunity to consider and provide comment on the proposed change to the model match methodology because it would, as here, affect the model match methodology in all such cases. Further, we find that the processors' reliance on Roller Chain from Japan to be misplaced because in that case, the Department made changes to the model matching methodology in the preliminary results, which provided the Department sufficient time to solicit comments from all interested parties. See Roller Chain from Japan, 62 FR at 60473.

As our practice demonstrates, the Department addresses arguments for changes to the model matching methodology when raised early in a proceeding so that all parties have sufficient opportunity to comment and address any reporting issues which may result from changes. See, e.g., Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004), and accompanying Issues and Decision Memorandum at Comment 15 (declining to address arguments for changing the model matching methodology raised for the first time in the case brief); Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (Feb. 11, 2005), and accompanying Issues and Decision Memorandum at Comment 10 (stating that arguments on the model matching methodology should be presented early in the case); Structural Steel Beams from Korea: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 6837 (Feb. 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (noting that parties were invited to comment early in the third administrative review on model matching changes which initially had been raised too late in the second administrative review). In order to modify the model matching methodology, according to section 782(g) of the Act, the Department must allow "reasonable opportunity" for interested parties to comment. See Koyo Seiko, 516 F. Supp. 2d at 1333. By raising model matching methodology concerns at the briefing stage of the review, the processors did not allow the Department sufficient time to solicit comments from all parties, consider the issue, including an opportunity for the Department to clarify aspects of the processors' proposal and the information and basis that supports the proposal. Further, the timing of the proposal does not allow the Department to make a reasonable determination on the basis of comments from all parties. Therefore, for purposes of the final results of this review, we have continued to rely on our established model matching

methodology in this case. The Department will consider the processors' arguments if raised at an early date in the next proceeding.

Comment 5: The Calculation of Falcon's G&A Expense Ratio

In the preliminary results, the Department made an adjustment to include taxes on wealth (i.e., asset taxes) and fringe benefits in the calculation of Falcon's G&A expense ratio. Falcon argues that including such taxes in the calculation of the G&A expense ratio is inconsistent with the Department's practice, citing Notice of Final Determination of sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 53 (Diamond Sawblades from Korea). Thus, Falcon claims that the wealth and fringe benefit taxes should not be included in the calculation of the G&A expense ratio for the final results.

The petitioner asserts that the inclusion of wealth and fringe benefit taxes in the calculation of the G&A expense ratio in the preliminary results was appropriate. The petitioner maintains that it is the Department's practice to include taxes in the G&A expense ratio calculation unless the taxes relate to income tax or value added tax (VAT), citing Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (Mar. 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1d. According to the petitioner, this practice is consistent with Certain Iron Construction Castings from India: Final Determination of Sales at Less Than Fair Value, 51 FR 9486 (Mar. 19, 1986), and accompanying Issues and Decision Memorandum at Comment 24 (where the Department determined that wealth taxes on Indian companies were to be treated as G&A expenses).

Department's Position:

We have continued to include wealth and fringe benefit taxes in our calculation of Falcon's G&A expense ratio. During Falcon's cost verification, we determined that the wealth taxes represented property taxes (e.g., taxes on buildings, land, cars, etc.) and the fringe benefit taxes represented the taxes levied on employee benefits (e.g., staff welfare, group insurance, foreign travel, etc.). See the February 22, 2009, memorandum from Ji Young Oh, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Verification of the Cost Response of Falcon Marine Export Limited in the Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from India." Generally, with the exception of VAT and income taxes, the Department's practice is to include taxes, such as land or property taxes and fringe benefit taxes, in the G&A expense ratio calculation as these taxes are related to the general operation of the company and are a cost of doing business. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (Apr. 9, 1999); Notice of Final Determination of Sales at Less than fair Value: Citric Acid and Certain Citrate Salts from Canada, FR 16843 (Apr. 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1; and Certain Pasta from Italy: Preliminary Results of Eleventh Antidumping Duty Administrative Review, 73 FR 45716, 45718 (Aug. 6, 2008) unchanged in

Certain Pasta from Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review, 73 FR 75400 (Dec. 11, 2008). Accordingly, we determine that it is appropriate to include these tax expenses in Falcon's G&A expense ratio.

Finally, we find that Falcon's reliance on Diamond Sawblades from Korea is misplaced. Contrary to Falcon's claim, the taxes at issue in that case were related to income taxes.

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 review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree_____

Disagree_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

(Date)