A-469-817
Investigation
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June 11, 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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the duties of Deputy Assistant Secretary for
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Ripe Olives from Spain

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## I. SUMMARY

The Department of Commerce (Commerce) finds that ripe olives from Spain are, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016 through March 31, 2017.

We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification, we made certain changes to the margin calculations for the mandatory respondents, Aceitunas Guadalquivir S.L. (AG), Agro Sevilla Aceitunas S.COOP Andalusia (Agro Sevilla), and Angel Camacho Alimentacion S.A (Camacho). 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 investigation on which we received comments from parties.

Comment 1: Clarify Scope to Include Ripe Olives Contained in Cocktail Mixes
Comment 2: Particular Market Situation Allegation
Comment 3: Whether Commerce Should Apply its Differential Pricing Methodology

Comment 4: Agro Sevilla's and Camacho's Constructed Export Price Indirect Selling Expenses
Comment 5: Camacho Corrections Presented at Verification
Comment 6: Camacho Ministerial Error Regarding Mixed Currencies
Comment 7: Camacho Cost Verification Findings
Comment 8: Camacho Purchases of Olives from Affiliated Parties
Comment 9: Camacho's Plantilla Price Adjustments
Comment 10: Camacho's CEP Offset
Comment 11: Camacho's Home Market Credit Expense
Comment 12: Camacho's Revised Control Number
Comment 13: Camacho's U.S. Sales of Merchandise Manufactured by an Unaffiliated Party
Comment 14: Camacho's Margin Should Be Based on Adverse Facts Available
Comment 15: AG Minor Corrections Presented During Sales and Cost Verifications
Comment 16: AG Home Market Commission Expenses
Comment 17: AG Freight Credit
Comment 18: AG Whether Local Taxes should be included in the General and Administrative Expenses
Comment 19: AG Unexplained Cost Reconciliation Difference
Comment 20: Whether Commerce Should Adjust AG's Reported Cost of Raw Materials to Reflect Consumption Costs versus POI Purchases
Comment 21: Classification of Machinery Depreciation Expense
Comment 22: Agro Sevilla Corrections Presented During Sales Verifications
Comment 23: Agro Sevilla's Pick-Up Adjustment Expense
Comment 24: Agro Sevilla's Unreported Pallet Revenues
Comment 25: Agro Sevilla's Total Cost of Manufacturing
Comment 26: Agro Sevilla's Financial Expenses
Comment 27: Agro Sevilla's Affiliated Purchases

## II. BACKGROUND

On January 26, 2018, Commerce published the *Preliminary Determination* of sales at less than fair value (LTFV) of ripe olives from Spain.[1] Between February 7, 2018, and March 23, 2018, we conducted sales and cost verifications of AG, Agro Sevilla, and Camacho, in accordance with section 782(i) of the Act. The Coalition for Fair Trade on Ripe Olives (the petitioner) and each of the mandatory respondents submitted case briefs on April 16, 2018.[2] Additionally, the mandatory respondents and the Associación de Exportadores e Industriales de Aceitunas de

[1] *See Ripe Olives from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures;* 83 FR 3677 (January 26, 2018) and accompanying preliminary decision memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Determination*).

[2] *See* the petitioner's Case Brief, "Ripe Olives from Spain; Case Brief," dated April 16, 2018 (Petitioner Case Brief); AG's Case Brief, "AG's AD Case Brief: Ripe Olives from Spain," dated April 16, 2018; Agro Sevilla's Case Brief, "Agro Sevilla's AD Case Brief: Ripe Olives from Spain," dated April 16, 2018; and Camacho's Case Brief, "Camacho's Case Brief: Ripe Olives from Spain," dated April 16, 2018 (Camacho Case Brief).

Mesa filed joint comments on the Particular Market Situation (PMS) allegation.[3] On April 23, 2018, the petitioner,[4] each of the mandatory respondents,[5] and the Association of Food Industries, Inc., Acme Food Sales, Inc., Mario Camacho Foods, Rema Foods Inc., Atalanta Corporation, Schreiber Foods International, Inc., and Mitsui Foods, Inc. (collectively, AFI)[6] submitted their rebuttal briefs. AFI also filed rebuttal comments on the PMS allegations.[7]

## III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are ripe olives from Spain. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of the Federal Register notice.

## IV. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,[8] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).[9] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice* during the scope comment period.[10] For the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*. For a summary of events since the *Preliminary Determination*, including product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* Comment 1 of the "Discussion of the Issues" section of this memorandum.[11]

## V. DISCUSSION OF THE ISSUES

### Comment 1: Clarify the Scope to Include Ripe Olives Contained in Cocktail Mixes

*Background:*

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[3] *See* "Comments on Petitioner's 'Particular Market Situation' Allegations from the Associación de Exportadores e Industriales de Aceitunas de Mesa (ASEMESA), Camacho, Guadalquivir and Agro Sevilla Ripe Olives From Spain (A-469-817)," dated April 16, 2018 (Respondents' PMS Comments).

[4] *See* the petitioner's Rebuttal Brief, "Ripe Olives from Spain; Rebuttal Brief," dated April 23, 2018 (Petitioner's Rebuttal).

[5] *See* AG's Rebuttal Brief, "AG's AD Rebuttal Brief: Ripe Olives from Spain," dated April 23, 2018. *See also* Agro Sevilla's Rebuttal Brief, "Agro Sevilla's AD Rebuttal Brief: Ripe Olives from Spain," dated April 16, 2018 (Agro Sevilla Rebuttal); and Camacho's Rebuttal Brief, "Camacho's AD Rebuttal Brief: Ripe Olives from Spain," dated April 16, 2018.

[6] *See* AFI's Rebuttal Brief, "Ripe Olives from Spain: AFI Rebuttal Comments," dated April 23, 2018 (AFI Rebuttal).

[7] *See* AFI's Scope Rebuttal, "Ripe Olives from Spain: AFI Scope Clarification Comments," dated April 23, 2018. *See also* AFI's PMS Rebuttal, "Ripe Olives from Spain (A-469-817): Particular Market Situation Allegation Rebuttal Comments," dated April 23, 2018 (AFI PMS Rebuttal).

[8] *See Antidumping Duties; Countervailing Duties*, *Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

[9] *See Initiation Notice*.

[10] *See Ripe Olives from Spain: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 33054 (July 19, 2017) (*Initiation Notice*).

[11] *See* Issues and Decision Memorandum at Comment 1.

In the context of supplemental questionnaire responses, AG and Camacho reported sales of cocktail mixes[12] but stated that they believe cocktail mixes are not within the scope of the investigation. The petitioner commented that the respondents cannot unilaterally determine whether cocktail mixes are outside the scope. For the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*. We included all sales of cocktail mixes in our margin calculations and stated that we would further evaluate this issue for purposes of the final determination.[13]

On January 24, 2018, we issued a letter to interested parties inviting parties to comment and/or submit additional information on the following: (1) what constitutes cocktail mixes, *i.e.,* clarify and define cocktail mixes; (2) are cocktail mixes within or outside the scope of the investigation; (3) if the cocktail mixes are in-scope merchandise, should a separate model-match criterium for such mixes be included; and (4) if cocktail mixes are within the scope, specify the minimum content of ripe olives in such mixes.[14] We received comments from the petitioner,[15] AG, Agro Sevilla and Camacho[16] and AFI.[17]

Based on comments to Commerce's First Cocktail Mix Letter, we issued a second letter on February 22, 2018, asking interested parties to comment on our proposed scope clarification language.[18] In addition, we invited interested parties to address the following items with respect to cocktail mixes: (1) that the minimum content of ripe olives be greater than 50 percent; (2) that this minimum content of ripe olives be calculated for the smallest packaging unit (*e.g.*, can, pouch, jar, *etc.*), regardless of whether the smallest unit of packaging is included in a larger packaging unit (*e.g.*, display case,[19] *etc.*); and (3) that only the ripe olives in cocktail mixes be considered in scope and subject to antidumping duties.[20] We also asked that interested parties provide the full scope language in their responses, including recommended scope clarification language and the HTSUS number(s) that should be added to the scope.[21] We received comments

[12] Camacho refers to this product as "cocktail mix" and AG refers to this product as "olive cocktails."
[13] *See* Preliminary Decision Memorandum at 4-5.
[14] *See* Letter to All Interested Parties, "Re: Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Request for Comments and Information Concerning Cocktail Mixes," dated January 24, 2018 (Commerce's First Cocktail Mix Letter).
[15] *See* the petitioner's Letters, "Re: Ripe Olives from Spain Comments regarding Cocktail Mixes," dated January 29, 2018 (Petitioner Cocktail Mix Comments), and "Re: Ripe Olives from Spain Comments regarding Cocktail Mixes," dated February 8, 2018.
[16] *See* AG, Agro Sevilla and Camacho's Letter, "Re: Comments re: Cocktail Mix Ripe Olives from Spain," dated January 29, 2018, and AG and Camacho's Letter, "Re: Rebuttal Comments Relating to Cocktail Mixes Ripe Olives from Spain," dated February 5, 2018.
[17] *See* AFI's Letter, "Re: Ripe Olives from Spain Rebuttal Comment Regarding Cocktail Olive Mixes," dated February 5, 2018.
[18] *See* Letter to All Interested Parties, "Re: Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Request for Comments Concerning Cocktail Mixes," dated February 22, 2018 (Commerce's Second Cocktail Mix Letter).
[19] *See* Camacho's section B response, "Re: Angel Camacho Alimentación Section B Questionnaire Response Ripe Olives from Spain," dated October 11, 2017, at 16 and Exhibit B-3.
[20] *See* Second Cocktail Mix Letter.
[21] *Id.*

from the petitioner[22] and AFI.[23]

Based on comments to Commerce's Second Cocktail Mix Letter, we issued a post-preliminary scope decision memorandum on April 3, 2018, in which we invited parties to comment on our recommendations: 1) that ripe olives contained in cocktail mixes are in the scope, but that the remaining ingredients are not in the scope, and 2) to clarify the scope by adding the following language: *Subject merchandise includes ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (e.g., can, pouch, jar, etc.) of any such product – regardless of whether the smallest unit of packaging is included in a larger packaging unit (e.g., display case, etc.) – contains a majority (i.e., more than 50 percent) of ripe olives by net drained weight. The scope does not include the non-subject components of such product.*[24] In addition, we notified parties that if this investigation results in an order, we will add a field to the model match criteria in the first administrative review (if one is requested) which will require respondents to identify when ripe olives are contained in a cocktail mix. We will also retain the existing fields used to identify the characteristics for ripe olives which will be applied to the ripe olives in the mix.[25] We received comments from the petitioner,[26] AG and Camacho,[27] and AFI.[28]

*Joint Respondents' Comments:*

- AG and Camacho state that they accept the scope clarification language in Commerce's Post-Preliminary Scope Decision Memorandum regarding the classification of cocktail mixes.
- However, AG and Camacho argue that Commerce's language may be confusing to interpreters of the scope with respect to cocktail mixes consisting of less than 50 percent ripe olives and, therefore, the scope may not be interpreted in accordance with Commerce's intention.
- AG and Camacho state that their concern arises from Commerce's statement in the Post-Prelim Scope Memorandum that "{w}e preliminarily find that ripe olives contained in cocktail mixes are in the scope, but that the remaining ingredients are not in the scope,"[29] and this statement can be read to include cocktail mixes that have any amount of ripe olives in them, regardless of quantity. For this reason, AG and Camacho argue that Commerce should add the following language to further clarify the scope: *The scope does not include ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (e.g.,*

[22] *See* AFI's Letter, "Re: Ripe Olives from Spain Further Comments regarding Cocktail Mixes," dated February 27, 2018.
[23] *See* the petitioner's Letter, "Re: Ripe Olives from Spain Response to Second Request for Comments Regarding Cocktail Mixes," dated February 27, 2018.
[24] *See* Memorandum, "Ripe Olives from Spain: Post-Preliminary Scope Clarification Decision Memorandum," dated April 3, 2018 (Post-Preliminary Scope Decision Memorandum)..
[25] *Id.*
[26] *See* the petitioner's Letters, "Re: Ripe Olives from Spain; Scope Clarification Comments," dated April 16, 2018, and "Re: Ripe Olives from Spain; Scope Clarification Rebuttal Comments," dated April 23, 2018.
[27] *See* AG and Camacho's Letter, "Re: Scope Clarification Comments (Relating to Cocktail Mixes) Ripe Olives from Spain," dated April 16, 2018.
[28] *See* AFI's Letter, "Re: Ripe Olives from Spain: AFI Scope Clarification Comments," dated April 23, 2018.
[29] Citing to Post-Preliminary Scope Decision Memorandum at 5.

*can, pouch, jar, etc.) of any such product contains less than 50 percent ripe olives by net drained weight.*

*AFI Comments:*

- AFI argues that Commerce should include the additional scope language proposed by AG and Camacho.
- AFI argues that including the proposed scope language will prevent confusion by U.S. Border Patrol and Protection and is consistent with Commerce's scope.

*Petitioner's Comments:*

- The petitioner argues that the preliminary scope language is perfectly clear and, therefore, should be retained without addition.
- The petitioner argues that AG and Camacho's recommended additional scope language is redundant and adding another sentence that means the same thing as the previous sentence will confuse future interpreters of the scope.

**Commerce's Position:** We continue to find that ripe olives contained in cocktail mixes are subject to the scope of this proceeding, and that the remaining ingredients are not within the scope of this proceeding. As discussed in Post-Preliminary Scope Decision Memorandum, it is our normal practice to provide ample deference to the petitioner with respect to products for which it seeks relief in the investigation,[30] and we find no reason to depart from this practice in this investigation. The petitioner expressed concern that, by not including ripe olives in cocktail mixes as part of the scope, there is a risk for circumvention and, therefore, cocktail mixes containing ripe olives should be included in the scope.[31] After analyzing information submitted by interested parties concerning cocktail mixes, we find that ripe olives contained in cocktail mixes, which otherwise meet the plain language of the scope as it appeared in the *Initiation Notice*, are in-scope merchandise and, therefore, it is appropriate to add language clarifying the scope with respect to cocktail mixes to prevent potential circumvention.

We also find that the scope clarification language proposed in the Post-Preliminary Scope Decision Memorandum[32] is clear and, therefore, does not require changes or additions for the final determination. Specifically, we find that the scope language appropriately captures our intent, as agreed to by interested parties, to include in the scope the ripe olives in cocktail mixes where ripe olives comprise the majority (*i.e.*, more than 50 percent) of the net drained weight of the cocktail mix. Moreover, we find that, because the scope language affirmatively states what is included in the scope, *i.e.*, ripe olives in cocktail mixes where the ripe olives comprise the majority (*i.e.*, more than 50 percent) of the cocktail mix by net drained weight, the scope

[30] *See*, *e.g.*, *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) and accompanying Issues and Decision Memorandum at Comment 90 ("While {Commerce} possesses the authority to determine the scope of an investigation, {Commerce's} standard practice is to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding."); *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (November 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1 (same).

[31] *See* Petitioner Cocktail Mix Comments at 3.

[32] *See* Attachment to Post-Preliminary Scope Decision Memorandum.

language at the same time clearly qualifies what is excluded from the scope, *i.e.*, ripe olives in cocktail mixes where the ripe olives comprise 50 percent or less of the cocktail mix by net drained weight, as well as non-ripe olives.

We disagree with AG, Camacho and AFI that the current scope may be confusing to interpreters of the scope as written unless language is added to affirmatively state that cocktail mixes that do not have a majority (*i.e.*, more than 50 percent) ripe olive content are excluded from the scope. In fact, as the petitioner argues correctly, adding the language AG and Camacho propose would itself be confusing because it is redundant and adds no further substantial directive to interpreters of the scope. AG and Camacho's concern with our recommendation in Comment 1 of Post-Preliminary Scope Decision Memorandum, *i.e.*, "{w}e preliminarily find that ripe olives contained in cocktail mixes are in the scope, but that the remaining ingredients are not in the scope," is inapposite, as this recommendation does not pertain directly to the language of the scope but rather a general discussion of it, *i.e.*, whether cocktail mixes containing ripe olives should be considered in-scope merchandise. We clarify that our recommendation in Comment 1 was not intended to modify the scope of this investigation. Moreover, in Comment 2, we provided the scope clarification language with respect to ripe olives in cocktail mixes (which, notably, does not include the language of the recommendation in Comment 1). We further clarify that our recommendation in Comment 1 should not be construed to mean that "cocktail mixes that have any amount of ripe olives in them, regardless of quantity, are included in the scope." Instead, as discussed above, the current scope clarification language affirmatively states what is included in the scope with respect to cocktail mixes and, at the same time, it clearly qualifies what is excluded from the scope with respect to cocktail mixes and, thus, requires no further modification to that end.

Accordingly, because we determine that ripe olives contained in cocktail mixes are in the scope, and that the scope clarification language proposed appropriately captures our intent, as agreed to by interested parties, to include in the scope the ripe olives in cocktail mixes where ripe olives comprise the majority (*i.e.*, more than 50 percent) of the net drained weight of the cocktail mix, we have added to the scope of this investigation the scope clarification language we proposed in the Post-Preliminary Decision Memorandum, without modification.[33] Furthermore, pursuant to this language of the scope, we have excluded from the margin calculations for the final determination, where appropriate, certain reported sales and associated costs of cocktail mixes.[34] In addition, we find that it is appropriate to add a field to the physical characteristics in the first administrative review, should there be one, which will require respondents to identify ripe olives that are contained in a cocktail mix.

[33] *See* Appendix I to the Federal Register notice.
[34] *See* company-specific analysis memoranda for details.

**Comment 2: Particular Market Situation Allegation**

*Petitioner's Comments:*

- Commerce should reverse its preliminary determination[35] and find that a PMS exists and, as a remedy, substitute a world market price for each respondent's cost of raw olives that distorts their reported cost of materials.
- A PMS exists because the Government of Spain (GOS) and the European Union (EU) provided subsidies to growers of raw olives that distorted the cost of the most significant input in the production of ripe olives. These subsidies render the respondents' reported COP distorted and unusable.
- Commerce's preliminary determination ignores the record evidence that demonstrates that an overwhelming portion of the value of Spanish producers' ripe olive COP is comprised of one input that is subsidized, thereby distorting the COP. This qualifies as a PMS, because the subsidies prevent an accurate calculation of the cost of ripe olives in the ordinary course of trade.
- Commerce ignores its own precedents when it implies the degree of subsidies received by growers affect whether the purchase of the input by the processors are outside of the ordinary course of trade. Commerce has found in numerous cases, citing to *Small Diameter Graphite Electrodes from China*[36] and *Certain Frozen Warmwater Shrimp from Vietnam,*[37] that any amount of subsidization renders input values unusable, that all input prices it cannot determine with certainty do not come from countries providing any level of broadly available subsidies should be disregarded, and that, even when making market economy purchases, input prices will not be used if they may have been subsidized.
- This case is unique; the majority of cases where Commerce conducts parallel AD/CVD cases and Commerce finds subsidization in the CVD investigation will not result in a PMS finding. In most cases, the respondents will not be using an input found to be subsidized in the corresponding CVD investigation in the production of the product subject to the AD investigation. However, a PMS finding is warranted in this specific instance because, according to section 771B of the Act, the subsidies provided to the grower of raw olives must be considered to be provided to the producers of the subject finished product.
- As a remedy, Commerce should follow its methodology used in *Biodiesel from Indonesia*[38] and substitute a world market price for the subsidized input. As there is no world market price, Commerce should use the constructed world market price included in the PMS allegation.

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[35] *See* Memorandum, "Antidumping Investigation of Ripe Olives from Spain: Memorandum on Particular Market Situation Allegation," dated March 26, 2018 (PMS Memorandum).

[36] *See Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 10658 (March 12, 2018) and accompanying Issues and Decisions Memorandum at 17.

[37] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 10673 (March 12, 2018) and accompanying Preliminary Decision Memorandum at 21-22.

[38] *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) and accompanying Preliminary Decision Memorandum at 18 and 23.

*Joint Respondents' Comments*:

- The respondents support Commerce's preliminary rejection of the PMS allegation.
- Section 773(a)(1)(B)(i) of the Act requires that PMS allegations must be sufficient to demonstrate that government interference in the foreign market impairs the operation of a free market for the input. The petitioner has failed to substantiate any such level of government involvement in this investigation.
- Commerce has made no finding, or even examined any evidence, to show that subsidies received by olive growers are passed through to processors in the form of lower-than-market prices. The record demonstrates that most of the olives processed by the Spanish table olive industry are purchased from unrelated growers at prices that are negotiated in arm's length negotiations.
- There is no evidence of government control of prices of either raw or processed olives.
- The data on which the petitioner constructed a world market price for olives in Spain resulted in a constructed cost that was distortedly high and bore no relationship to olive costs in Spain.

*Petitioner's Rebuttal:*

- Raw olives account for a large percentage of respondents' cost of materials and the subsidies provided to the growers must be considered by law to be provided to the processors. Commerce has found in numerous cases that any amount of subsidization renders input values unusable. Evidence shows an overwhelming portion of the value of the finished product is attributable to subsidized raw materials and, therefore, the reported material costs do not reflect the cost of production in the ordinary course of trade.
- The petitioner disagrees with the respondents' arguments that the constructed world market price is distortive.

*Mandatory Respondents' Rebuttals*:[39]

- Commerce did not ignore the fact that raw olives are the largest input into subject merchandise; this is a fact that is confirmed by all the companies' responses and denied by no one. Commerce's finding that there is no evidence that olive prices are controlled or affected to the extent that they are outside of the ordinary course of trade implicitly accepts that raw olives are an important input in the cost of production.
- The petitioner's claims that Commerce ignored its own precedents in its preliminary PMS determination refer to determinations made under the non-market economy provisions of the statute. The non-market economy (NME) statutory provisions require the valuation of the factors of production using the best information available from a market economy. There is nothing in the NME statue that requires that the inputs used be found to be in the ordinary course of trade. However, a finding that an input is provided outside of the ordinary course of trade is a specific requirement of the statute for finding that a PMS exists.
- The extent of subsidies is one factor include in making a PMS determination, but the statutory requirement is broader than merely examining the extent of subsidies. Commerce must look at the entire situation relating to the extent of the government's

[39] The rebuttal briefs filed separately by the mandatory respondents include rebuttal arguments on the PMS allegation that are virtually identical in substance.

involvement in setting prices for the input in question. In this case, Commerce found that there was no evidence that the government was controlling or affecting prices in such a way to render them outside of the ordinary course of trade.

*AFI Rebuttal:*

- AFI agrees with respondents' opposition to the petitioner's PMS allegation.
- Commerce may only find a PMS exists where the petitioner demonstrates that government interference has virtually eliminated the operation of a free market for the cost of the input involved. In this instance, the GOS imposes no controls on the prices charged by the olive growers and imposes no export taxes on raw or processed olives.
- The mere existence of government intervention does not *per se* create a PMS. Commerce must examine the effect of government control on pricing, not the existence of government intervention nor the process for setting prices. Commerce has not made a finding that the major input was provided to the respondents for less than adequate remuneration.
- The petitioner has constructed a world market price that is distortive. Commerce must base its antidumping calculations on fact, not on speculation.

**Commerce's Position:** We disagree with the petitioner and continue to find that the record contains insufficient evidence to support a conclusion that a PMS exists in Spain in the instant investigation.

As outlined in the PMS Memorandum, section 773(a)(1)(B)(i) of the Act defines normal value as "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price." Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)[40] added language to section 773(e) of the Act to state that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." Further, the TPEA added the concept of "particular market situation" in the definition of the term "ordinary course of trade." Accordingly, pursuant to sections 771(15) of the Act, Commerce shall find sales prices to be "outside the ordinary course of trade" in situations in which it "determines that the particular market situation prevents a proper comparison with the export price or constructed export price."

We disagree with the petitioner that we ignored record evidence that raw olives were the largest input in the production of subject merchandise in making our *Preliminary Determination*. In the PMS Memorandum, we did acknowledge that raw olives were the major input used in the production of the subject merchandise.[41] Additionally, as Commerce described in the corresponding *CVD Preliminary Determination*, a subsidy finding under section 771B of the Act

[40] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).
[41] *See* PMS Memorandum at 4.

requires, in part, that the "processing operation add only limited value to the raw commodity."[42] As such, the application of section 771B of the Act necessarily indicates that the value of the raw input represents a significant portion of the value of the subject merchandise.

The petitioner then argues that a subsidy provided to the grower of the major input automatically prevents an accurate calculation of the cost of ripe olives and results in a PMS. The petitioner claims that it is Commerce's practice to discard the unit value for an input where there is subsidization or even if it cannot determine with certainty that input prices do not come from countries providing any level of broadly available subsidies, even in the absence of any evidence that the input receives such subsidies. The petitioner claims that Commerce has applied this standard in numerous cases and cites to a pair of reviews (*Small Diameter Graphite Electrodes from China* and *Certain Frozen Warmwater Shrimp from Vietnam).* However, we agree with the respondents that the precedent that the petitioner references are not applicable to a PMS determination, because the petitioner is citing to determinations that involved the NME provisions of the statute that deal with the surrogate value of a factor of production under the NME methodology, which is not used in this market economy proceeding. The standards and practice under the NME provisions of the statute are different from the Act's explicit requirement that Commerce determine whether the cost of an input accurately reflects the cost of production in the ordinary course of trade in a PMS determination. As we stated in the PMS Memorandum, most markets will have some distortions, but in order to find a PMS, these distortions need to be significant enough that "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."[43] The standard for finding a PMS in a market economy is different from those used for selecting surrogate values for factors of production in an NME proceeding.

We also disagree with the petitioner's assertion that the provision of these grants under section 771B of the Act warrants the finding of a PMS. While we agree that Commerce's use of section 771B of the Act distinguishes this investigation from most other proceedings, section 771B must be read in conjunction with section 773(e) of the Act, which specifically addresses the concept of particular market situation. Accordingly, the fact that this investigation involves an agricultural product does not change the fundamentals of our analysis from the PMS Memorandum. There continues to be no evidence that the grants found in the parallel CVD investigation, as a share of the raw olive growers' total cost, distort the raw olives market in Spain to the extent that the cost of production is outside the ordinary course of trade. As we stated in the PMS Memorandum, unlike *Biodiesel from Indonesia,* the record of this investigation lacks evidence of a government policy guaranteeing the supply of intermediate inputs below world market prices, that the prices of raw olives sold on the open market in Spain are depressed as a result of such a policy, or that the prices are otherwise outside of the ordinary course of trade. As we discussed above, although, conceptually, government grants could distort the costs of production to a degree that such costs do not accurately reflect the cost of production in the ordinary course of trade, we do not find sufficient evidence that this is the situation in this investigation. The mere existence of

[42] *See Ripe Olives from Spain: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 56218 (November 28, 2017) (*CVD Preliminary Determination*) and accompanying Issues and Decision Memorandum at 12-13.
[43] *See* PMS Memorandum at 4.

grants, which the petitioner referenced, does not demonstrate that the material costs for the subject merchandise are outside of the ordinary course of trade.

Apart from the arguments addressed above, the petitioner has not provided or cited new information or analysis that demonstrates that prices in the market for raw olives in Spain are outside of the ordinary course of trade. For the reasons outlined above and in the PMS Memorandum, we continue to find that the petitioner's PMS allegation is not supported by sufficient evidence that demonstrates that the subsidies provided to growers of raw olives found in the corresponding CVD investigation distort the market for raw olives such that the cost of materials and fabrication or other processing does not accurately reflect the COP for processed ripe olive producers in the ordinary course of trade.

The parties commented on the petitioner's construction of a world market price for raw olives for use in the petitioner's proposed methodology for calculating a remedy if we found that a PMS exists. Given that we continue to find that a PMS does not exist, we have not addressed parties' arguments relating to a potential remedy.

**Comment 3: Whether Commerce Should Apply its Differential Pricing Methodology**

*Respondents' Comments:*[44]

- Commerce should implement the World Trade Organization (WTO) decision from *Washers from Korea* by applying its average-to-average price comparison methodology since there is no further avenue for appeal. At a minimum, Commerce should refrain from zeroing negative antidumping margins for sales it finds to be differentially priced.

*Petitioner's Rebuttal:*

- Commerce applied its differential pricing methodology in numerous recent cases and has rejected requests by respondents to depart from this methodology (citing to *Mechanical Tubing and Alloy Steel from Germany*[45]).

**Commerce's Position:** We will continue to conduct our standard differential pricing analysis for the final determination as we did for the *Preliminary Determination* and determine each of the respondents' estimated weighted-average dumping margins using the method based on the results of our differential pricing analysis.

With regard to the respondents' arguments that Commerce's use of zeroing in its differential pricing analysis violates U.S. obligations under the WTO Agreements, we note that WTO findings are not self-executing under U.S. law. 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

[44] The case briefs filed separately by the mandatory respondents and the rebuttal brief from AFI include virtually identical arguments on this issue and have been summarized together.
[45] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 16326 (April 16,2018).

specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[46] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[47] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to supersede automatically the exercise of Commerce's discretion in applying the statute.[48] Commerce has not revised or changed its use of the differential pricing analysis, nor has the United States adopted changes to its practice pursuant to the URAA's implementation procedure. Accordingly, for the final results, we will continue to apply a differential pricing analysis to examine whether the average-to-average comparison method is appropriate for each respondent, consistent with 19 CFR 351.414(c)(1).

**Comment 4: Agro Sevilla's and Camacho's Constructed Export Price Indirect Selling Expenses**

*Petitioner's Comments:*

- Because Ago Sevilla's and Camacho's U.S. affiliates are not manufacturers but exclusively resellers of merchandise, Commerce should recalculate the U.S. indirect selling expenses (ISEs) incurred by their U.S. affiliated resellers to include all administrative expenses and interest expenses, because these expenses support the resellers selling functions. Section 772(d)(1)(D) of the Act permits Commerce to deduct from the constructed export price (CEP) any selling expenses that are not commissions, direct selling expenses, or selling expenses that the seller pays on behalf of the purchaser. Commerce has a longstanding practice to treat all expenses incurred by affiliated resellers as selling expenses.[49]

*Agro Sevilla's and Camacho's Comments:*

- The expenses that the petitioner argues should be treated as ISEs are treated as cost of goods sold (COGS) in the ordinary books and records of these importers, in accordance with U.S. Generally Accepted Accounting Principles (GAAP). The dumping law distinguishes between COGS and selling expenses, and while it expressly acknowledges in section 773(b)(3)(B) of the Act that certain administrative expenses should be included in the cost of production for the normal value calculation, nothing in the statute permits Commerce to treat COGS as an adjustment to price for CEP sales. Rather, the statute limits CEP deductions to selling expenses. The only costs permitted to be deducted from U.S. price are further manufacturing costs.
- Because Commerce never questioned the ratio as reported, it cannot revise the CEP ISE calculation now. Because the respondents' U.S. affiliated resellers were not given an opportunity to address any concerns about the calculation of the ratio on the record,

[46] *See Corus Staal BV v. U.S. Dep't of Commerce*, 395 F 3d. 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006), accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007).
[47] *See, e.g.*, 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).
[48] *See, e.g.*, 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).
[49] Citing *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003) (*Stainless Steel Sheet and Strip in Coils from Mexico*) and accompanying Issues and Decisions Memorandum at comment 11 at page 41; *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286, July 1, 2014, (*Citric Acid and Certain Citrate Salts from Canada*) and accompanying Issues and Decision Memorandum at Comment 3 at 6.

revising the CEP ISE calculation at this stage of the investigation would result in the violation of Agro Sevilla's and Camacho's rights for due process.

**Commerce's Position:** Agro Sevilla's and Camacho's U.S. affiliates are both exclusively resellers of products and do not conduct any manufacturing activity.[50] Although it has been alleged that U.S. GAAP may require that administrative expenses are categorized as COGS, Commerce, however, is not bound by U.S. GAAP for its margin calculation purposes, but only by the Act. While the Act does distinguish between COGS and selling expenses, it requires that administrative expenses are treated as COGS only when they are in support of manufacturing.[51] According to Commerce's longstanding practice, when a company is exclusively a reseller of products and conducts no manufacturing activities, all administrative expenses are determined to be selling expenses, because they can only be in support of the company's sole function, which is the resale of products manufactured by another company.[52] Therefore, for Agro Sevilla's and Camacho's affiliated resellers, for the final determination, we are including all administrative expenses in the calculation of the CEP ISEs and, in accordance with section 772(d)(1)(D) of the Act, we are deducting these expenses from the CEP. For Agro Sevilla, we are also including the interest expenses in the CEP ISE calculation. Because Camacho had a negative financial expense, according to our practice, we are not including it in the calculation of its CEP ISE.

Contrary to Agro Sevilla's and Camacho's claims that we violated their rights to due process because we did not give them an opportunity to address our concerns about their CEP ISE ratio calculations, we did in fact note our concerns in our CEP verification reports,[53] which were placed on the record of this proceeding prior to the deadline for interested parties to submit their case and rebuttal briefs, and the petitioner expressly raised the issue of CEP ISE ratio calculations in its case brief, to which Agro Sevilla and Camacho responded in their rebuttal briefs. Accordingly, Agro Sevilla and Camacho had the opportunity to address, and did address, this issue in their case brief and rebuttal briefs, pursuant to 19 CFR 351.309. Therefore, Agro Sevilla's and Camacho's argument that their due process rights were violated is unfounded.

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[50] *See* Camacho's Response to Section A of our Questionnaire dated September 6, 2017, (Camacho QRA) at 3, 9, 10, and exhibit A-2.1.b. *See also* Agro Sevilla CEP Verification Report at 4 and 17-18.

[51] *See Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comment 7; *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 5 at 44.

[52] *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003) and accompanying Issues and Decision Memorandum at Comment 11; *Citric Acid and Certain Citrate Salts from Canada*, and accompanying Issues and Decision Memorandum at Comment 3.

[53] *See* Memorandum, "CEP Verification of the Sales Response of Angel Camacho Alimentacion S.L., in the Antidumping Duty Investigation of Ripe Olives from Spain," dated February 23, 2018, (Camacho CEP Verification Report) at 18-19 and exhibit 15. *See also* Agro Sevilla CEP Verification Report at 2 and 17-18 and CEP VE-15.

**Comment 5: Camacho Corrections Presented at Verification**

*Camacho's Comments:*

- Camacho argues that, for the final determination, Commerce should revise the preliminary margin calculations to incorporate the corrections Camacho presented at the sales and cost verifications. [54] Camacho argues that Commerce officials reviewed and accepted the corrections during verification, verified that they were minor in nature, correct, and tied to Camacho's records. [55]

*Petitioner's Comments:*

- Commerce should reject Camacho's request to accept all the alleged "minor corrections" that Camacho presented at its verifications. Contrary to Camacho's claim, these corrections were not verified as minor or correct. Camacho submitted a major revision to its plantilla price adjustments, which continued to be distorted, and changed its methodology for reporting the net drained weight for certain selected sales to manipulate its margin. In addition, Camacho did not submit in its minor corrections its "falsely" reported selling activities and home-market (HM) payment dates. Commerce should, therefore, apply total adverse facts available (AFA) to Camacho, in light of the significant data errors discovered by Commerce, coupled with the evidence that Camacho intentionally tried to mislead Commerce with respect to level of trade and other key issues which warrant a finding that it has failed to cooperate by not acting to the best of its ability in replying to Commerce's requests for information. At a minimum, Commerce, as partial AFA, should not make the revisions to the plantilla price adjustments and net drained weight, deny the CEP offset, and set the HM credit expense to zero for all transactions.

**Commerce's Position:** As documented in our verification reports, we examined the corrections that Camacho presented at the start of verification and determined that they tie to Camacho's books and records, are minor in nature and, except for the plantilla price adjustments, are correct.[56] Therefore, we have accepted these corrections for purposes of the final determination. For a detailed discussion of each correction presented at verification that the petitioners argue should not be accepted, *see* the individual comments in this memorandum.

**Comment 6: Camacho Ministerial Error Regarding Mixed Currencies**

*Camacho's Comments:*

- Camacho requests that, for the final determination, Commerce correct certain ministerial errors in its preliminary calculation of Camacho's dumping margin with respect to the conversion of mixed currency variables reported on a U.S. dollar (USD) and euro basis,

[54] *See* Camacho Case Brief at 1.
[55] *Id*.
[56] *See* Camacho CEP Verification Report at 3 and exhibit 1A; Memorandum, "Home Market and EP Verification of the Sales Responses of Angel Camacho Alimentacion S.L., in the Antidumping Duty Investigation of Ripe Olives from Spain," dated March 30, 2018, (Camacho Spain HM and EP Verification Report) at 2-3 and exhibit 1.

*i.e.*, in database variable fields GRSUPRU_KG, CREDITU, DINDIRSU_2, DINVCARU, FRTREVU, and INSUREU.[57] Camacho argues that, when Commerce split the mixed currency variables in the margin program to convert the euro-denominated reported amounts to USD, it inadvertently set the USD-denominated reported amounts to zero.

No other party commented on this issue.

**Commerce's Position**: We agree with Camacho that we made an error when we calculated Camacho's margin in the *Preliminary Determination*. Specifically, in the margin program when we split the mixed currency variables GRSUPRU_KG, CREDITU, DINDIRSU_2, DINVCARU, FRTREVU, and INSUREU, to convert the euro-denominated amounts to USD, we inadvertently set the USD-denominated amounts to zero. We are correcting this error for the final determination.[58]

**Comment 7: Camacho Cost Verification Findings**

*Petitioner's Arguments:*

- Commerce should increase Camacho's reported TOTCOM to account for the minor correction to the variance calculations.[59]
- Commerce should include omitted extraordinary expenses noted in the cost verification report and revise the submitted general and administrative (G&A) expense ratio accordingly.[60]
- Commerce should revise the submitted financial expense ratio to reflect both its testing of the cost of sales denominator and to remove an amount that was incorrectly included as interest income.[61]

*Camacho's Arguments:*

- Commerce should revise the G&A expense ratio at the final determination to reflect the minor correction identified at the cost verification.[62]

**Commerce's Position:** First, we agree with the petitioner with regard to the minor correction for the variance calculations. As we have noted in our cost verification report, this change corrects for an understatement of costs relative to all CONNUMs.[63]

Second, we agree with Camacho with regard to the minor correction to the G&A expense ratio. This correction is to exclude the net exchange losses from Camacho's total G&A expenses. In

[57] *See* Camacho Case Brief at 3.
[58] *See* Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Final Determination Analysis Memorandum for Angel Camacho Alimentacion S.L. (Camacho Final Analysis Memorandum).
[59] *See* Memorandum, "Verification of Angel Camacho Alimentación, S.L. in the Antidumping Duty Investigation of Ripe Olives from Spain," dated March 28, 2018 at 2 (Camacho Cost Verification Report).
[60] *Id* at 18.
[61] *Id* at 18-19.
[62] *Id* at 2.
[63] *Id*.

accordance with Commerce's established practice, we include the total net foreign exchange gain or loss reported on the income statement of the same entity used to compute a respondent's net interest expense in the financial expense ratio calculation.[64] As noted in the cost verification report, we found that the total net exchange gains and losses from Grupo Camacho's 2016 audited consolidated financial statements have been included in the financial expense ratio calculation.[65]

Third, we agree with the petitioner that we should include the omitted extraordinary expenses in Camacho's G&A expense ratio calculation. At verification, we noted that these amounts are related to Camacho's general operations.[66] Thus, in accordance with our established practice, we find that such expenses are appropriately captured as G&A expenses.[67]

Fourth, we agree with the petitioner that we should adjust the cost of sales denominator of the financial expense ratio. At verification, we found that Camacho had understated the denominator of its financial expense ratio as a result of overstating a deduction for selling and G&A expenses.[68] Accordingly, we have recalculated the financial expense ratio to correct for this understatement.

Lastly, we disagree with the petitioner that we should exclude the interest income from Grupo Camacho's total financial expenses. First, we note that the income is recorded as financial income in Grupo Camacho's financial accounts and audited financial statements. In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Second, as noted in the cost verification report, the income in question relates to early payment discounts from suppliers.[69] By paying its suppliers early, Camacho generated income using its working capital. As such, we find Camacho's normal accounting treatment of this income as financial income to be reasonable. Commerce routinely includes the financial income related to the management of working capital as an offset to a company's financial expenses.[70] Therefore, in accordance with this practice, we have allowed this amount as an offset to Grupo Camacho's total financial expenses for the final determination.

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[64] *See, e.g., Magnesium Metal from the Russian Federation: Final Determination of Sales at Less-than-Fair Value*, 70 FR 9041 (February 24, 2005) and accompanying Issues and Decision Memorandum at Comment 12.
[65] *See* Camacho Cost Verification Report at 19.
[66] We note that the precise description of these expenses is proprietary in nature. *See* Camacho Cost Verification Report at 18 for details.
[67] *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) and accompanying Issues and Decision Memorandum at Comment 4.
[68] *See* Camacho Cost Verification Report at 18.
[69] *Id* at 19.
[70] *See, e.g., Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017) and accompanying Issues and Decision Memorandum at Comment 7 and *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009) and accompanying Issues and Decision Memorandum at Comment 5.

**Comment 8: Camacho Purchases of Olives from Affiliated Parties**

*Camacho's Arguments:*

- Commerce should eliminate the adjustment made at the *Preliminary Determination* for purchases of olives from affiliated parties.
- In light of the clarification of the issue at the cost verification, it is now clear that Camacho pays on average the same price to both affiliated and unaffiliated suppliers.
- As the cost verification report demonstrates, the prices paid to both affiliated and unaffiliated suppliers are the same when controlling for different stages and varieties of olives.
- Based on these facts, no adjustment is needed. At most, Commerce should base any adjustment on the trivial difference paid to affiliated suppliers of raw manzanilla olives.

*Petitioner's Arguments:*

- Commerce should continue to make a major input adjustment for the final determination.
- At verification, Commerce confirmed that Camacho's olive purchases are not at arm's-length prices, and Camacho has provided no reason whatsoever for Commerce to depart from its normal practice.

**Commerce's Position:** We agree with Camacho. At the *Preliminary Determination*, we adjusted Camacho's reported costs based on a comparison of the total purchases of manzanilla and hojiblanca olives from affiliated and unaffiliated suppliers.[71] Subsequently, as a result of our testing performed at the cost verification, we determined that the olives purchased from affiliated and unaffiliated suppliers during the POI were at different stages of processing. Specifically, we noted that all purchases from affiliated suppliers were of raw green olives, while the purchases from unaffiliated suppliers were at various stages of processing, including raw green, stored in brine, and sorted and classified.[72] When we compared the purchases of raw green olives from affiliated suppliers to the purchases of raw green olives from unaffiliated suppliers, we found that for each variety of olives the affiliated purchases were at arm's-length prices.[73] Accordingly, based on the record evidence, we have determined that no adjustment is necessary for the final determination.

**Comment 9: Camacho's Plantilla Price Adjustments**

*Petitioner's Comments:*

- Commerce should not have accepted Camacho's revision to its plantilla price adjustments because it was not a minor correction presented at verification but new factual information. The petitioner argues that the alleged minor correction alters virtually every non-zero value reported for many different items and is therefore well beyond a minor correction and qualifies as new factual information. Citing *Wooden Bedroom Furniture* and *Crystalline Silicone Photovoltaic Cells*, the petitioner argues that the purpose of verification is to verify the information that has already been submitted for the record and

[71] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Angel Camacho Alimentación, S.L.," dated January 18, 2018.
[72] *See* Camacho Cost Verification Report at 16.
[73] *Id*.

not an opportunity to correct major deficiencies,[74] and that Commerce's policy is to not accept extensive revisions that substantially affect the database quantity and/or value.[75]

- The revised plantilla price adjustments suffer from the same flaw as the original data and continue to be distorted despite the correction presented at verification, because Camacho corrected its original allocation of four quarters of plantilla price adjustment data to six quarters of sales, to four quarters of plantilla price adjustment data to five quarters of sales.
- At a minimum, Commerce, as partial AFA, should disregard Camacho's reported plantilla price adjustments, because they continue to be distorted and not a reliable basis for Commerce's margin calculations.

*Camacho's Comments:*

- There is no justification for disregarding the plantilla price adjustments in Camacho's margin calculation. As documented in Commerce's verification report, Commerce verified all plantilla price adjustments and the accuracy of the allocation methodology. The correction to the denominator (*i.e.*, the sales) over which the plantilla price adjustments were allocated was indeed a minor correction. It is expected that a correction to the denominator of a ratio will affect all transactions to which the ratio is applied. Despite it affecting a large volume of transactions, the total impact of the ratio's correction on each individual transaction, however, was minimal, ranging from zero to 0.04 euros per kilogram.

**Commerce's Position:** Pursuant to the instructions in the verification agenda, at the beginning of verification, Camacho identified an error in its calculation of the fixed plantilla price adjustment ratio, claiming it had discovered the error when preparing for verification. We verified how Camacho made the reporting error. Camacho grants customers non-invoice-specific promotional discounts it refers to as fixed plantilla price adjustments. To report these discounts on a per kg basis, Camacho allocated the total discounts over total sales quantity. In its response, Camacho stated that it allocated the 2016 total discounts over 2016 sales quantity.[76] In its corrections presented at verification, Camacho stated that, for the HM, it had inadvertently allocated the 2016 discounts over the total of 2016 and first half of 2017 sales quantity and corrected the HM allocation denominator to the total of 2016 and first quarter of 2017 sales quantity. Camacho did not correct the U.S. allocation in its corrections presented at verification.

Because Camacho corrected the denominator of the fixed plantilla price adjustment ratio, it is expected that it will affect all transactions to which this ratio is applied. Commerce's standard on whether a correction is minor is not solely based on the quantity of affected transactions from

[74] *See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China*, 72 FR 469557 (August 22, 2007) (*Wooden Bedroom Furniture from China)* and accompanying Issues and Decision Memorandum at Comment 54.
[75] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2105) (*Crystalline Silicon Photovoltaic Cells)* and accompanying Issues and Decision Memorandum at Comment 9.
[76] *See* Camacho Supplemental Questionnaire Response dated December 5, 2017, at 8 - 10

the correction, but Commerce is required to also examine the nature of the correction and whether the correction calls into question the reliability of Camacho's reported data.[77]

We verified that the revised data submitted as minor corrections were accurate and supported by source documents. Further, we verified that the data that were not revised were also accurate and supported by source documents. As such, we concluded that the reporting error, while it affected many transactions and cascaded into many fields in Camacho's databases, was due to a clerical error and, thus, was an acceptable verification correction. Because the correction involved many reported transactions, we instructed Camacho to submit revised databases that incorporated the correction.

In *Tapered Roller Bearings,* Commerce rejected extensive corrections at verification. The fact pattern in *Tapered Roller Bearings*, however, is distinguishable from the fact pattern in the current investigation. In *Tapered Roller Bearings,* the respondent had not reported to Commerce 60 percent of its HM sales of subject merchandise and attempted to report them as a minor correction at verification to introduce them for the first time to the record of the proceeding. Commerce did not accept the additional sales as a minor correction. In the current case, while the correction may have affected many transactions and other reported information, it was not completely new information that had never been reported to Commerce, but a correction to information that was already on the record, *i.e.*, an allocation of discounts over total sales quantity (namely correcting a mismatch between the time period when the discounts were received and the time period for sales to which such discounts were allocated).

In *Wooden Bedroom Furniture,* Commerce rejected some extensive corrections at verification, but also accepted other extensive corrections at verification. The fact pattern in *Wooden Bedroom Furniture* is distinguishable from the fact pattern in the current case with regard to the corrections that were rejected, but similar to the fact pattern with regard to the corrections that were accepted. In *Wooden Bedroom Furniture*, the respondent provided revised factors of production data as minor corrections at verification, because it had originally understated the surface and mass of furniture components used to calculate the consumption rate of many factors of production *i.e.*, glue, parquet tape, labor hours, and energy.[78] Commerce did not accept these corrections at verification because, after reviewing how the presented error had been made, determined that the error was not inadvertent, the revisions were extensive across several factors of production databases, and the respondent could not provide a detailed explanation and supporting documentation for several of the revisions that were randomly selected to verify the accuracy of the revised information. In other words, there were several factors leading to the rejection of the correction, in addition to the extent of the corrections, namely that the errors were not inadvertent, not clerical, and the accuracy of the revisions could not be verified. In *Wooden Bedroom Furniture*, at the verification of the same respondent, Commerce accepted

[77] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17410 (March 26, 2012) and accompanying Issues and Decision Memorandum (*Refrigerators*) at Comment 6; *Brake Manufacturers v. United States*, 44 F.2d 229, 236 (CIT 1999).

[78] *See* Memorandum, "Verification of the Factors Response of Teamway Furniture (Dong Guan) Ltd. and Brittomart Incorporated (collectively, "Teamway") in the Second Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture ("WBF") from the People's Republic of China," dated July 3, 2008, at 2 and 3.

several corrections that, similar to the fact pattern in the current case, while they affected many transactions, were decidedly inadvertent and clerical. Specifically, Commerce accepted the respondent's corrections to incorrectly-reported data due to programming errors in which the respondent used the electricity consumption ratio, instead of the water consumption ratio, to calculate the water consumption, and the fuel consumption ratio, instead of the electricity ratio, to calculate the electricity consumption.[79]

In conclusion, Camacho's revised databases are merely corrections of inadvertent clerical errors in allocation that Camacho found in preparation for verification and we verified the accuracy of the corrections. Further, we requested that Camacho submit the revised databases and Camacho simply complied with our request. Therefore, there is no basis to reject the revised databases from the record as untimely filed new information. We also verified the revised database at the sales verification and found the revised information to be accurate.

We, however, do not agree that the allocation of the fixed plantilla price adjustments is methodologically correct. Pursuant to 19 CFR 351.410(g), Commerce may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided that Commerce is satisfied that the allocation methodology does not cause inaccuracies and distortions. For the HM, both the original (12 months of expenses allocated over 18 months of sales) and the corrected (12 months of expenses allocated over 15 months of sales) HM allocations are distortive. For the U.S. export price (EP) sales, Camacho allocated 2016 expenses over 2016 sales quantity and applied the resulting per kg discount to all 2016 EP sales, and allocated 2017 expenses over the first half of 2017 sales (12 months of expenses allocated over 6 months of sales) and applied the resulting per kg discount to all 2017 EP sales. The allocation of the 2017 expenses for the U.S. EP sales is also distortive. Because the information reported on the record does not contain a non-distortive allocation, as neutral facts available, we are allowing Camacho the fixed plantilla price discounts, but are adjusting for the distortive allocation. For the HM, we are multiplying the reported discounts by 1.25 (ratio of 15 months/12 months) to bring the allocation to a 12-month basis. For the United States, we are applying the 2016 reported per kg discount amount to all U.S. POI transactions for which such discount was reported, because it is not distortive.

**Comment 10: Camacho's CEP Offset**

*Petitioner's Comments:*

- Commerce found at verification that Camacho had misrepresented its levels of selling activities which it reported in each market. Camacho officials admitted that the reported intensity levels did not accurately reflect Camacho's selling activities in the HM for HM sales and EP sales. In addition, Commerce found that the U.S. affiliated reseller had reported the intensity level for inventory maintenance incorrectly. Therefore, Commerce should draw an adverse inference and, at a minimum, deny Camacho the CEP offset it has claimed.

[79] *Id*.

*Camacho's Comments:*

- There is no justification to deny Camacho's CEP offset. Commerce verified the reported selling functions and found that, out of 100 separate selling activities fields, only seven were reported incorrectly, and that for six of those seven, the correct level of intensity differed by only one level from the reported selling activity levels. To suggest that a chart which is 93 percent accurate and which has only minor deviations from the corrected chart constitutes fiction and indicates Camacho's malfeasance, is a distortion of the facts and reckless.
- The verified information on the record fully supports Commerce's preliminary determination to grant a CEP offset. Commerce's findings at verification regarding slight differences in the selling activity level of seven selling activities, makes the case for a CEP offset even stronger, because Commerce found that six of the seven HM selling activity intensity levels were performed at a higher intensity level than reported.

**Commerce's Position:** We verified the selling functions Camacho reported at the sales verifications. We found that, for a small number of certain selling functions, the reported level of intensity for a specific channel of distribution was incorrect. Because the findings affected a very small portion of the reported selling functions and the correct information is on the record, we are able to determine whether a CEP offset is warranted based on the record information. Moreover, none of the other requirements for the application of AFA are present; therefore, a denial of the CEP offset as the application of partial AFA is not justified. For the final determination, we are basing our decision whether to grant a CEP offset on the selling functions chart Camacho originally reported, having adjusted it according to our verification findings and are continuing to grant Camacho a CEP offset.[80]

**Comment 11: Camacho's Home Market Credit Expense**

*Petitioner's Comments:*

- Commerce discovered at verification that Camacho failed to report accurate payment dates for its HM transactions. Camacho reported as a payment date the payment clearing date and not the date that the payment was received. The reported clearing date does not abide by the questionnaire, which requires Camacho to report the date the payment was received and conflicts with Camacho's questionnaire response, which stated that it had reported the date of payment as requested. In many of the HM sales traces Commerce conducted at verification, the clearing date was much later than the payment date, thus inflating the credit expense. Camacho was unable to identify which sales were affected by this misreporting, nor to reliably estimate the number of sales in which the clearing date was incorrectly reported as the payment date, and the record does not furnish any reliable way to correct for Camacho's over-reporting of the HM credit expense. At a minimum, as partial AFA, Commerce should disallow Camacho's claimed HM credit expense adjustment.

[80] *See* Camacho Final Analysis Memorandum.

*Camacho's Comments:*

- Commerce must continue to adjust for HM credit expenses, as reported, to calculate Camacho's margin accurately. In its questionnaire response, Camacho stated that it reported as payment date the date on which Camacho received payment from the customer "as recorded in its accounting system."[81] This statement accurately reflects the facts, even for the sales for which Camacho sells the accounts receivables (A/R) to a bank through a factoring arrangement. For these sales, Camacho has reported as the payment date the date that the invoice payment terms expire, because this is the only payment date it tracks in its accounting system. This is also the appropriate payment date, because it is the date on which Camacho's received payment is free and clear of all obligation because, until the bank receives payment from the customer, Camacho is still liable to the bank for the sold A/R amount.
- Should Commerce disagree that the credit expense was accurately reported based on the correct payment date, it would be incorrect to deny the credit expenses adjustment, because it would deny the credit adjustment to the sales for which Camacho did not sell the A/Rs. Because Camacho does not have the ability to identify the sales for which it sold the A/Rs utilizing a factoring arrangement, if Commerce decides to undertake an adjustment to the credit expense for the sales where the factoring arrangement was employed, Commerce should revise the credit calculation days for all HM transactions by deducting 17 days from the reported payment date and recalculating credit based on the revised credit days. The deduction of 17 days is appropriate, because it is the mean of the difference between the reported payment date and the date Camacho received the payment funds for the ten HM sales traces conducted at verification.

**Commerce's Position:** With the exception of ten HM sales, for the reasons discussed below, we are denying Camacho the HM imputed credit expense adjustment and will not deduct it from the HM gross unit price in our calculation of the normal value for the final determination.

Section 776(a) of the Act provides that Commerce shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of Section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by Section 782(i) of the Act.

Section 776(b) of the Act provides that if Commerce finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.[82] In addition, the SAA[83] provides that Commerce may employ an adverse

[81] *See* Camacho's Section B Questionnaire response, dated October 11, 2017, at 7.
[82] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).
[83] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA).

inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[84] The "best of its ability" standard requires a party to "do the maximum it is able to do."[85] Evidence of "bad faith, or willfulness" on the part of the respondent is not required for Commerce to make an adverse inference.[86]

Section 351.401(b)(1) of Commerce's regulations provides that, in making adjustments to normal value, the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of Commerce the amount and nature of the adjustment.

In its questionnaire response, for the HM, Camacho stated: "For the invoices where payment is tied to an individual invoice or where the customer issues a remittance advice detailing the invoices that have been paid, Camacho has reported the actual date funds are received as recorded in the accounting system. Otherwise, Camacho has reported the payment date closest to the invoice."[87] In a supplemental questionnaire, we requested that, for transactions where the invoice could not be tied to a specific payment, Camacho calculate a customer-specific average A/R turnover ratio and employ it to report the payment date.[88] Camacho did not comply with our request in the supplemental questionnaire or provide a justification for not doing so. At verification, we found that Camacho's system tracks several payment dates, including the dates Camacho receives the payment funds, and that for several of the HM sales traces, regardless of when Camacho received the funds, Camacho reported as the payment date the day following the expiration of the invoice payment terms, because that is when the payment obligation was expunged from their accounting books and records.[89] At the verification, the company officials explained that Camacho frequently employed a factoring arrangement to sell the A/Rs to a bank, and that for those sales, Camacho does not know when the customer pays the bank. Prior to the verification, Camacho did not report the use of factoring in the HM in any of its questionnaire and supplemental questionnaire responses. To assess the magnitude of factoring, we asked Camacho to identify the subset of sales or customers for which they used a factoring arrangement. Camacho stated it could not extract that information from its accounting system in a systematic manner and could, at best, provide an estimate that for 70 percent of all HM sales a factoring arrangement was employed, the estimate was later revised to 35 percent for 2016 and 50 percent for 2017. To further assess the magnitude, we reviewed all HM sales traces and recorded the date funds had been received as recorded in their accounting system and the reported payment date. For 6 of the 10 HM sales traces, the funds were received eight to 62 days prior to the reported payment date.[90]

Accurate payment dates are necessary for the accurate calculation of the margin. Specifically, the difference between the shipment date and the payment date, *i.e.*, the credit days, are used to calculate the imputed credit expense, which is deducted from the gross unit price to arrive at

[84] *See* SAA at 870; *see also, e.g.*, *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).
[85] *See* SAA at 870.
[86] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382-3 (Fed. Cir. 2003) (*Nippon Steel*).
[87] *See* Camacho Section B Questionnaire Response dated October 11, 2017, at 13.
[88] *See* Camacho Supplemental Questionnaire Response dated December 12, 2017, at 21.
[89] *See* Camacho Spain HM and EP Verification Report at 7 and exhibit 11.
[90] *See* Camacho Spain HM and EP Verification Report at 7-8 and exhibit 19.

normal value.[91] Because Camacho did not report as a payment date the date it received the funds but, rather, the later date on which the payment terms expired, it artificially increased the credit days in some instances by as much as 62 days, which in turn artificially inflated the imputed credit expense. This distorted imputed credit expense leads to a distorted deduction from gross unit price, resulting in a distorted dumping margin because it artificially lowered normal value.

Camacho argues that the day following the date the payment terms expire is the appropriate payment date, because it is the date on which the payment received is free and clear from all obligation. This argument is based on an incorrect premise. The imputed credit expense is meant to offset the opportunity cost of money. Camacho "pays" the opportunity cost of money only for the time-period during which the payment is outstanding, *i.e.*, for the time period between the shipment date and the date it receives the payment funds. Once Camacho receives payment, whether it is directly from the customer or a third intermediary party, the payment is no longer outstanding and Camacho no longer bears the opportunity cost of money, regardless of whether the risk of non-payment by the customer to a third intermediary party still exists and whether it could subsequently trigger an obligation for Camacho to reimburse the third party. Whether the funds are free and clear from all obligation is irrelevant to the opportunity cost of money and the imputed credit expense it is meant to offset.[92]

According to section 776(a)(2)(A) of the Act, Commerce shall apply "facts otherwise available" if an interested party withholds information that has been requested. Camacho tracks the date it

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[91] *See* Commerce's Section A Antidumping Duty Questionnaire at Appendix I – Glossary of at I-5 and I-10 where credit expenses and imputed credit are defined as follows: "Credit expense is a type of expense for which the Department frequently makes circumstances of-sale adjustments. It is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. The Department normally imputes the expense by applying a firm's annual short-term borrowing rate in the currency of the transaction, prorated by the number of days between shipment and payment, to the unit price. If actual payment dates are not kept in a way that makes them accessible, the calculation may be based on the average number of days that accounts receivable remain outstanding. See also Imputed Expenses. Note that credit expenses are not the same as bank charges or fees. While credit expenses represent the imputed costs of extending different credit periods on different sales, bank charges and fees are actual expenses incurred by a company, recorded on its books, and typically should be reported as a direct selling expense. Imputed Expenses Imputed expenses generally are opportunity costs (rather than actual costs) that are not reflected in the financial records of the company being investigated, but which must be estimated and reported for purposes of an antidumping inquiry. Common examples of imputed expenses include credit expenses and inventory carrying costs." *See also Mitsubishy Heavy Indus. V. United States*, 54 F.Supp.2d 1183, 1188 (CIT 1999), which states: "The imputed credit expense represents the producer's opportunity cost of extending credit to its customers. By allowing the purchaser to make payment after the shipment date, the producer forgoes the opportunity to earn interest on an immediate payment. Thus, the imputed credit expense reflects the loss attributable to the time value of money. Commerce's usual imputed credit calculation is based only on the cost of financing receivables between shipment date and payment date." *See also Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 11 at 23, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32842 (June 16, 1998) stating: "We normally adjust for imputed credit expense to account for the opportunity cost associated with the period of time between shipment and payment. Because payment by the bank is not made until the required documents are presented by Union, an adjustment for imputed credit expense for the waiting period is proper. We have no reason to believe that the letter of credit is actually negotiable upon receipt." *See also* Welded Carbon from Turkey.

[92] *Id*.

received the funds in its books and records but did not provide that information as the payment date.[93] Moreover, Camacho also did not provide information regarding the factoring arrangement in any of its questionnaire and supplemental questionnaire responses until it was discovered by the Commerce officials at verification. Therefore, Camacho withheld information that we requested, even though the information was available in its books and records.

Further, section 776(b) of the Act provides that if Commerce finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.[94] The record demonstrates that Camacho tracked the date it received the payment funds.[95] The record also demonstrates that, if Camacho could not tie the receipt of funds to a specific invoice, it had the necessary information to calculate the payment date by calculating an average A/R turnover rate by customer as Commerce had instructed according to its practice.[96] The record also demonstrates that Camacho failed to disclose that it employs factoring arrangements to receive payment in advance of when the customer provides payment.[97] Therefore, Camacho failed to cooperate by not acting to the best of its ability to comply with a request for information by Commerce.

Accordingly, pursuant to sections 776(a)(2)(A) and 776(b) of the Act, we find it appropriate to apply the partial facts available to the imputed credit for the HM, and to apply an adverse inference.[98] Adverse inferences are appropriate to "ensure that the party does not obtain a more favorable result by failing to cooperate than it if it had cooperated fully."[99] Absent an accurate payment date on the record we are unable to calculate an accurate imputed credit expense for the HM. However, for the ten HM sales, which we traced at verification, the correct payment date is on the record and, thus, we have allowed the HM credit expense adjustment for these ten HM sales based on the correct payment date.[100] Alternatively, pursuant to 19 CFR 351.401(b)(1),

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[93] *See* Commerce's Antidumping Duty Questionnaire to Camacho, dated August 22, 2017, at page B-22 where we instruct the respondent to report credit as follows: "This expense should be calculated and reported on a transaction-by-transaction basis using the number of days between date of shipment to the customer and date of payment. If you are unable to determine actual payment dates from your records, you may base the calculation on the average age of accounts receivable. If payment has not yet been received for this sale, leave this field blank for the transaction." *See also* Camacho Section B Questionnaire Response dated October 11, 2017, at 13, and 32; Camacho Supplemental Questionnaire Response dated December 12, 2017, at 21.

[94] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[95] *See* Camacho Spain HM and EP Verification Report at 7-8 and exhibit 11. *See also* Camacho Section B Questionnaire Response dated October 11, 2017, at 13, and 32; Camacho Supplemental Questionnaire Response dated December 12, 2017, at 21.

[96] *Id*.

[97] *Id*.

[98] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review*, 72 FR 10689, 10692 (March 9, 2007), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

[99] *Id.*

[100] *See* Camacho Spain HM and EP Verification Report at exhibit 19.

when a party claims an adjustment, the burden lies with the party to establish to Commerce's satisfaction the amount of the adjustment. We also find that Camacho has not provided the evidence to our satisfaction that the reported credit amount for the HM is accurate. We are, therefore, denying Camacho the HM imputed credit expense adjustment and will not deduct it from the HM gross unit price in our calculation of the normal value for the final determination.[101]

**Comment 12: Camacho's Revised Control Number**

*Petitioner's Comments:*

- Camacho attempted to manipulate its dumping margin by asserting it had misreported one of its product matching control numbers, because it had miscalculated the net drained weight of the product, notwithstanding evidence that this methodological change affected other control numbers, as well. Commerce should, as partial AFA, maintain the affected sales in Camacho's database as originally reported.

*Camacho's Comments:*

- There is no justification to refuse the correction to the coding of the control number. Camacho presented the correction at verification and Commerce officials verified the accuracy of the correction. Camacho calculated the net drained weight for one product code based on the information in the specification sheet but, due to a calculation error, calculated and reported the net drained weight of multiple units instead of a single unit. This lead to Camacho misreporting the net drained weight range and the control number because, as a matching characteristic, the net drained weight range is incorporated in the control number. This mistake affected only two HM transactions.
- The petitioner does not provide any legal or factual evidence in support of its argument that Commerce should deny this correction. The petitioner's argument is solely based on its displeasure because the correction decreases Camacho's margin.

**Commerce's Position:** As discussed below, for the final determination, we are using the revised control number presented at verification and are making necessary adjustments to some additional fields that are affected by the revised net drained weight for the two sales of this product code.

At verification, Camacho presented as a correction the revised net drain weight for a single product code. Camacho officials explained that the product at issue was packaged in bundles of four cans and sold in cases which contain three bundles of four cans. Camacho explained that it inadvertently reported the net drained weight of a bundle of four cans instead of a single can as is required for model matching purposes and, therefore, its control number, which incorporates the net drained weight, was also incorrect. We reviewed the specification sheet for the product code, and the two invoices for the two reported sales of this product code. Camacho did not sell this product code to the United States. We reviewed the initial and revised calculation. We found no discrepancies and were satisfied that the correction was minor in nature and tied to Camacho's books and records.

[101] *See* section 776(b) of the Act.

The petitioner argues that when correcting the net drained weight of the product code, Camacho revised the methodology of the net drained weight calculation for this product code and that this revised methodology is applicable to other product codes, as well, and, therefore, should not be accepted, because it is an attempt by Camacho to manipulate the margin. The petitioner, however, does not provide a single example of other product codes, in which a similar miscalculation occurred and to which this alleged revised methodology would apply. We looked at the list of product codes that Camacho sold in the HM, and while the list clearly indicates that the product code for which Camacho provided the revised net drained weight is bundled in cans of four, we did not find any other product code for which the list indicated that it was bundled in multiples of a single unit.[102] We, therefore, do not find a justification for rejecting Camacho's correction presented at verification to the net drained weight of the product code. Nor do we find any justification for applying the same revision to other product codes, which (unlike the product code at issue) are not bundled in multiples of a single unit. For the final determination we are using the revised control number and are making necessary adjustment to some additional fields that are affected by the revised net drained weight for the two sales of this product code.[103]

**Comment 13: Camacho's U.S. Sales of Merchandise Manufactured by an Unaffiliated Party**

*Petitioner's Comments:*

- Commerce erred in excluding certain U.S. sales reported by Camacho in the absence of evidence that the unaffiliated producer knew or should have known that the merchandise was destined for the United States. In *Pistachios from Iran*,[104] Commerce set the knowledge test threshold that the supplier must know or have reason to know at the time of sale that specific sales are destined for the United States and that the producer's speculation that the goods might be destined for the United States is not sufficient to satisfy the knowledge test. The merchandise manufactured by the unaffiliated producer entered Camacho's inventory. Camacho ultimately decided whether the merchandise was going to the United States or to one of the other countries where the Mario brand is also sold. The manufacturer had no way of knowing at the time of sale the ultimate destination of its products. Therefore, for the final determination, Commerce should include in its margin calculation Camacho's U.S. sales of products manufactured by the unaffiliated producer.

*Camacho's Comments:*

- Commerce correctly determined at the *Preliminary Determination* that products manufactured by an unaffiliated producer should not be excluded from the calculation of Camacho's margin, because the producer knew or had reason to know that the merchandise was destined for the United States and should continue to do so for the final

[102] *See* Camacho Section B Questionnaire Response dated October 11, 2017, at exhibit B-5.
[103] *See* Camacho Final Analysis Memorandum.
[104] *See Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran*, 70 FR 7470 (February 14, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

determination. Commerce's practice is to consider documentary or physical evidence that the producer knew or should have known that the merchandise was destined for the United States including certificates, packaging, labeling, brands, and specifications of the merchandise.[105] There is substantial evidence on the record that the unaffiliated producer knew or had reason to know the merchandise it sold to Camacho was destined for the United States. Specifically, when the unaffiliated producer sells the merchandise to Camacho it is already packaged with the Mario label, Camacho's U.S. brand, which is in English, marked with U.S. specifications (*i.e.*, weight is in ounces and nutritional label in accordance with the FDA's format), and indicates Camacho's U.S. affiliated reseller's U.S. address (*i.e.*, Plant City, Florida, U.S.A.). Further, the unaffiliated producer also provides Camacho the Submission Identifier (SID) number in accordance with the FDA's regulations. Therefore, the unaffiliated producer knew or should have known at the time of sale that the merchandise it sold to Camacho was destined for the United States. While Camacho's affiliated reseller did sell Mario brand products to one other country during the POI, they were sold to one customer and the total value of those sales was miniscule when compared to the sales value of the Mario brand products sold to the United States.

**Commerce's Position:** We find that the record evidence supports the conclusion that Camacho's unaffiliated supplier of certain products knew or should have known at the time of sale that the products it sold to Camacho were destined for the United States. The physical markings on the product indicating a U.S. destination and conforming to U.S. FDA requirements, coupled with the fact that the unaffiliated supplier provided Camacho with the SID number, also a U.S. FDA requirement, at the time of sale to Camacho indicate that the products were destined for the United States. Therefore, any unaffiliated producer should have known that the merchandise it produced, even though it was entering its customer's inventory, was intended to be sold in the United States. Although Camacho sold a very small portion of that merchandise to a country other than the United States[106] it is not sufficient to outweigh the physical evidence (such as labeling, indication of a U.S. destination, presence of SID number required by U.S. FDA) that the merchandise was primarily destined for the United States. Therefore, we continue to determine that the unaffiliated producer had or should have had knowledge that the merchandise was destined for the United States, and as such we will continue to exclude Camacho's sales of the merchandise manufactured by the unaffiliated producer from our calculation of Camacho's margin.

**Comment 14: Camacho's Margin Should Be Based on Adverse Facts Available**

*Petitioner's Comments:*

- Because Commerce discovered various acts of "malfeasance" at verification and Camacho attempted to manipulate its data, Commerce should apply total AFA in the

[105] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 69723, 69727 (December 4, 1999); GSA, S.r.L., 77 F.Supp. 2d at 1355; and GSA, S.r.l. v. United States, 77 F.Supp. 2d 1349 (Ct. Int'l Trade 1999).

[106] We did not include this very small portion sold outside of the United States in our calculation of the U.S. price.

calculation of Camacho's dumping margin. Namely, Camacho reported false levels of selling activities, submitted a major revision to its plantilla price adjustments that qualifies as new information and continued to manipulate the data through distortive allocation, submitted a correction to the calculation methodology of the net drained weight but applied it to select sales to manipulate its margin, inflated its HM credit expense by reporting inaccurate payment dates and lied in its questionnaire response about the date it reported, and excluded administrative expenses incurred by its affiliated reseller in its CEP indirect selling expense calculation.

*Camacho's Comments:*

- Commerce has no justification to apply AFA to Camacho. None of the prerequisites for application of an AFA rate to Camacho are present. All necessary information is on the record, Camacho did not withhold, fail to provide in a timely manner, or submit information that could not be verified, or impede the investigation in any manner. There is no basis on the record that Camacho failed to cooperate to the best of its ability to comply with a request for information. The record shows that Camacho was fully cooperative in this proceeding, responded to all requests for information in a timely manner, and submitted to three weeks of rigorous verification of this information.

*AFI's Comments:*

- Commerce has no justification to apply AFA to Camacho. Camacho has fully cooperated throughout the investigation by submitting detailed questionnaire and supplemental questionnaire responses and undergoing sales and cost verifications. The petitioner's request for Commerce to apply AFA has no merit.

**Commerce's Position:** We disagree with petitioner and have not based Camacho's margin on AFA. Section 776(a) of the Act provides that Commerce shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of Section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by Section 782(i) of the Act.

Section 776(b) of the Act provides that if Commerce finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.[107] In addition, the SAA[108] provides that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate

[107] *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[108] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA).

than if it had cooperated fully."[109] The "best of its ability" standard requires a party to "do the maximum it is able to do."[110] Evidence of "bad faith, or willfulness" on the part of the respondent is not required for Commerce to make an adverse inference.[111]

Based on the information on the record, and as discussed in comments above, we find no basis to apply total AFA to Camacho. Except as otherwise indicated in our decision to apply partial AFA for certain items, such as the calculation of HM credits expense, Camacho placed the requested information on the record in a timely manner, did not impede the proceeding, and the information provided was verified. The information on the record is sufficient to calculate Camacho's margin. Further, Camacho did not fail to cooperate by not acting to the best of its ability to comply with our request for information. Therefore, the petitioners call for application of total AFA to Camacho is without merit. For the final determination we will continue to use the information on the record to calculate Camacho's margin.

**Comment 15: AG Minor Corrections Presented During Sales and Cost Verifications**

*AG's Comments:*

- AG argues that Commerce verified that AG's minor corrections presented during the sales and cost verifications are minor in nature, correct, and tied to AG's records.[112]
- Therefore, AG argues that Commerce should use in its margin calculations for the final determination the corrected sales and cost databases which incorporate these corrections.

No other party commented on this issue.

**Commerce's Position:** We confirmed that the corrections AG presented during the sales and cost verifications are minor corrections to information already on the record, correct and tied to AG's records, and they are accurately reflected in the corrected HM sales, U.S. sales and cost databases AG submitted following the verifications.[113] Therefore, we used these databases to implement the minor corrections in our margin calculations for the final determination.[114]

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[109] *See* SAA at 870; *see also*, *e.g.*, *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).
[110] *See* SAA at 870.
[111] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382-3 (Fed. Cir. 2003) (*Nippon Steel*).
[112] For more details, *see* Memorandums, "Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Final Determination Analysis Memorandum for Aceitunas Guadalquivir S.L.," (AG Final Analysis Memorandum), and "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Aceitunas Guadalquivir S.L." (AG Final Cost Calculation Memorandum), both dated concurrently with this memorandum.
[113] *Id.*
[114] *Id.*

**Comment 16: AG Home Market Commission Expenses**

*AG's Comments:*

- AG notes that Commerce found during the sales verification that AG understated reported per-unit commission expenses pertaining to all HM sales made to a certain customer.[115]
- AG explains that documentation collected during verification confirms that, during the POI, one commission agent incorrectly charged AG commissions based on the invoiced value inclusive of value-added tax (VAT), and that the VAT amount is not included in the reported gross unit prices to this customer.[116]
- Therefore, AG argues that, because the amount of commissions paid by AG was not reflected in the commission reported in the database field COMMH for this customer, Commerce should recalculate COMMH for sales to this customer exclusive of VAT for the final determination.

No other party commented on this issue.

**Commerce's Position:** During the sales verification, we found that AG understated reported per-unit commission expenses pertaining to all HM sales made to a certain customer which had been reported inclusive of VAT.[117] Therefore, for the final determination, we recalculated COMMH for sales to this customer, exclusive of VAT.[118]

**Comment 17: AG Freight Credit**

*AG's Comments:*

- Commerce confirmed during the sales verification that AG correctly reported freight credit (FRTCRED) that Commerce denied in the *Preliminary Determination* on the grounds that AG failed to prove that this credit was tied to the invoices on which AG reported the credit.[119]
- Therefore, Commerce should offset AG's reported international freight for the final determination to account for this credit as AG reported it.

*Petitioner's Comments:*

- Commerce should not allow AG's claimed freight credit, because Commerce did not verify that the credit is properly treated as a direct selling expense attributable to sales of subject merchandise during the POI.
- Alternatively, if Commerce allows the credit, the credit should only be applied to sales during the period April through December 2016, not to sales during 2017.

[115] For more details, *see* AG Final Analysis Memorandum.
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*

**Commerce's Position:** We found during the sales verification that AG correctly reported a credit for international freight (FRTCRED) that we denied in the *Preliminary Determination* on the grounds that AG did not demonstrate that this credit was tied to the invoices on which AG reported the credit.[120] Specifically, AG provided further documentation which demonstrates that this credit is tied to certain invoices for sales of ripe olives during 2016 and, thus, properly treated the credit as a direct selling expense attributable to sales of merchandise under consideration during the POI.[121] However, AG did not demonstrate that this credit ties to invoices for sales of ripe olives during 2017. Therefore, because AG adequately justified its claimed freight credit for international freight related to certain sales during 2016, but not 2017, we have granted the credit for certain sales during 2016 only. Accordingly, for the final determination, we offset AG's reported international freight to account for this credit as reported by AG for certain sales during 2016.[122]

**Comment 18: AG Whether Local Taxes should be included in the General and Administrative Expenses**

*Petitioner's Comments:*

- Commerce discovered at verification that AG excluded local taxes relating to property and vehicle expenses from its reported costs. For the final determination, Commerce should recalculate G&A expenses to include these excluded taxes.

AG did not comment on this issue.

**Commerce's Position:** We agree with the petitioner and revised AG's G&A expense ratio to include property and vehicle tax expenses in the G&A expenses for the final determination. We normally consider expenses of this nature as period expenses that relate to the general operations, as they are a cost of doing business.[123] For more information, *see* AG Final Cost Calculation Memorandum.[124]

**Comment 19: AG Unexplained Cost Reconciliation Difference**

*Petitioner's Comments:*

- The summation of AG's extended minor correction cost database (*i.e.*, production quantity multiplied by TOTCOM) differs from the total cost reflected on the submitted cost reconciliation. For the final determination, Commerce should increase the total cost submitted in the minor correction cost database to capture this unexplained difference.

*AG's Comments:*

- Contrary to the petitioner's assertion, AG properly reported all its costs. Commerce

[120] *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, at 4.
[121] For more details, *see* AG Final Analysis Memorandum.
[122] *Id.*
[123] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada*, 74 FR 16843 (April 13, 2009).
[124] *See* AG Final Cost Calculation Memorandum.

should not make an adjustment for the unexplained cost reconciliation difference in the final determination because it is not unusual for there to be small differences between AG's costs using its normal costing methodology and the CONNUM specific costs defined by Commerce.

**Commerce's Position:** For the final determination, we did not adjust AG's costs for unreconciled differences. The petitioner argues that the difference between AG's cost incurred for all products in the cost reconciliation and the cost incurred for all products in the minor correction database indicates that AG has understated its reported costs. However, the difference specifically reflects a minor correction submitted at the cost verification[125] related to AG reclassifying its employee healthcare and retirement benefits for non-production personnel from the direct labor costs and classifying the expenses as G&A expenses. When this minor correction is accounted for properly, there is no difference between the minor correction cost database and the submitted cost reconciliation.[126] Accordingly, no additional adjustment is warranted.

**Comment 20: Whether Commerce Should Adjust AG's Reported Cost of Raw Materials to Reflect Consumption Costs versus POI Purchases**

*Background:*

For the *Preliminary Determination*, to ensure that AG's cost reporting methodology (*i.e.,* costs based on POI purchases versus POI consumption) did not result in an understatement of its reported raw material costs, we compared the quantity of olives purchased by variety to the theoretical quantity consumed in production by variety. Where the calculated consumption quantity exceeded the purchased quantity, we determined that the olives input costs for that variety were understated and adjusted the reported olive input costs for those understated varieties using an aggregated adjustment factor.

*AG's Comments:*

- Commerce's adjustment in the *Preliminary Determination* to account for an alleged shortfall of purchases to consumption has no basis in law or the facts of record.
- At verification, Commerce confirmed that "AG does not track the consumption and can only calculate consumption as of the end of its fiscal year, by relying on its physical inventory count." Thus, AG had to calculate its cost of olives based on the total POI cost of purchases of olives. Accordingly, AG applied the total POI purchase cost of olives (by variety) to the amount of each variety of ripe olives produced during the POI. This resulted in the cost of production of ripe olives, which is what Commerce requires.
- Calculating olive costs based on estimated olive consumption quantities would essentially reproduce the inventory adjustment made by AG at the end of the year and result in the cost of olives sold, rather than the cost of olives produced.
- AG contends that its estimated consumption quantities were used solely to account for yield loss in the production process from raw olives to finished olives. Multiplying this

[125] *See* Memorandum, "Verification of the Cost Response of Aceitunas Guadalquivir S.L. in the Antidumping Duty Investigation of Ripe Olives from Spain, dated April 6, 2018 (AG Cost Verification Report) at 3.
[126] *Id.*

estimated consumption by purchase prices does not produce a reliable figure for determining AG's costs of raw materials used in production, only multiplying the olive price by production does.

- The adjustment made by Commerce at the *Preliminary Determination* for olive consumption exceeds AG's costs in its audited financial statements. Section 773(f)(1)(A) of the Act requires Commerce to accept a company's recorded costs of production if the costs reasonably reflect the costs of production and sale of merchandise. By increasing AG's reported cost beyond AG's audited costs, Commerce is applying an unsupported methodology.
- AG purchases the majority of its olives in the last quarter of the year during harvest season and draws down on those olives until the next harvest. AG can have a surplus or deficit of purchases compared to consumption as it draws down the inventory of the preceding harvest. Thus, there is no shortfall of inventory making an adjustment to AG's costs unwarranted given the record.
- Commerce's calculation for the consumption shortfall in the *Preliminary Determination* uses the price of semi-finished olives. However, AG purchases raw olives at a lower price during harvest season and processes them internally. Pricing the consumption shortfall with the price of semi-finished olives artificially inflates AG's cost. If Commerce calculates an adjustment for the final determination, it should be done based on the average price of raw olives.
- Commerce's adjustment at the *Preliminary Determination* did not reduce the cost of olives varieties where the quantity consumed is less than the quantity purchased. For the final determination, if Commerce calculates an adjustment for instances where quantities purchased are less than consumption, it should likewise include a decrease in the varieties where the quantity purchased exceeds consumption.
- The petitioner's assertion that AG's costs are distorted and underreported is incorrect. AG reported all its costs accurately and Commerce's adjustment at the *Preliminary Determination* resulted in distortions as described above in the case brief comments.

*Petitioner's Comments:*

- Commerce correctly recognized at the *Preliminary Determination* that AG's reported costs were distorted because they reflect purchases of olives rather than consumption and, appropriately, increased AG's cost of olives. However, because there is sufficient information on the record to calculate an adjustment for each olive variety, Commerce should calculate the adjustment for the final determination by applying an adjustment factor, calculated as the ratio of consumption to purchased quantities for each olive variety, to the reported costs rather than applying an average price as done in the *Preliminary Determination*.
- Commerce should consider AG's reported costs unusable because of AG's comment that "multiplying AG's estimated consumption by purchase price does not, however, produce a reliable figure for determining AG's actual cost of raw materials used in production" and because of AG's flawed logic in arguing that purchase cost is equivalent to consumption cost.
- If Commerce decides AG's cost are usable, the petitioner agrees with AG that there is sufficient information for a variety specific adjustment and Commerce should rely on the adjustment provided in the petitioner's case brief.

**Commerce's Position:** For the final determination, we continue to adjust AG's costs to approximate the consumption cost of olive inputs, rather than the cost of POI purchases. We have accepted AG's reported cost database after correcting a distortion that concerned certain varieties of olives to ensure that the reported costs are not understated. Specifically, we increased the reported cost of olive inputs for those varieties where the theoretical consumption quantity exceeds the reported quantity purchased, as we did in the *Preliminary Determination*. However, we have revised our calculations from the *Preliminary Determination* to adjust AG's raw materials olive costs on a variety-specific basis, as opposed to calculating an aggregated adjustment for all varieties. This revision results in a more product-specific adjustment. Specifically, where the theoretical consumption quantity for a variety of olive exceeded the reported purchased quantity of that same variety, we determined that the reported olive raw material costs were understated and accordingly increased the raw material olive costs. We calculated the adjustment percentage for those varieties where the purchased quantity was less than the theoretical consumed quantity and, increased the raw material olive costs by multiplying the differences in quantity (*i.e.*, the consumption shortfall) by AG's average POI purchase price of olives in solution.

We disagree with AG's arguments that allocating the total purchase cost of olives by variety to the quantity of each variety of ripe olives produced during the POI correctly results in the POI cost of production of ripe olives. Allocating the cost of POI purchases to finished products produced during the POI does not represent the cost of production as proffered by AG. The quantity of olives purchased during the POI can differ significantly from the quantity of olives consumed during the POI, as it does here. And it is the consumption of the olives, not purchases, that is directly related to the finished products produced. The difference between consumption and purchases is the change in the olives raw material inventory. AG's use of purchases as the total olives raw material cost artificially lowers the reported input cost of olives where, for a given variety, the quantity of olives purchased during the POI are not sufficient to meet the theoretical quantity consumed for that variety (*i.e.*, the cost of olives that must have been drawn from beginning inventory are ignored). Therefore, to ensure the flawed reporting methodology does not result in an understatement of the reported raw material olive cost, we compared the quantity of olives purchased by variety to the theoretical quantity consumed in production by variety. Where the calculated consumption exceeded the purchased quantity, by variety, we determined that the specific variety's olive raw material costs were understated.

AG's contention that Commerce erred by departing from AG's audited normal books and records in making an adjustment to the reported olive cost is without merit. AG does not have a cost accounting system, nor does it maintain perpetual inventory records.[127] Therefore, in its normal books and records, AG only calculates its consumption cost annually at the end of the fiscal year when it takes a physical count of its raw materials inventory. As an alternative, because the POI does not correspond with its fiscal year end, AG had to devise a reporting methodology, albeit flawed, that departed from its normal books and records. Instead of allocating its POI olive input consumption costs to all finished products produced during the POI, AG allocated the POI cost of purchased olives to all finished products produced during the

[127] *See* AG Cost Verification Report at 6.

POI.[128] Consequently, AG's argument that the adjustment made at the *Preliminary Determination* for olive consumption exceeds its costs in its audited financial statements is misplaced because its financial statements cover a different period (the fiscal year) from the POI and the financial statements do not record POI-specific consumption costs. Accordingly, AG itself never provided the POI consumption costs based on its normal books and records.[129]

AG's claim that calculating olive costs based on estimated olive consumption quantities would essentially reproduce the inventory adjustment made by AG at the end of the year and result in the cost of olives sold, rather than the cost of olives produced, is incorrect. The cost of olives sold during the POI would represent the POI manufacturing cost, plus the POI beginning finished goods inventory, less the POI ending finished goods inventory.[130] Similarly, the POI cost of manufacturing would represent the POI cost of goods sold, less the POI beginning finished goods inventory, plus the POI ending finished goods inventory. Contrary to AG's assertions, the adjustment described above was not intended to represent either the cost of olives sold or the cost of manufacture. The intent of the adjustment is to ensure that the reported input olive costs, which were reported based on total POI purchase quantity and values rather than total consumption quantity and value, are not understated.

AG's argument that's Commerce's calculation for the consumption shortfall in the *Preliminary Determination* uses the price of semi-finished olives rather that than price of raw olives is without merit. As noted in the cost verification report, purchased raw olives from farmers are sorted and placed into a brine solution within twenty-four hours of them entering the factory.[131] Therefore, the cost of olives consumed in production of subject merchandise from inventory have already received some processing (*i.e.*, sorting and placing them in a brine solution).[132] Likewise, the input olives that are being accounted for in Commerce's adjustment reflect the input olives that were sourced from beginning inventory. The adjustment should reflect the value of the olive product drawn from inventory (*i.e.*, olives in solution). Consequently, the POI average purchase price of olives in brine solution is representative of the olives placed in solution prior to the POI and subsequently consumed from inventory by AG to produce subject merchandise. Therefore, contrary to AG's assertion, we find the appropriate price to use for the understated olive cost sourced from inventory is the POI average purchase price of olives in solution, not the 2016 harvest purchases of raw olives.

While we agree with the petitioner that AG's costs as reported are unusable, we are able to remedy this deficiency in reporting by testing the reported raw material olive cost by variety and adjusting as necessary to ensure the costs are not understated. Further, the petitioner contends that Commerce should revise its preliminary adjustment by calculating variety-specific adjustment factors based on the ratio of the quantity consumed to the quantity purchased for each variety and applying the adjustment factor to the reported olive cost of that specific variety. However, the petitioner's proposed method of inflating the POI purchase cost by the quantity

[128] *See* AG Cost Verification Report at 10 and 14-15.
[129] *See* AG Cost Verification Report at 10.
[130] Joel G. Siegel, PhD., CPA, Jae K. Shim, PhD. 1995. Dictionary of Accounting Terms (Barron's Business Guides), 2nd Edition at 101. Also commonly known as the Cost of Goods Sold formula.
[131] *See* AG Cost Verification Report at 6.
[132] See AG Cost Verification Report at 6.

difference alone to cover the gap in POI consumption cost would create additional distortions in AG's reported costs. AG's reported costs represent a mix of olive costs in differing forms, raw olives, olives in solution, pitted olives, etc., while the shortfall in the POI consumption should only represent olives in solution consumed to produce merchandise under consideration.[133] Specifically, the shortfall in quantity between purchases and consumption represents AG's draw down of olives in solution from beginning inventory used to produce merchandise under consideration. Therefore, applying the POI average purchase price of olives in solution to the consumption shortfall quantity reflects the adjustments necessary to ensure AG's variety specific reported costs are not understated.

Lastly, we disagree with AG's argument that if Commerce makes an adjustment for olive varieties where estimated consumption quantities appear to be greater than purchase quantities, it should also make a corresponding offset adjustment for olive varieties where the estimated quantity consumed appears to be less than the quantity purchased. As noted above, AG devised a reporting methodology that resulted in an understatement of the reported cost for specific olive varieties because the purchases during the POI do not appear to be sufficient to meet the consumption demand during the POI. Consequently, for those specific olive varieties it would not be possible for AG to produce the quantity of finished products reported using the quantity and value of the olives purchased during the POI. Instead, AG would have had to withdraw olives from beginning inventory to reasonably produce the quantity of finished product reported. Commerce's adjustment was to account for the under-reported cost. However, for varieties where there appear to be sufficient quantities purchased to account for the finished products produced, no adjustment was made and we accepted AG's reporting methodology. AG's assertion that a corresponding reduction in cost is appropriate for other varieties, is based on an assumption that Commerce's estimated theoretical consumption quantities used to test the reasonableness of AG's reported variety-specific costs should be relied upon in all instances. However, as explained earlier, we have accepted AG's own reporting methodology, except we made an adjustment for those specific olive varieties where it would not be possible for AG to produce the quantity of finished products reported using the quantity and value of the olives purchased during the POI. For those varieties, the adjustment ensured that the reported costs are not understated.

**Comment 21: Classification of Machinery Depreciation Expense**

*AG's Comments:*

- At the *Preliminary Determination*, Commerce reclassified AG's machinery depreciation expenses from variable overhead to fixed overhead. Commerce should not reclassify AG's machinery depreciation expenses for the final determination because, as AG demonstrated at verification, the majority of its machinery is depreciated using a machine time methodology, in accordance with Spanish GAAP.

*Petitioner's Comments:*

- Commerce followed its normal practice in reclassifying the machinery depreciation

[133] *See* AG Cost Verification Report at Exhibit-8 Olive Cost for a list of AG's purchases and AG Cost Verification Report at Exhibit-5 Cost Reconciliation for a list of the FY2015 and FY2016 year-end inventory.

expenses as fixed overhead, as laid out in *Bottom Mount Refrigerator-Freezers from Mexico*.[134] Additionally, the Spanish GAAP provision cited by AG is irrelevant and should be rejected as untimely new information.

**Commerce's Position:** We agree with the petitioner and continue to reclassify AG's machinery deprecation expenses from variable overhead expenses to fixed overhead expenses as we did for the *Preliminary Determination*. Depreciation expense by its nature is a fixed cost.[135] The objective of depreciating a fixed asset is to spread the original fixed cost of property, plant and equipment over the estimated useful life of the asset.[136] In this instance, AG argues that because it employs a depreciation methodology that uses machine time, as opposed to using a straight-line methodology (*i.e.,* cost less salvage value divided by useful life), that the expense should be considered variable, we disagree. The company incurred a fixed cost in purchasing the asset. Regardless of the depreciation methodology used by a company there is a decline in the economic potential of the limited life assets due to the wear and tear, natural deterioration, and technical obsolescence that must be recognized over the life of the asset. The depreciation method adopted by a given company is simply a means of determining how to spread the fixed cost incurred in acquiring the asset over the estimated useful life of such asset. Regardless of the method used to allocate the cost over a number of years, the cost being spread to each year is still a fixed cost. Therefore, Commerce normally classifies these categories of expenses as fixed overhead.[137] Here, the use of a machine time depreciation methodology, instead of straight line depreciation, does not change the nature of the expense. Rather, it only changes the rate at which depreciation expense is recognized. Lastly, we note that even if AG employed a straight-line depreciation methodology, as opposed to the machine time methodology, the depreciation expense would be virtually the same.[138] Accordingly, for the final determination we continue to classify AG's depreciation expenses as fixed costs.

**Comment 22: Agro Sevilla Corrections Presented During Sales Verifications**

*Agro Sevilla's Comments:*

- Agro Sevilla argues that Commerce accepted Agro Sevilla's minor corrections presented during the sales verifications and that Commerce should take into account the corrected data that are now on the record.[139]

The petitioner did not comment on this issue.

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[134] *Bottom Mount Refrigerator-Freezers from Mexico: Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decisions Memorandum (*Bottom Mount Refrigerator-Freezers from Mexico).*

[135] Joel G. Siegel, PhD., CPA, Jae K. Shim, PhD. 1995. Dictionary of Accounting Terms (Barron's Business Guides), 2nd Edition at 124-125.

[136] *Id.*

[137] *See Bottom Mount Refrigerator-Freezers from Mexico* and accompanying Issues and Decisions Memorandum at Comment 35.

[138] *See* AG Cost Verification Report at 21.

[139] For more details, *see* Memorandum, "Less-Than-Fair-Value Investigation of Ripe Olives from Spain: Final Determination Analysis Memorandum for Agro Sevilla," (Agro Sevilla Final Analysis Memorandum), dated concurrently with this memorandum.

**Commerce's Position:** We confirmed that the corrections Agro Sevilla presented during the sales and cost verifications are minor corrections to information already on the record, are accurate, and tied to Agro Sevilla's records. Therefore, we have revised the comparison market and margin calculations to implement the minor corrections for the final determination.[140]

**Comment 23: Agro Sevilla's Pick-Up Adjustment Expense**

*Petitioner's Comments:*

- Commerce should include an expense for unreported adjustments to account for the unreported pick-up allowance granted to one customer. Commerce should ensure that expense related to only one customer; if not, Commerce should apply the expense to all U.S. sales.

*Agro Sevilla's Rebuttal*:

- Commerce verified that the unreported pick-up adjustment applied to only one customer. There is no reason to apply this adjustment to all U.S. sales.

**Commerce's Position:** We agree with Agro Sevilla. The verification report states, and the underlying documentation confirmed, that the unreported pick-up adjustment only concerned sales to one customer. Accordingly, we find no basis to apply this pick-up adjustment to sales to other customers, and for the final determination, we have included an expense for the unreported pick-up adjustment and have applied the expense to the sales of the single customer.[141]

**Comment 24: Agro Sevilla's Unreported Pallet Revenues**

*Petitioner's Comments:*

- Commerce should make an adjustment for unreported pallet revenues on all sales made to one comparison market customer based on invoices included in the verification exhibits. Commerce should apply partial facts available and include this revenue for all sales made to this customer.

*Agro Sevilla's Rebuttal*:

- The petitioner misread Commerce's verification report. Commerce verified that Agro Sevilla correctly reported pallet revenues.

**Commerce's Position:** We disagree with the petitioner's claim that we discovered unreported pallet revenues at verification. We reviewed Agro Sevilla's reported billing adjustment for a claim of refurbishment of pallets submitted by a comparison market customer. Agro Sevilla allocated this billing adjustment over Agro Sevilla's sales of subject and non-subject olives to that customer during the POI. The petitioner observed that two of Agro Sevilla's invoices to this

[140] *Id.*
[141] *Id.*

customer included invoice line items and charges for pallets. The petitioner argues that Commerce should adjust Agro Sevilla's gross unit price upwards to reflect these unreported pallet revenues. However, the record demonstrates that Agro Sevilla accounted for these pallet revenues in its calculation of PACKH: the product description of the pallets included in the invoice line items referenced by the petitioner is one of the product descriptions from Agro Sevilla's packing cost worksheet.[142] The worksheet recognizes "revenue of packing" to the comparison market for those pallets as a component of the net cost of packing to the comparison market that was used to construct the allocation.[143] We reviewed this calculation at verification and found no discrepancies.[144]

**Comment 25: Agro Sevilla's Total Cost of Manufacturing**

*Petitioner's Comments:*

- Commerce should increase Agro Sevilla's reported total cost of manufacturing (TOTCOM) for the difference found at verification between Agro Sevilla's total costs per its normal books and records and its reported costs (reconciling difference).
- Commerce should also increase Agro Sevilla's reported TOTCOM, as partial facts available, for finding at verification that Agro Sevilla had failed to report the standard costs used in the normal course of business for FY 2017 for non-merchandise under consideration (MUC). As partial facts available, Commerce should increase Agro Sevilla's TOTCOM for the unfavorable adjustment related to material costs but not for the favorable adjustment to fixed overhead (FOH).

*Agro Sevilla's Comments:*

- Commerce should not adjust Agro Sevilla's reported TOTCOM for the reconciling difference or the non-MUC standard cost findings, because of the minimal impact the adjustments have on Agro Sevilla's reported cost.
- If Commerce determines that such adjustments are warranted, Commerce should increase Agro Sevilla's TOTCOM by the net effect of the reconciling difference and the non-MUC adjustments.
- The petitioner incorrectly mischaracterizes the reconciling difference and the non-MUC standard cost findings as two separate and distinct adjustments. The reconciling difference, reported by Agro Sevilla prior to verification, is affected by both the non-MUC material cost finding and the related favorable adjustment to FOH.
- There is no basis to the petitioner's argument for the application of facts available because Agro Sevilla has cooperated with Commerce to the best of its ability. The necessary information is not missing from the record, Agro Sevilla did not fail to provide the information, Agro Sevilla fully disclosed the error, and Commerce verified the correct information. Moreover, there is no evidence that Agro Sevilla impeded any part of the investigation.

[142] *See* Agro Sevilla Verification Report at VE-13 at 4 and 6 and VE-17 at 1. Additionally, the product code for this same item description appears on the screenshot from Agro Sevilla's system and matches the product code associated with the product description on the packing expenses worksheet.
[143] *Id.* at VE-17.
[144] *Id.* at 18.

- Because Commerce has successfully verified the corrected costs of the non-MUC product, Commerce should consider both the positive and negative effects that the non-MUC findings have on Agro Sevilla's total reconciliation difference.

**Commerce's Position:** We agree with the petitioner that Agro Sevilla's reported costs should be increased for the reconciling difference between the total costs per Agro Sevilla's normal books and records and its total reported costs. However, we disagree with both the petitioner and Agro Sevilla regarding the value of the reconciling difference and, instead, relied on the value of the unreconciled difference after the adjustment for the non-MUC findings.[145] We also disagree with the petitioner that partial facts available are warranted. Therefore, we adjusted Agro Sevilla's reported costs for the reconciling difference and for the non-MUC findings for the final determination.[146]

In its December 1, 2017 submission, Agro Sevilla submitted a worksheet showing the reconciliation of the total POI costs per it normal books and records to the total costs reported to Commerce in its cost data file.[147] We examined this reconciliation worksheet at verification.[148] The difference shown on the reported reconciliation worksheet is the value that the petitioner argues should be used to adjust Agro Sevilla's reported costs.[149]

At verification, we found that, while the FY 2017 standard direct material costs for MUC were correctly reported, the FY 2017 standard direct material cost for non-MUC were overstated.[150] Because the total standard material costs for the POI changed (*i.e.* reported MUC plus revised non-MUC), certain raw material variances (differences between standard and actual costs) were also affected.[151] The change in those variances affects the reported costs of MUC (*i.e.* additional material variance amounts should be allocated to MUC).[152] At our request, Agro Sevilla provided a calculation showing the impact of the error (increase), to the total reported costs of MUC.[153] This is the adjustment the petitioner asserts should be used as partial facts available.[154]

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[145] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Agro Sevilla Aceitunas S.COOP Andalusia," (Agro Sevilla Final Cost Memorandum) dated concurrently with this memorandum, at 1.
[146] *See* Agro Sevilla Final Cost Memorandum at 1-2.
[147] *See* exhibit SD2-14.
[148] *See* Memorandum to the File, "Verification of the Cost Response of Agro Sevilla Aceitunas S.COOP Andalusia in the Antidumping Duty Less Than Fair Value Investigation of Ripe Olives from Spain," (Agro Sevilla Cost Verification Report) dated April 4, 2018 at 8-12.
[149] *See* Agro Sevilla Cost Verification Report at 11 and Petitioner Case Brief at 30.
[150] Because the POI covers the period of April 1, 2016 through March 31, 2017, Agro Sevilla relied on FY 2016 standard costs for production occurring in April 1, 2016 through December 31, 2016 and FY 2017 standard costs for production occurring in January 1 through March 31, 2017. We found no issues with the FY 2016 standard costs of non-MUC. *See* Agro Sevilla Cost Verification Report at 13-14.
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.,* and Petitioner Case Brief at 30.

We also found at verification that certain FY 2017 standard FOH costs were omitted from the standard costs of non-MUC manufactured during the POI.[155] The FY 2017 standard FOH costs for MUC were correctly reported.[156] Because the total standard FOH costs for the POI changed (*i.e.* reported MUC plus revised non-MUC), the FOH variance (difference between standard and actual costs) was also affected.[157] The change in the FOH variance affects the reported costs of MUC (*i.e.* the FOH variance allocated to MUC should be reduced).[158] At our request, Agro Sevilla provided a calculation showing the impact of the error (decrease), on the total reported costs.[159] This is the adjustment the petitioner assert should be excluded as partial facts available.[160]

At verification, we obtained a revised worksheet showing the reconciliation of the total cost per Agro Sevilla's normal books and records to the total costs reported to Commerce adjusted for both the non-MUC material and FOH findings.[161]

The petitioner's argument for the application of facts available is based on the petitioner's assertion that Commerce "discovered that Agro Sevilla had failed to report its standard costs used in the normal course of business for FY 2017" with respect to non-MUC.[162] We disagree with the petitioner's assertion that we discovered that Agro Sevilla "failed to report" its FY 2017 standard costs for non-MUC. Instead, we discovered that the values of the FY 2017 standard material costs for non-MUC were incorrect and certain FY 2017 standard FOH costs for some non-MUC products were excluded from the total standard costs used to allocate certain variances to MUC.[163]

The FY 2017 standard costs for non-MUC, albeit incorrect in some instances, were not withheld as alleged by the petitioner.[164] Although the petitioner asserts that the errors should have been brought to Commerce's attention at the start of verification, we note that the discovery of the errors didn't occur until verification was underway.[165] In contrast to the petitioner's assertion, Agro Sevilla complied in a timely manner with Commerce's requests at verification for information regarding the errors in the standard costs and the impact on the reported costs.[166] We also find that the resulting correction to the MUC is not so egregious as to impede the proceeding and we note that the information was verified.[167] As such, we find the application of facts available here to be unwarranted.

[155] *See* Agro Sevilla Cost Verification Report at 18.
[156] *Id*.
[157] *Id.*
[158] *Id*.
[159] *Id*.
[160] *Id*., and Petitioner Case Brief at 30.
[161] *See* Agro Sevilla Cost Verification Exhibit 10.
[162] *See* Petitioner Case Brief at 30.
[163] *See* Agro Sevilla Cost Verification Report at 13-14 and 18.
[164] *Id*.
[165] *Id*.
[166] *Id*.
[167] *Id*.

Therefore, we adjusted Agro Sevilla's reported costs for the changes in the variances resulting from the standard material and FOH cost findings related to non-MUC.[168] We also adjusted the total reported costs for the revised reconciling difference.[169] We did not use the originally reported reconciling difference because that difference does not account for the adjustments we made related to the variances. We disagree with Agro Sevilla that we should rely on the net result of the non-MUC findings and the revised reconciling difference. Because the revised overall reconciliation adjustment already includes the effects of the non-MUC adjustments, to make both adjustments would result in double counting the adjustments for non-MUC.[170]

**Comment 26: Agro Sevilla's Financial Expenses**

*Petitioner's Comments:*

- Commerce should increase the numerator of Agro Sevilla's financial expense ratio for impairment losses on disposal of non-current assets discovered by Commerce at verification. Because these transactions relate directly to the general operation and financing of the company, the total expense should be included in the company's financial expense ratio.

*Agro Sevilla's Comments:*

- Commerce should continue to exclude the impairment losses on disposal of non-current assets because these losses relate to investment activities rather than the general operations of the company.
- Commerce has consistently excluded investment activities from the calculation of financial expenses.

**Commerce's Position:** We agree with Agro Sevilla. At verification, we confirmed that the impairment losses in question related to investment activities.[171] It is our well-established and consistent practice to exclude gains and losses on investment activities from the reported costs as investment activities are considered a separate profit-making activity not related to the company's normal operations.[172] Therefore, we continue to exclude these expenses from the reported costs for the final determination.

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[168] *See* Agro Sevilla Final Cost Memorandum at 1-2.
[169] *Id*.
[170] *See* Agro Sevilla Cost Verification Exhibit 10.
[171] *See* Agro Sevilla Cost Verification Report at 10.
[172] *See e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 6, stating that "we exclude investment related gains, losses or expense from the calculation of COP and CV," and *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) and accompanying Issues and Decision Memorandum at Comment 14 (finding that investment activities are not related to production, but are a separate profit making activity).

**Comment 27: Agro Sevilla's Affiliated Purchases**

*Agro Sevilla's Comments:*

- Commerce should revise the major input adjustment it made at the *Preliminary Determination* for purchases from affiliated parties of certain olives based on the minor correction to the purchase price data provided at verification.

The petitioner did not comment.

**Commerce's Position:** We agree with Agro Sevilla and revised the major input adjustment we made at the *Preliminary Determination* for the minor correction to the purchase price data provided at verification.[173]

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register.*

☒ ☐

Agree Disagree

6/11/2018

X

Signed by: GARY TAVERMAN

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

[173] *See* Agro Sevilla Final Cost Memorandum at 2.