A-469-817
Investigation
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DATE: January 18, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Ripe Olives from Spain

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that ripe olives (olives) from Spain are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On June 22, 2017, Commerce received an antidumping duty (AD) petition covering imports of ripe olives from Spain,[1] which was filed in proper form on behalf of the Coalition for Fair Trade in Ripe Olives and its individual members, Musco Family Olive Company and Bell-Carter Foods (collectively, the petitioner). Commerce initiated this investigation on July 12, 2017.[2]

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[1] *See* Letter to the Secretary of Commerce, "Re: Ripe Olives from Spain Petition for the Imposition of Antidumping and Countervailing," dated June 21, 2017 (Petition). The petition was filed with Commerce and the International Trade Commission (ITC) on June 21, 2017, after 12:00 noon, and pursuant to 19 CFR 207.10(a), are deemed to have been filed on the next business day, June 22, 2017. *See* Memorandum, "Decision Memorandum Concerning the Filing Date of the Petitions," dated June 23, 2017.
[2] *See Ripe Olives from Spain: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 33054 (July 19, 2017) (*Initiation Notice*).

In the *Initiation Notice*, Commerce notified the public that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of olives from Spain during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[3] On July 13, 2017, Commerce released CBP import data to interested parties.[4] On July 20, 2017, Commerce received comments on the CBP data from the petitioner.[5]

Additionally, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of olives to be reported in response to Commerce's AD questionnaire.[6] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*.

On August 4, 2017, the petitioner and exporters of merchandise under investigation, Asociación de Exportadores e Industriales de Aceitunas de Mesa (ASEMESA), submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.[7] On August 14, 2017, the petitioner, ASEMESA, and importers of merchandise under consideration, Association of Food Industries, Inc., Mario Camacho Foods, Schreiber Foods, Rema Foods Inc., Atalanta Corporation, Acorsa USA, and Mitsui Food Inc. (collectively, AFI), submitted rebuttal comments.[8] On August 16, 2017, and August 17, 2017, respectively, Angel Camacho Alimentación, S.L. (Camacho) and Agro Sevilla Aceitunas S.COOP Andalusia (Agro Sevilla) submitted comments to clarify factual information in Petitioner Rebuttal Comments.[9] On August 21, 2017, the petitioner submitted surrebuttal comments concerning Camacho Factual Information Comments and Agro Sevilla Factual Information Comments.[10]

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[3] *Id.* at 54265.

[4] *See* Memorandum, "Ripe Olives from Spain Antidumping Duty Investigation: Release of Customs Entry Data from U.S. Customs and Border Protection," dated July 13, 2017 (CBP Entry Data Memorandum).

[5] *See* Letter to the Secretary of Commerce, "Re: Ripe Olives from Spain Comments on Respondent Selection," dated July 20, 2017).

[6] *See Initiation Notice*, 82 FR at 33055-33056.

[7] *See* Letters to the Secretary of Commerce, "Re: Ripe Olives from Spain Comments on Product Characteristics" (Petitioner Model Match Comments) and "Re: ASEMESA's Comment on Model Match Characteristics: Ripe Olives from Spain (A-469-817)" (ASEMESA Model Match Comments), dated August 4, 2017, respectively.

[8] *See* Letters to the Secretary of Commerce, "Re: Ripe Olives from Spain Rebuttal Comments on Product Characteristics" (Petitioner Rebuttal Comments), "Re: Rebuttal Comments on Petitioner's Proposed Product Characteristics for use in Model Matching: Ripe Olives from Spain" (ASEMESA Rebuttal Comments) and "Re: Ripe Olives from Spain (A-469-817) Rebuttal Comments on Product Characteristics" (AFI Rebuttal Comments), dated August 14, 2017, respectively.

[9] *See* Letters to the Secretary of Commerce, "Re: Factual Information to Correct Petitioner's August 14, 2017 Submission: Ripe Olives from Spain," dated August 16, 2017 (Camacho Factual Information Comments), and "Re: Factual Information to Correct Petitioner's August 14, 2017 Submission: Ripe Olives from Spain," dated August 17, 2017 (Agro Sevilla Factual Information Comments).

[10] *See* Letter to the Secretary of Commerce, "Re: Ripe Olives from Spain Rebuttal Comments on Product Characteristics," dated August 21, 2017 (Petitioner Surrebuttal Model Match Characteristics).

On August 7, 2017, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ripe olives from Spain.[11]

On August 8, 2017, we selected Aceitunas Guadalquivir, S.L. (AG), Agro Sevilla and Camacho as mandatory respondents because, based on CBP data, they account for the largest volume of exports of subject merchandise during the POI.[12] On August 8, 2017, we issued the AD questionnaire to AG, Agro Sevilla and Camacho.[13]

In October 2017, AG submitted timely responses to Commerce's AD questionnaire for section A (*i.e.*, the section relating to general information) and sections B, C, and D (*i.e.*, the sections relating to home market and U.S. sales and cost of production). From October 2017 through December 2017, Commerce issued supplemental questionnaires to AG, and we received responses to these supplemental questionnaires from October 2017 through December 2017. The petitioner timely submitted comments with respect to the responses submitted by AG.[14]

In September 2017, Agro Sevilla submitted a timely response to Commerce's AD questionnaire for section A (*i.e.*, the section relating to general information). In October 2017, Agro Sevilla submitted timely responses to the questionnaires for sections B, C, and D (*i.e.*, the sections relating to home market and U.S. sales and cost of production). From September 2017 through December 2017, Commerce issued supplemental questionnaires to Agro Sevilla, and we received responses to these supplemental questionnaires from October 2017 through December 2017. The petitioner timely submitted comments with respect to the responses submitted by Agro Sevilla.[15]

In September 2017, Camacho submitted a timely response to Commerce's AD questionnaire for section A (*i.e.*, the section relating to general information). In October 2017, Camacho submitted timely responses to Commerce's AD questionnaire for sections B, C, and D (*i.e.*, the sections relating to home market and U.S. sales and cost of production). From October 2017 through December 2017, Commerce issued supplemental questionnaires to Camacho, and we received responses to these supplemental questionnaires from October 2017 through December 2017. The petitioner timely submitted comments with respect to the responses submitted by Camacho.[16]

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[11] *See Ripe Olives from Spain, Investigation Nos. 701–TA–582 and 731–TA–1377 (Preliminary ITC Ruling)*, 82 FR 37610 (August 11, 2017).
[12] *See* Memorandum, "Antidumping Duty Investigation of Ripe Olives from Spain: Respondent Selection," dated August 8, 2017 (Respondent Selection Memo) at 5.
[13] *See* Letters from Commerce to AG, Agro Sevilla and Camacho dated August 8, 2017.
[14] *See* letters to the Secretary of Commerce, "Re: Ripe Olives from Spain Comments on AG Section A Response," dated September 18, 2017, "Re: Ripe Olives from Spain Comments on AG Sections B-C Responses," dated October 24, 2017, "Re: Ripe Olives from Spain Comments on AG Section D Response," dated October 26, 2017, "Re: Ripe Olives from Spain Comments on AG Supplemental Section D Response," dated December 12, 2017, and "Re: Ripe Olives from Spain Pre-Preliminary Comments," dated January 2, 2018.
[15] *See* the petitioner's comments dated September 14, 2017, and October 25, 2017.
[16] *See* the petitioner's comments dated September 18, 2017, and October 24, 2017.

On November 16, 2017, Commerce published the notice of postponement for the preliminary determination in this investigation, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(f)(1).[17] As a result of the 50-day postponement, the revised deadline for the preliminary determination of this investigation moved to January 18, 2017.[18]

On December 27, 2017, the petitioner submitted a particular market situation (PMS) allegation.[19] On January 4, 2018, Commerce accepted the allegation on the record and issued deadlines for interested parties to submit information to rebut, clarify, or correct the factual information in the petitioner's PMS allegation. On January 11, 2018, the three mandatory respondents and the Asociacion de Exportadores e Industriales de Aceitunas de Mesa provided comments and rebuttal factual information to the PMS allegation.[20] Commerce will further investigate this allegation and issue a finding prior to the Final Determination.

On January 2, 2018, the petitioner submitted comments with respect to AG, Agro Sevilla and Camacho for consideration in the preliminary determination.

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2017.[21]

IV. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,[22] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).[23] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

However, we note that both AG and Camacho had sales of cocktail mix/olive cocktails[24] (collectively cocktail mixes), that we have preliminary included in our margin calculations.

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[17] *See Ripe Olives from Spain: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 82 FR 53479 (November 16, 2017).
[18] *Id*.
[19] *See* Letter to the Secretary of Commerce, "Re: Ripe Olives from Spain Particular Market Situation," dated December 19, 2017 (PMS Allegation).
[20] *See* Letter to the Secretary of Commerce, "Re: Rebuttal With New Factual Information for Particular Market Situation (PMS) Allegation: Rip Olives from Spain," dated January 11, 2018.
[21] *See* 19 CFR 351.204(b)(1).
[22] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).
[23] *See Initiation Notice*, 80 FR at 54261.
[24] Camacho refers to this product as "cocktail mix" and AG refers to this product as "olive cocktails."

Both AG and Camacho stated that cocktail mixes are out of the scope. Without any further elaboration, the petitioners commented that AG and Camacho cannot unilaterally determine whether cocktail mixes are outside the scope. For this preliminary determination, Commerce is including all of these sales, but we will further evaluate this issue for purposes of the final determination. Commerce will set a time period for comments, and if necessary, collect additional information to clarify and define cocktail mixes.

V. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until August 1, 2017.[25] The petitioner and other interested parties provided comments which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.[26]

VI. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

To determine whether the respondents' sales of the subject merchandise from Spain to the United States were made at less than normal value (NV), Commerce compared the export price (EP) and constructed export price (CEP) to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. Commerce's regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).[27]

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[28] Commerce finds that

[25] *See Initiation Notice*, 82 FR at 33056.
[26] *See* the AD questionnaires, dated August 8, 2017, issued to the respondents.
[27] *See* 19 CFR 351.414(b)(1) and (2).
[28] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351, 33352 (June 4, 2013), and accompanying Issues and Decision Memorandum; *Steel Concrete Reinforcing Bar from Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), and accompanying Preliminary Decision Memorandum at "Determination of Comparison Method," unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final*

the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination 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 purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by Camacho.[29] For AG[30] and Agro Sevilla,[31] purchasers are based on reported customer codes, because they do not have consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, state) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI 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 NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *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

Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at "Margin Calculations."

[29] *See* Letter to the Secretary of Commerce, "Re: Angel Camacho Alimentación Section B Questionnaire Response Ripe Olives from Spain," dated October 11, 2017 (Camacho BQR), at 8, and Letter to the Secretary of Commerce, "Re: Response of Angel Camacho Alimentacion S.L. to Section C of the Department's Questionnaire Ripe Olives from Spain," dated October 13, 2017 (Camacho CQR), at 7.

[30] *See* Letter to the Secretary of Commerce, "Re: Response of Aceitunas Guadalquivir, S.L. To Section B of the Department's Antidumping Questionnaire: Ripe Olives from Spain," dated October 11, 2017 (AG BQR), at 8, and Letter to the Secretary of Commerce, "Re: Response of Aceitunas Guadalquivir, S.L. to Section C of the Department's Antidumping Questionnaire: Ripe Olives from Spain," dated October 11, 2017 (AG CQR), at 6.

[31] *See* Letter to the Secretary of Commerce, "Re: Agro Sevilla Aceitunas, SOC. COOP. AND. Section B Questionnaire Response: Ripe Olives from Spain," dated October 11, 2017 (Agro Sevilla BQR), at 12-13, and Letter to the Secretary of Commerce, "Re: Agro Sevilla Aceitunas, SOC. COOP. AND. Section C Questionnaire Response: Ripe Olives from Spain," dated October 11, 2017 (Agro Sevilla CQR), at 11.

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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) *Results of the Differential Pricing Analysis*

For AG, based on the results of the differential pricing analysis, Commerce preliminarily finds that 78.93 percent of the value of U.S. sales pass the Cohen's *d* test,[32] 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 all U.S. sales because both rates are above the de minimis threshold and there is less than a relative 25 percent change in the rates.[33] Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for AG.

For Agro Sevilla, based on the results of the differential pricing analysis, Commerce preliminarily finds that 80.43 percent of the value of U.S. sales pass the Cohen's *d* test,[34] 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 all U.S. sales because both rates are above the *de minimis* threshold and there is less than a relative 25 percent change in the rates.[35] Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Agro Sevilla.

For Camacho, based on the results of the differential pricing analysis, Commerce preliminarily finds that 46.87 percent of the value of U.S. sales pass the Cohen's *d* test,[36] 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 all U.S. sales because both rates are above the *de minimis* threshold and there is less than a relative 25 percent change in the rates.[37] Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Camacho.

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[32] *See* Memorandum, "Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Preliminary Determination Analysis Memorandum for Aceitunas Guadalquivir, S.L.," dated January 18, 2018 (AG Preliminary Analysis Memorandum).

[33] *Id*.

[34] *See* Memorandum, "Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Preliminary Determination Analysis Memorandum for Agro Sevilla Aceitunas S.COOP Andalusia," dated January 18, 2017 (Agro Sevilla Preliminary Analysis Memorandum).

[35] *Id.*

[36] *See* Memorandum, "Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Preliminary Determination Analysis Memorandum for Angel Camacho Alimentación, S.L." dated January 18, 2017 (Camacho Preliminary Analysis Memorandum).

[37] *Id*.

VII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in 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. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[38]

All three companies, AG, Agro Sevilla, and Camacho reported that the invoice date is the date at which the price and quantity are set with its customer and when the sale is realized on its accounting books.[39] They also reported that for home market and U.S. sales, material terms of sale can change up to the point of invoice date.[40] However, because some of their home market and U.S. sales had shipment dates that preceded the date of invoice, they reported the earlier of the invoice date or shipment date as the date of sale.[41] Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[42] Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our regulation and practice.[43]

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, Commerce considered all products produced and sold by the respondents in Spain during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: olive form, drain weight, package type and variety. For respective sales by AG, Agro Sevilla, and Camacho

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[38] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").
[39] *See* AG BQR at 11 and AG CQR at 8. *See also* Camacho BQR at 11, Camacho CQR at 8, and Letter to the Secretary of Commerce, "Re: Angel Camacho Alimentación Supplemental Section A Response Ripe Olives from Spain," dated October 19, 2017 (Camacho SQRA), at 11 – 17. *See also* AS BQR at 16 and AS CQR at 13.
[40] *Id.*
[41] *Id.*
[42] *See, e.g., Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009) (*Staple Fiber from Korea*).
[43] *Id*.

of ripe olives in the United States, the reported control number identifies the characteristics of ripe olives, as exported by AG, Agro Sevilla, and Camacho.

IX. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, Commerce calculated EP for all of AG's and Camacho's U.S. sales where subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for the remainder of Camacho's U.S. sales and all of Agro Sevilla's U.S. sales we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Camacho and Agro Sevilla, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

We based EP on a packed price to the first unaffiliated purchaser in the United States. We made adjustments for billing adjustments, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties.

Camacho classified some of its sales of merchandise under consideration to the United States as CEP sales because such sales were invoiced and sold by Camacho's U.S. affiliate, Mario Camacho Foods, LLC (MCF). We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.

X. NORMAL VALUE

A. *Comparison Market Viability*

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 equal to or greater than five percent of the aggregate volume of U.S. sales), Commerce normally compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, Commerce determined that the aggregate volume of home market sales of the foreign like product for AG and Camacho was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for AG and Camacho, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included sales by Camacho to affiliated parties for purposes of determining home market viability.[44]

Agro Sevilla reported that its sales did not meet the five percent threshold for sales of the foreign like product in the home market.[45] As requested in the questionnaire, Agro Sevilla reported the quantity and value of sales of the foreign like product in the three largest third country markets and suggested a choice for the selection of an appropriate comparison market.[46] The petitioner provided comments on this issue in its comments on Agro Sevilla's Section A response[47] and in response to Agro Sevilla's response to the comparison market supplemental questionnaire.[48] On October 12, 2017, Commerce notified Agro Sevilla of its determination with respect to the comparison market. Due to the business proprietary nature of the information pertaining to this determination, see the analysis memorandum for a detailed discussion relating to this determination.[49]

B. *Affiliated Party Transactions and Arm's-Length Test*

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.[50] Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Therefore, consistent with 19 CFR 351.403(c) and (d) and our practice, Commerce "*may* calculate normal value based on sales to affiliates if the agency is satisfied that the transactions were made at arm's length."[51]

Camacho reported that it had a small volume of sales of merchandise under consideration to one affiliated party in the home market during the POI.[52] Pursuant to 19 CFR 351.403(c) and in

44 *See Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).
45 *See* Letter to the Secretary of Commerce, "Re: Agro Sevilla's Section A Response: Ripe Olives from Spain," dated September 6, 2017 (AS AQR) at 3-4 and Letter to the Secretary of Commerce, "Re: Agro Sevilla Supplemental Comparison Market Questionnaire Response: Ripe Olives from Spain," dated October 2, 2017.
46 *Id.*
47 *See* Letter to the Secretary of Commerce, "Re: Ripe Olives from Spain Comments on Agro Sevilla Section A Response," dated September 14, 2017.
48 *See* Letter to the Secretary of Commerce, "Re: Ripe Olives from Spain Request that the Department Require Agro Sevilla to Report Sales for its Largest Third Country Market" dated October 4, 2017.
49 *See* Letter to Agro Sevilla dated October 12, 2017. Commerce is re-evaluating respondent's classification of this information as business proprietary.
50 *See* 19 CFR 351.403(c).
51 *See China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003) (emphasis in original).
52 *See* Camacho BQR at 2.

accordance with Commerce's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.[53] Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.[54]

AG reported that it had no sales of merchandise under consideration to affiliated parties in the home market during the POI.[55]

Agro Sevilla reported that it had sales to an affiliated party in the comparison market during the POI.[56] We preliminarily find that all sales that Agro Sevilla made to its affiliated reseller in the comparison market during the POI failed the arm's length test. Pursuant to 19 CFR 351.403(c), sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.[57] With respect to Agro Sevilla's sales to the affiliated reseller that failed the arm's length test, we used the reported downstream sales of the affiliate in our calculations for the preliminary determination.

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[58] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[59] In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[60] Commerce considers the starting prices before any adjustments. For CEP sales, we consider only the selling

[53] *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).
[54] *See* 19 CFR 351.102(b)(35).
[55] *See* AG BQR at 3.
[56] *See* AS BQR at 5-6.
[57] *See* section 771(15) of the Act; 19 CFR 351.102(b)(35).
[58] *See* 19 CFR 351.412(c)(2).
[59] *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), and accompanying Issues and Decision Memorandum (*Orange Juice from Brazil*) at Comment 7.
[60] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[61]

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 a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[62]

AG

AG reported that it sold olives in the comparison market to retailers and distributors through four channels of distribution: 1) the customer picks up olives from AG's factory (Channel 1), 2) AG ships olives from the factory directly to the customer's place of delivery (Channel 2), 3) AG ships olives to an unaffiliated warehouse in Spain and, once the customer places an order, AG ships the product from the warehouse to the customer's place of delivery (Channel 3), and 4) AG ships olives to the unaffiliated customer's warehouse in Spain and the customer picks up the merchandise at various times during the month (Channel 4). AG provided a list of the following selling functions for the home market and the U.S. market and provided a level of intensity with respect to each: Advertising, Direct Sales Personnel, Distributor/Dealer Training, Engineering Services, Inventory Maintenance, Market Research, Order Input/Processing, Packing, Pay Commissions, Perform Repacking, Personnel Training/Exchange, Procurement/Sourcing Services, Provide After-Sales Services, Provide Rebates/discount, Provide Warranty Service, Sales Forecasting, Sales Promotion, Sales/Marketing Support, Selling Activity/Function, Strategic/Economic Planning, and Technical Assistance.[63] Although AG reported that there were some consignment sales made through channel 4, it also reported that the warehouse was controlled by the customer, so we found that no warehousing services were performed by AG.[64] Based on this information, we preliminarily find that AG performed the same selling functions at the same relative level of intensity for its comparison market sales. Therefore, we determine that all comparison market sales are at the same LOT.

AG reported that its U.S. sales were made to distributors through three channels of distribution: 1) AG ships olives to the U.S. customer's location (Channel 1), 2) AG ships olives to the home market port, where title transfers to the customer (Channel 2), and 3) sales are picked up by the customer at the factory (Channel 3). AG provided the list mentioned above of the selling functions for the home market and the U.S. market and assigned a level of intensity with respect

[61] *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[62] *See, e.g., Orange Juice from Brazil*, at Comment 7.
[63] *See* letter to the Secretary of Commerce, "Re: Aceitunas Guadalquivir S.L. Section A Response *Ripe Olives from Spain*," dated September 6, 2017 (AG AQR) at Exhibit A-6.
[64] *See* AG AQR at 9-13.

to each.[65] Based on this information, we preliminarily find that AG performed the same selling functions at the same relative level of intensity for its U.S. sales.[66] Therefore, we determine that all comparison market sales are at the same LOT.

Commerce found that the selling functions AG performed for all U.S. sales were very similar to those it performed for comparison-market sales. The only differences in selling functions between U.S. sales and comparison-market sales reported by AG relate to inventory maintenance, sales forecasting, promotion and marketing support expenses. As a result, we preliminarily determine the LOT of U.S. sales was the same as the LOT of home-market sales. Based on these circumstances, we preliminarily determine to not make a LOT adjustment.[67]

Agro Sevilla

Agro Sevilla reported that it made sales through six channels of distribution to retailers and distributors in the comparison market: 1) direct sales to customers in the comparison market (Channel 1), 2) direct sales where the customer picks up the merchandise from Agro Sevilla's factory warehouse (Channel 2), 3) sales to Agro Sevilla's affiliate in the comparison market that are resold to a specific unaffiliated customer in the comparison market (Channel 3), 4) the downstream sales from the comparison market affiliate to the specific unaffiliated customer (Channel 4), sales from a public warehouse in Spain to the comparison market (Channel 5), and toll production where the ripe olives are frozen before being sold to customers in the comparison market (Channel 6).[68] Because the details of Agro Sevilla's reported selling functions for each channel of distribution are business proprietary, analysis of these selling functions is contained in a separate memorandum.[69]

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Agro Sevilla performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported sales in the comparison market. We preliminarily find that Agro Sevilla performed the same selling functions at the same relative level of intensity for its comparison market sales.[70] Therefore, we determine that all comparison market sales are at the same LOT.

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[65] *See* AG AQR at Exhibit A-6.
[66] *Id*.
[67] For a more detailed discussion of the level of trade analysis for AG, *see* AG Preliminary Analysis Memorandum at 2.
[68] *See* AS AQR at 17 and AS BQR at 14.
[69] *See* Memorandum, "Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Preliminary Determination Analysis Memorandum for Agro Sevilla Aceitunas S.COOP Andalusia," dated January 18, 2017 (Agro Sevilla Preliminary Analysis Memorandum).
[70] *See* AS AQR at Exhibit A-5.

With respect to the U.S. market, Agro Sevilla reported that it made sales through two channels of distribution (*i.e.*, CEP sales through its wholly-owned U.S. subsidiary, AgroUSA, directly to the customer (Channel 1) or from AgroUSA's warehouse (Channel 2)).[71] Agro Sevilla reported a single level of trade for its CEP sales.[72] With respect to the U.S. sales, Agro Sevilla reported that it only performed services relating to ocean freight in Spain for its sales through these channels, while the other selling functions were performed in the United States by AgroUSA.[73] Because Agro Sevilla performed the same selling functions at the same relative level of intensity for its U.S. sales channels, we determine that U.S. sales in these channels are at the same LOT (AS CEP LOT).

We compared the AS CEP LOT to the comparison market LOT and found that the selling functions Agro Sevilla performed for its comparison market customers are at a more advanced stage of distribution than those performed for its U.S. customers. That is, there is a broader range of selling functions performed for comparison market sales than for CEP sales, and these functions are performed at a higher level of intensity in the comparison market. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that comparison market sales during the POI were made at a different LOT than CEP sales. Because Agro Sevilla's comparison market LOT is at a more advanced stage of distribution than the AS CEP LOT, and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset to Agro Sevilla, pursuant to section 773(a)(7)(B) of the Act.

Camacho

Camacho reported that it sold ripe olives in the comparison market to distributors/wholesalers and to retailers through four channels of distribution: 1) the customer picks up the ripe olives from Camacho's factory warehouse (Channel 1), 2) Camacho ships the ripe olives from its factory warehouse to the customer (Channel 2), 3) Camacho ships and stores the ripe olives at an unaffiliated warehouse and the customer picks up the ripe olives from the unaffiliated warehouse (Channel 3), and 4) Camacho ships and stores the ripe olives at an unaffiliated warehouse and Camacho ships the ripe olives from the unaffiliated warehouse to the customer (Channel 4).[74] Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Camacho performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported sales in the comparison market. Because Camacho performed the same selling functions at the same relative level of intensity for its comparison market sales,[75] we determine that all comparison market sales are at the same LOT.[76]

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[71] *Id.* at 16.
[72] *See* AS CQR at 22.
[73] *See* AS AQR at 20.
[74] *See* Camacho AQR at 1. *See also* Camacho SQRA, at Exhibit SA-16.
[75] *See* Camacho AQR at Exhibit A-3.2.
[76] Due to the proprietary nature of the individual selling functions and the specific level at which they were performed, a more detailed discussion of the level of trade analysis is included in the Camacho Preliminary Analysis Memorandum) at 2.

Camacho reported that it sold ripe olives in the United States to distributors/wholesalers and to retailers through four channels of distribution: 1) Camacho exports to its U.S. affiliate, Mario Camacho Foods, LLC. (MCF) who stores the product in an unaffiliated warehouse and ships the ripe olives from the unaffiliated warehouse to the customer (CEP sales) (Channel 1); 2) Camacho exports to MCF who stores the product in an unaffiliated warehouse and the customer picks up the ripe olives from the unaffiliated warehouse (CEP sales) (Channel 2); 3) Camacho ships the ripe olives from Spain directly to the customer but invoices MCF and MCF invoices the customer (CEP sales) (Channel 3); and Camacho ships the ripe olives from Spain directly to the customer and invoices the customer directly (EP sales) (Channel 4). Selling activities can be generally be grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Camacho performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for its reported sales in the United States. Because Camacho performed the same selling functions at the same relative level of intensity for its U.S. CEP sales (*i.e.*, Channel 1, Channel 2, and Channel 3),[77] we determine that U.S. sales in Channel 1, Channel 2, and Channel 3, are at the same LOT (Camacho CEP LOT). [78] Because Camacho performed the same selling functions at a different relative level of intensity for its U.S. EP sales (*i.e.*, Channel 4),[79] we determine that U.S. sales in Channel 4 (Camacho EP LOT) are at a different level of trade than Camacho CEP LOT. [80]

We compared Camacho's CEP LOT to the comparison market LOT and found that the selling functions Camacho performed for its comparison market customers are at a more advanced stage of distribution than those performed for its U.S. customers. That is, there is a broader range of selling functions performed for home-market sales than for U.S. sales, and these functions are performed at a higher level of intensity in the home-market. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that home-market sales during the POI were made at a different LOT than U.S. sales. Because Camacho's home-market LOT is at a more advanced stage of distribution than its CEP LOT, and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset to Camacho, pursuant to section 773(a)(7)(B) of the Act.

We compared Camacho's EP LOT to the comparison market LOT and found that the selling functions Camacho performed for its EP sales are very similar to those it performed for comparison-market sales and performed at the same relative level of intensity. As a result, we preliminarily determine that Camacho's EP LOT was the same as Camacho's comparison-market LOT. Based on these circumstances, we preliminarily determine to not make an LOT adjustment.

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[77] *See* Camacho AQR at Exhibit A-3.2.

[78] Due to the proprietary nature of the individual selling functions and the specific level at which they were performed, a more detailed discussion of the level of trade analysis is included in the Camacho Preliminary Analysis Memorandum) at 2.

[79] *See* Camacho AQR at Exhibit A-3.2.

[80] Due to the proprietary nature of the individual selling functions and the specific level at which they were performed, a more detailed discussion of the level of trade analysis is included in the Camacho Preliminary Analysis Memorandum) at 2.

D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding Commerce's requests for information on sales at less than cost of production.[81] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.[82] Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request constructed value (CV) and cost of production (COP) information from respondent companies in all AD proceedings.[83] Accordingly, Commerce requested this information from AG, Agro Sevilla and Camacho. We examined the respondents' cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, Commerce calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.[84]

We relied on the COP data submitted by AG, except as follows:[85]

- We adjusted AG's reported total cost of raw materials to reflect POI consumption rather than the reported POI purchases.
- We revised AG's reported G&A expenses to exclude selling expenses.
- We revised AG's reported interest expenses to exclude long term interest income.
- We revised AG's reported variable and fixed overhead costs to reclassify certain expenses as fixed overhead rather than variable overhead.
- We adjusted AG's reported transfer prices of certain olive varieties purchased from affiliated parties in accordance with section 773(f)(2) of the Act.

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[81] *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[82] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice).
[83] *Id*. at 46794-95.
[84] *See* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.
[85] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Aceitunas Guadalquivir S.L.," dated concurrently with this memorandum.

We relied on the COP data submitted by Agro Sevilla, except as follows:[86]

- We adjusted Agro Sevilla's reported transfer prices of certain olive varieties purchased from affiliated cooperatives in accordance with section 773(f)(3) of the Act.

We relied on the COP data submitted by Camacho, except as follows:[87]

- We adjusted Camacho's reported transfer prices of certain olive varieties purchased from affiliated parties in accordance with section 773(f)(2) of the Act.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market or comparison market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market or comparison market 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 comparison market sales of a given product are at prices less than the COP, we do not disregard any 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) they 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 POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of AG's, Agro Sevilla's, and Camacho's home market sales during the POI 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,

[86] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Agro Sevilla Aceitunas S.COOP Andalusia," dated concurrently with this memorandum (AS Cost Memorandum).
[87] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Angel Camacho Alimentacion, S.L." dated concurrently with this memorandum (Camacho Cost Memorandum).

therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. *Calculation of NV Based on Comparison-Market Prices*

We based NV on comparison market prices. We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in Spain.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of 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.[88]

Commerce calculated NV for AG, Agro Sevilla, and Camacho based on delivered or ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

F. *Calculation of NV Based on Constructed Value*

For Agro Sevilla and Camacho, where we were unable to find a comparison market match of identical or similar merchandise, we based normal value on CV in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Agro Sevilla's and Camacho's material and fabrication costs, selling, general and administrative (SG&A) expenses, profit, and U.S. packing costs, as adjusted. We calculated the COP component of CV for Agro Sevilla and Camacho as described above in the "Calculation of COP" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized in connection with the production and sale of the foreign like product for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and 19 CFR 351.410. We also made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

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[88] *See* 19 CFR 351.411(b).

XI. 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.

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒	☐
Agree	Disagree

1/18/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
Performing the non-exclusive functions and duties of
Assistant Secretary for Enforcement and Compliance