



A-469-817

AR: 01/26/2018-07/31/2019

**Public Document**

E&C Office I: DV/YJC

December 18, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Ripe Olives from Spain: Decision Memorandum for Preliminary  
Results of Antidumping Duty Administrative Review; 2018-2019

---

## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on ripe olives (olives) from Spain covering the period of review (POR) January 26, 2018 through July 31, 2019. The review covers three producers or exporters of the subject merchandise. Commerce preliminarily determines that the producers or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

## II. BACKGROUND

On August 1, 2018, we published in the *Federal Register* an AD order on olives from Spain.<sup>1</sup> On August 2, 2019, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.<sup>2</sup> On September 3, 2019, the Coalition for Fair Trade in Ripe Olives (the Coalition), a coalition of domestic processors of ripe olives and the petitioner in the underlying investigation, requested an administrative review of the following three producers and/or exporters of ripe olives: Agro Sevilla Aceitunas S.COOP Andaluca (Agro Sevilla); Angel Camacho Alimentacion S.L. (Angel Camacho); and Alimentary Group Dcoop S.Coop. And (Dcoop) (collectively, the respondents).<sup>3</sup> Also on September 3, 2019, Agro Sevilla and Angel Camacho requested an administrative review.<sup>4</sup> On October 7, 2019, based on timely

---

<sup>1</sup> See *Ripe Olives from Spain: Antidumping Duty Order*, 83 FR 37465 (August 1, 2018) (*Order*).

<sup>2</sup> See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).

<sup>3</sup> See Coalition's Letter, "Ripe Olives from Spain; 1st Administrative Review; Petitioner Request for Antidumping Duty Administrative Review," dated September 3, 2019.

<sup>4</sup> See Agro Sevilla and Angel Camacho's Letter, "Request for Administrative Review: Ripe Olives from Spain POR1," dated September 3, 2019.



requests, Commerce initiated an administrative review of three companies, Agro Sevilla, Angel Camacho, and Dcoop, in accordance with 19 CFR 351.221(c)(1)(i).<sup>5</sup>

In response to comments submitted by the interested parties, on February 5, 2020, Commerce determined that the Coalition, as an interested party under section 771(9)(G) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.102(b)(17), has standing to request an administrative review.<sup>6</sup>

In the *Initiation Notice* we explained that, if we limit the number of respondents for individual examination, we intend to determine respondents based on U.S. Customs and Border Protection (CBP) data of U.S. imports during the POR.<sup>7</sup> On October 15, 2019, Commerce placed on the record the CBP data for U.S. imports of subject merchandise from the companies subject to this administrative review.<sup>8</sup> According to the CPB data, there were no entries of subject merchandise for Dcoop during the POR. On October 23, 2019, Commerce received comments on the CBP data from Musco Family Olive Company (Musco), a member of the Coalition, which showed that Dcoop may have exported the subject merchandise to the United States during the POR.<sup>9</sup> On October 28, 2019, Commerce received rebuttal comments from the Asociación de Exportadores e Industriales de Aceitunas de Mesa (ASEMESA), exporters of the subject merchandise.<sup>10</sup> Commerce determined to individually examine all three companies for which an administrative review was requested and, on October 29, 2019, it issued the AD questionnaire to Agro Sevilla, Angel Camacho, and Dcoop.<sup>11</sup>

Angel Camacho submitted timely responses to Commerce's AD questionnaire on between November 26, 2019 and December 24, 2019. Between March 20 and July 2, 2020, Angel Camacho timely responded to Commerce's supplemental questionnaires.

In December 2019, Agro Sevilla submitted its responses to Commerce's AD questionnaire. Between March 17 and November 25, 2020, Agro Sevilla submitted its responses to Commerce's supplemental questionnaires.

In December 2019, Dcoop submitted its responses to Commerce's AD questionnaire. Between March 18 and November 4, 2020, Dcoop responded to Commerce's supplemental questionnaires.

---

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

<sup>6</sup> See Memorandum, "Antidumping Duty Administrative Review of Ripe Olives from Spain; 2018-19: Petitioner's Standing to Request Administrative Review," dated February 5, 2020.

<sup>7</sup> See *Initiation Notice*, 84 FR at 53412.

<sup>8</sup> See Commerce's Letter, CBP Data, dated October 15, 2019.

<sup>9</sup> See Musco's Letter, "Ripe Olives from Spain; 1st Administrative Review: Comments on CBP Data," dated October 23, 2019.

<sup>10</sup> See ASEMESA's Letter, "ASEMESA's Rebuttal Comments to Musco's Comments on CBP Data: Ripe Olives from Spain (POR 1)," dated October 28, 2019.

<sup>11</sup> See Commerce Letters, AD Questionnaire, dated October 29, 2019.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these preliminary results until June 22, 2020.<sup>12</sup> On June 2, 2020, Commerce extended the time limit for the preliminary results of review to October 19, 2020, pursuant to section 751(a)(3)(A) of the Act.<sup>13</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by additional 60 days, thereby extending the deadline for these preliminary results until December 18, 2020.<sup>14</sup>

Musco submitted comments with respect to Angel Camacho and Dcoop on November 17, 2020, and with respect to Agro Sevilla on November 24, 2020, for consideration in the preliminary results of this review.

### **III. SCOPE OF THE *ORDER***

The products covered by the *Order* are certain processed olives, usually referred to as “ripe olives.” The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multilayered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in Spain.

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.

Excluded from the scope are: (1) Specialty olives<sup>15</sup> (including “Spanish-style,” “Sicilian-style,”

---

<sup>12</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

<sup>13</sup> See Memorandum, “Ripe Olives from Spain: Extension of Deadline for Preliminary Results of 2018-2019 Antidumping Duty Administrative Review,” dated June 2, 2020.

<sup>14</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>15</sup> Some of the major types of specialty olives and their curing methods are:

- “Spanish-style” green olives: Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are

and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to the *Order* is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and U.S. Customs purposes, they do not define the scope of the *Order*; rather, the written description of the subject merchandise is dispositive.

#### IV. REQUESTS FOR A WITHDRAWAL OF ADMINISTRATIVE REVIEW

On December 31, 2019, Bell-Carter Foods, LLC (Bell-Carter), one of the two members of the Coalition, requested a withdrawal of the administrative review request that was submitted on behalf of the Coalition and urged Commerce to rescind the review with respect to all producers and/or exporters under review.<sup>16</sup> On January 3, 2020, Musco, the other member of the Coalition, objected to Bell-Carter's withdrawal request.<sup>17</sup> On January 8, 2020, Dcoop submitted comments that, *inter alia*, requested that Commerce "rescind the administrative review in light of the Coalition's timely withdrawal of the request for the administrative review submitted by {Bell-Carter}, and in the alternative, the dissolution of the Coalition that requested the administrative review."<sup>18</sup> On January 17, 2020, Bell-Carter filed additional comments and objected to the amended entry of appearance filed by McDermott Will & Emery LLP (MWE) on January 3,

---

used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.

- "Sicilian-style" green olives: Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for 4 to 9 months. These olives may be sold whole unpitted, pitted, or stuffed.
- "Kalamata" olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olive is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over 4 to 9 months in a salt brine.
- Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for 3 months or more.

<sup>16</sup> See Bell-Carter's Letter, "Ripe Olives from Spain: Petitioner's Notice of Withdrawal of Requests for Antidumping and Countervailing Duty Administrative Reviews," dated December 31, 2019.

<sup>17</sup> See Musco's Letter, "Ripe Olives from Spain; 1st Administrative Reviews; Response to 'Withdrawal of Review Requests,'" dated January 3, 2020.

<sup>18</sup> See Dcoop's Letter, "Ripe Olives from Spain: Letter in Support of Agro Sevilla and Angel Camacho's Request for Resolution of Procedural Matters and Review Status," dated January 8, 2020.

2020.<sup>19</sup> On January 23, 2020, Musco responded and restated the arguments in support of its position.<sup>20</sup> On February 5, 2020, Commerce issued a letter notifying all parties that it was continuing with the administrative review of each of the three companies (*i.e.*, Agro Sevilla, Angel Camacho, and Dcoop) because Bell-Carter's December 31, 2019 letter did not constitute a withdrawal of the Coalition's review request; further, Commerce determined that there is no overlap in claimed representation on behalf of MWE and legal counsel to Bell-Carter, and that evidence on the record does not require a change in the current status of the Coalition's representation.<sup>21</sup>

On November 17, 2020, Bell Carter requested the reconsideration of Commerce's decision not to rescind this review with respect to Dcoop and further clarified its reconsideration request on December 4, 2020.<sup>22</sup> Bell-Carter's reconsideration request does not raise any new arguments or facts that warrant a reversal of our original decision regarding its original request to rescind. Bell-Carter's reconsideration request is based in part on its amended entry of appearance, submitted on April 30, 2020.<sup>23</sup> An entry of appearance is a procedural document used to identify parties to be included in a public service list<sup>24</sup> and exempted from the certification of accuracy required under 19 CFR 351.303(g).<sup>25</sup> Bell-Carter's amended entry of appearance does not contain "clear evidence regarding whether the Coalition continues to function as an entity and, if so, whether individually one of the Coalition's member companies has the authority to make decisions on behalf of the Coalition."<sup>26</sup> Bell-Carter's reconsideration request is based also in part on *Coalition for Fair Trade in Garlic v. United States*, 463 F. Supp. 3d 1380, 1382 (CIT 2020), in which Commerce on remand found that a domestic association's review request was void *ab initio* because a majority of the individuals who comprised the domestic association did not credibly establish that they qualified as domestic producers at the time of the request and, thus, the domestic association lacked standing as an interested party under section 771(9)(E) of the Act.<sup>27</sup> This case is inapposite because the Coalition is an interested party under section 771(9)(G) of the Act and there is no dispute that the two individual members of the Coalition were domestic processors and producers of ripe olives at the time of the review request.

---

<sup>19</sup> See Bell-Carter's Letter, "Ripe Olives from Spain: Response to Musco's January 3rd 2020 Comments," dated January 17, 2020; *see also* MWE's Amended Entry of Appearance, dated January 3, 2020. MWE represents Musco.

<sup>20</sup> See Musco's Letter, "Ripe Olives from Spain; 1st Administrative Reviews; Response to BCF January 17 Comments," dated January 23, 2020.

<sup>21</sup> See Commerce's Letter, dated February 5, 2020. *See* Commerce's Letter, dated February 5, 2020.

<sup>22</sup> See Bell-Carter's Letter, "Comments in Advance of the Preliminary Results," dated November 17, 2020, as clarified in Bell-Carter's Letter, "Clarification Letter of Other New Factual Information," dated December 4, 2020.

<sup>23</sup> See Amended Entry of Appearance dated April 30, 2020. Although Bell-Carter indicated that Exhibits 1-5 to its reconsideration request contained new factual information, we determine that the documents submitted as exhibits (such as the Court of International Trade decision, Commerce's determinations, etc.) do not constitute new factual information under 19 CFR 351.102(b)(21)).

<sup>24</sup> See 19 CFR 351.213(d)(1); *see also* Public Service List dated May 1, 2020.

<sup>25</sup> See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678, 42686 (July 17, 2013) ("the Department has decided to create a narrow exception to the certification requirement for procedural submissions. Some examples of procedural submissions are ... letters of appearance,...").

<sup>26</sup> See Commerce's Letter, dated February 5, 2020 at 4; *see also* Amended Entry of Appearance dated April 30, 2020.

<sup>27</sup> Section 771(9)(E) of the Act requires a majority of individual members of a trade or business association to have standing as interested parties within the meaning of section 771(9)(C) of the Act.

## V. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review in accordance with section 751(a) of the Act and 19 CFR 351.213.

### A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of the subject merchandise to unaffiliated U.S. customers were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP) to NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### 1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>28</sup>

In recent proceedings, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-average method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).<sup>29</sup> Commerce finds that the differential pricing analysis used in recent investigations and administrative reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a weighted-average dumping margin for each respondent.

---

<sup>28</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>29</sup> See, e.g., *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying Preliminary Decision Memorandum at 21-24, unchanged in *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018), and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018) (2016-17 Prelim), and accompanying Preliminary Decision Memorandum at 3-6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by Angel Camacho,<sup>30</sup> Agro Sevilla,<sup>31</sup> and Dcoop.<sup>32</sup> For Agro Sevilla, purchasers are based on reported customer codes, because it does not maintain consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, state) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR, based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average

---

<sup>30</sup> See Angel Camacho’s Letter, “Camacho’s Section C Response: Ripe Olives from Spain (01/26/2018-07/31/2019),” dated December 19, 2019 (Angel Camacho CQR) at 12 and Exhibit C-6.

<sup>31</sup> See Agro Sevilla’s Section C Response dated December 20, 2019 at 13-14.

<sup>32</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Section C Questionnaire Response,” dated December 20, 2019 (Dcoop’s Section C Response) at 11 and Exhibit C-6.

method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

## 2. Results of the Differential Pricing Analysis

For Dcoop, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.95 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>33</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Dcoop.

---

<sup>33</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Ripe Olives from Spain: Preliminary Analysis Memorandum for Alimentary Group Dcoop S.Coop.; 2018-2019," dated concurrently with this Preliminary Decision Memorandum (Dcoop Preliminary Analysis Memorandum).



For Agro Sevilla, based on the results of the differential pricing analysis, Commerce preliminarily finds that 75.31 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>34</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Agro Sevilla.

For Angel Camacho, based on the results of the differential pricing analysis, Commerce preliminarily finds that 45.60 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>35</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Angel Camacho.

## B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by the respondents in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, we made comparisons to weighted-average comparison market prices that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month.

## C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business."<sup>36</sup> The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or

---

<sup>34</sup> See Memorandum, "Ripe Olives from Spain: Preliminary Analysis Memorandum for Agro Sevilla Aceitunas S.COOP Andalusia," dated concurrently with this Preliminary Decision Memorandum (Agro Sevilla Preliminary Analysis Memorandum).

<sup>35</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Ripe Olives from Spain: Preliminary Analysis Memorandum for Angel Camacho Alimentacion, S.L.; 2018-2019," dated concurrently with this Preliminary Decision Memorandum (Angel Camacho Preliminary Analysis Memorandum).

<sup>36</sup> See 19 CFR 351.401(i).

producer establishes the material terms of sale.<sup>37</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>38</sup>

For comparison market and U.S. sales, all three companies claimed that the invoice date best represents the date of sale.<sup>39</sup> The companies also reported that, because for certain comparison market and U.S. sales the shipping date precedes the invoice date, the earlier of the invoice date or the shipment date was used to report the date of sale.<sup>40</sup> Accordingly, because there is nothing on the record establishing that a different date better reflects the date on which the material terms are finalized, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our regulation and practice.

#### D. Export Price and Constructed Export Price

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

Agro Sevilla reported certain entries of olives that entered the United States prior to the suspension of liquidation but sold after the importation within the POR.<sup>41</sup> If a respondent can demonstrate the link between the entry and sales of such products, it is our practice to treat such products as non-subject merchandise and exclude them from dumping margin calculations.<sup>42</sup>

---

<sup>37</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>38</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) (*Shrimp from Thailand*), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

<sup>39</sup> See Angel Camacho's Letters, "Camacho's Section A Response: Ripe Olives from Spain (01/26/2018-07/31/2019)," dated November 26, 2019 (Angel Camacho's AQR) at 16-17; "Camacho's Section B Response: Ripe Olives from Spain," dated December 19, 2019 (Angel Camacho's BQR) at 19; and Angel Camacho CQR at 14; see also Agro Sevilla's Sections B Response dated December 20, 2019 at 18; Section C Response at 16-17; and Fourth Supplemental Questionnaire Response dated September 8, 2020 at 5 and Exhibit SA-2.4; and Dcoop's Letters, "Ripe Olives from Spain: Section A Questionnaire Response," dated December 3, 2020 (Dcoop's Section A Response) at 16-17; "Ripe Olives from Spain: Sections B and D Questionnaire Response," dated December 19, 2019 (Dcoop's Section B Response) at 12; and Dcoop's Section C Response at 12-13.

<sup>40</sup> *Id.*

<sup>41</sup> See Agro Sevilla's Section C Response dated December 20, 2019 at 36-37.

<sup>42</sup> See, e.g., *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2016*, 82 FR 32170 (July 12, 2017), and accompanying IDM at Comment 1B ("... in general, merchandise that has entered the United States prior to the suspension of liquidation resulting from a preliminary determination in an LTFV investigation (and in

Because Agro Sevilla demonstrated the link between the entry and sales of such products, we treated them as non-subject merchandise and excluded them from the margin calculation.<sup>43</sup>

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

We calculated CEP based on a packed price to unaffiliated purchasers in the United States. We made adjustments for billing adjustments, early payment discounts, rebates, and other discounts, as appropriate. We made adjustments for movement expenses, including foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, U.S. brokerage and handling, marine insurance, U.S. inland freight, U.S. warehousing, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. Pursuant to section 772(c)(1)(C) of the Act, we made an adjustment to the reported EP and CEP for countervailable export subsidies.<sup>44</sup>

## E. Normal Value

### 1. Selection of Comparison Market

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

---

the absence of an affirmative critical circumstance finding) is not subject merchandise within the meaning of section 771(25) of the Act.”), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610, 18611-12 (April 10, 2001) (“The Department has a long-standing and consistent practice of excluding sales of merchandise entering prior to suspension of liquidation, on the grounds that such merchandise was not covered by the order, as long as the sales made after entry can be demonstrably linked to entries made prior to suspension of liquidation.”)

<sup>43</sup> See Agro Sevilla Preliminary Analysis Memorandum at 4.

<sup>44</sup> The portion of the countervailing duty rate attributable to export subsidies in effect during the POR is 0.11 percent for Agro Sevilla, 0.05 percent for Angel Camacho, and 0.05 percent for Dcoop (based on the “All-Others” rate). See *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193, 28194 (June 18, 2018).

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for Agro Sevilla, Angel Camacho, and Dcoop was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Angel Camacho and Dcoop, in accordance with section 773(a)(1)(B) of the Act. Consistent with our practice, we also included sales that were later determined to be outside the ordinary course of trade, *e.g.*, below-cost sales and sales made to affiliated parties, for purposes of determining home market viability.<sup>45</sup>

## 2. Affiliated Party Transactions and Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>46</sup> Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Therefore, consistent with 19 CFR 351.403(c) and (d) and our practice, Commerce “*may* calculate normal value based on sales to affiliates if the agency is satisfied that the transactions were made at arm's length.”<sup>47</sup>

Agro Sevilla reported that it made a small volume of home market sales to affiliates during the POR.<sup>48</sup> We preliminarily find that Agro Sevilla's home market sales to its affiliates failed the arm's length test.<sup>49</sup> Angel Camacho reported that it made a small volume of sales of merchandise under consideration to one affiliated party in the home market during the POR.<sup>50</sup> We preliminarily find that all sales that Angel Camacho made to its affiliated reseller in the comparison market during the POR failed the arm's length test. Accordingly, pursuant to 19 CFR 351.403(c), sales to an affiliated customer in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>51</sup>

Dcoop reported that it had no home market sales to affiliates during the POR.<sup>52</sup> Dcoop reported that it had one affiliate through which it sold olives exclusively to the European market.<sup>53</sup>

---

<sup>45</sup> See *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying IDM at Comment 2 (“A market is ‘viable’ regardless of whether some, all, or no sales are subsequently determined to fail the arm's length test or to be below cost. Whether a given sale is ultimately determined to be made outside the ordinary course of trade or whether a customer is ultimately determined to be an affiliated party, are decisions made apart from and later in time than the market viability question.”)

<sup>46</sup> See 19 CFR 351.403(c).

<sup>47</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003) (emphasis in original).

<sup>48</sup> See Agro Sevilla's Section B Response dated December 20, 2019 at 16.

<sup>49</sup> See Agro Sevilla Preliminary Analysis Memorandum.

<sup>50</sup> See Angel Camacho's BQR at 3.

<sup>51</sup> See section 771(15) of the Act; 19 CFR 351.102(b)(35).

<sup>52</sup> See Dcoop's Section B Response at 2.

<sup>53</sup> See Dcoop's Section A Response at 3; see also Dcoop's Letter, “Supplemental Sections A-C Questionnaire Response,” dated March 18, 2020 at 1-2 (Dcoop's First Supplemental Response).

### 3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>54</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>55</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>56</sup> Commerce considers the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>57</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>58</sup>

Agro Sevilla reported that it made sales through three channels of distribution to distributors and other types of customers in the comparison market: (1) direct delivery from the factory; (2) customers' pickup at the factory; and (3) customers' pickup at unaffiliated warehouse.<sup>59</sup> Agro Sevilla reported substantially the same selling functions at the same levels of intensity across all comparison market channels of distribution for the following selling function categories: provision of sales support, provision of training services, provision of technical services, and performance of sales related administrative activities.<sup>60</sup> With respect to the U.S. market, Agro Sevilla reported that it made sales through three channels of distribution: (1) delivery to the customer's requested place of destination in the United States directly from the factory in Spain;

---

<sup>54</sup> See 19 CFR 351.412(c)(2).

<sup>55</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010), and accompanying IDM (*Orange Juice from Brazil*) at Comment 7.

<sup>56</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>57</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>58</sup> See, e.g., *Orange Juice from Brazil* at Comment 7.

<sup>59</sup> See Agro Sevilla's Section B Response dated December 20, 2019 at 17.

<sup>60</sup> See Agro Sevilla's Section A Response dated December 3, 2019 at 17-23 and Exhibit A-5, and Agro Sevilla's Section B Response dated December 20, 2019 at 26.

(2) customer pickup at an unaffiliated public warehouse in the United States; and (3) delivery to the customer's requested place of destination from an unaffiliated public warehouse in the United States.<sup>61</sup> Agro Sevilla reported a single LOT for its CEP sales.<sup>62</sup> Agro Sevilla reported that the selling functions undertaken for its CEP sales were made at substantially lesser levels of intensity for the selling function categories identified above, in contrast to its comparison market sales.<sup>63</sup>

Angel Camacho reported two channels of distribution in the home market: (1) direct sales to unaffiliated food service/industrial customers and (2) warehouse sales to unaffiliated retail customers.<sup>64</sup> Angel Camacho reported dissimilar selling functions and/or intensities thereof across its comparison market channels of distribution for the following selling function categories: provision of sales support, provision of logistical services, and performance of sales related administrative activities.<sup>65</sup> Angel Camacho reported that its U.S. sales were made through two channels of distribution, CEP sales to various customer categories made through its U.S. affiliate, and EP sales to food service/industrial and retail customers.<sup>66</sup> Angel Camacho reported that it undertook fewer selling functions for its CEP and EP sales or that certain selling functions were made at substantially lesser levels of intensity for the selling function categories identified above, in contrast to its comparison market sales.<sup>67</sup>

Dcoop reported two channels of distribution in the home market: (1) sales to distributor/wholesalers and downstream processors; and (2) sales to retail customers.<sup>68</sup> Dcoop did not report differences in selling functions and/or levels of intensity thereof between the two home market channels of distribution.<sup>69</sup> Dcoop reported that its U.S. sales were made through two channels of distribution, CEP sales to various customer categories made through its U.S. affiliates, and direct EP sales.<sup>70</sup> Dcoop reported that, in contrast to its comparison market sales, it undertook fewer selling functions for its CEP and EP sales, or that certain selling functions were made at substantially lesser levels of intensity for the following selling function categories: provision of sales support, provision of logistical services, and performance of sales related administrative activities.<sup>71</sup>

We find that none of the respondents in this administrative review (Agro Sevilla, Angel Camacho, and Dcoop) provided source documentation, requested by Commerce in the initial questionnaires, that supports the performance of specific selling activities that each company claimed to have undertaken for different reported channels of distribution. Specifically, there is no source documentation establishing that certain reported selling activities were undertaken in

---

<sup>61</sup> See Agro Sevilla's Section C Response dated December 20, 2019 at 15-16.

<sup>62</sup> See Agro Sevilla's Section A Response dated December 20, 2019 at Exhibit A-5.

<sup>63</sup> *Id.* at 18 and Exhibit A-5.

<sup>64</sup> See Angel Camacho's AQR at Exhibit A-6; *see also* Angel Camacho's Letter, "Camacho's Supplemental Section A Response: Ripe Olives from Spain (01/26/2018-07/31/2019)," dated March 20, 2020 at 5-10.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See Dcoop's Section A Response at Exhibit A-12; *see also* Dcoop's First Supplemental Response and Dcoop's Letter, "Fourth Supplemental Questionnaire Response," dated September 30, 2020.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

certain channels and not in others (e.g., sales forecasting, market research, strategic/economic planning for comparison market sales, but not for sales to the United States). Further, none of the companies provided the quantitative analysis, also requested by Commerce in the initial questionnaires, that is substantiated with source documents to show how: (1) the expenses for sales made at different claimed LOTs impact price comparability; or (2) the claimed levels of intensity for the selling activities reported in the selling functions chart are quantitatively supported. Because the respondents' respective reported selling functions and intensities thereof were unsubstantiated, we find that there is insufficient information on the record to determine, for each respondent, whether respective comparison market sales were made at a different LOT than U.S. sales.

The courts have confirmed that the mere existence of a CEP entity and CEP sales do not, in themselves, establish an entitlement to a CEP offset. In *Corus*, the Court stated, "CEP offset analysis thus compares the indirect selling activities that are undertaken outside the United States in support of the U.S. and comparison market sales. It is not automatic each time export price is constructed ... {t}he burden of proof is upon the claimant to prove entitlement ... ('if a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment')." <sup>72</sup> Moreover, Commerce recently explained the significance of the quantitative analysis as essential in supporting the claimed differences in selling functions and determining whether such differences are substantial in warranting a finding of sales being made at different LOTs. <sup>73</sup> Due to the absence of requested documentation and quantitative analysis, the record lacks any means of corroborating LOT claims for each respondent. Further, given the importance of the quantitative analysis to Commerce's LOT analysis, we find that none of the respondents have met their evidentiary burden. Accordingly, for Agro Sevilla, Angel Camacho, and Dcoop, we have not made a preliminary LOT adjustment or CEP offset under sections 773(a)(7)(A) or (B) of the Act. Our determination, under identical circumstances, is supported by recent administrative precedents. <sup>74</sup>

#### 4. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, Commerce requested cost information from Angel Camacho, Agro Sevilla, and Dcoop, and they submitted timely responses. We examined the respondents' respective cost data and determined that the quarterly cost methodology is not warranted for any of the three respondents and, therefore, we applied our standard methodology of using annual costs based on the reported data. <sup>75</sup>

---

<sup>72</sup> See *Corus Engineering Steels Ltd. v. United States*, 27 CIT 1286, 1290 (2003) (*Corus*) (citing *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315-16 (Fed. Cir. 2001) and quoting Statement of Administrative Action, H.R. Doc. No. 103-316 (1994) reprinted in 1994 U.S.C.C.A.N. 4040 at 829).

<sup>73</sup> See *Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020) (*PET Film Korea*), and accompanying IDM at Comment 4.

<sup>74</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020), and accompanying IDM at Comment 1 (where Commerce declined to find the existence of different LOTs or grant a CEP offset when the record lacked sufficient quantitative evidence corroborating a respondent's LOT claims); see also *PET Film Korea* IDM at Comment 4.

<sup>75</sup> See Angel Camacho Preliminary Analysis Memorandum; see also Agro Sevilla Preliminary Analysis

a. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. Except as stated below, we relied on the COP data submitted by Angel Camacho, Agro Sevilla, and Dcoop in their questionnaire responses for the COP calculation.

We relied on the COP data submitted by Agro Sevilla, except as follows:<sup>76</sup>

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

We relied on the COP data submitted by Angel Camacho, except as follows:<sup>77</sup>

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

We relied on the COP data submitted by Dcoop, except as follows:<sup>78</sup>

- We relied on partial facts available to adjust DCoop's reported CONNUM-specific costs to include the cost of manufacturing (COM) of identical products sold in third countries.
- We adjusted Dcoop's reported transfer prices of certain raw olive varieties purchased from certain affiliated parties in accordance the major input rule. We relied on partial adverse facts available for the COP of one affiliated cooperative in determining the adjustment to Dcoop's reported transfer price for certain olive varieties purchased from the affiliated cooperative.
- We relied on partial adverse facts available and used Dcoop's olive division's COM as the denominator to calculate the revised G&A expense rate.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

---

Memorandum; and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Alimentary Group Dcoop S. Coop. And," dated concurrently with this Preliminary Decision Memorandum (Dcoop Preliminary Cost Memorandum).

<sup>76</sup> See Agro Sevilla Preliminary Analysis Memorandum.

<sup>77</sup> See Angel Camacho Preliminary Analysis Memorandum.

<sup>78</sup> See Dcoop Preliminary Cost Memorandum.



Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information in the form and manner requested upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Section 782(d) of the Act states that if Commerce “determines that a response to a request for information... does not comply with the request,” it “shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews...”

Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Dcoop excluded merchandise sold in third country markets which had identical physical characteristics as the subject merchandise from the calculation of Dcoop’s reported CONNUM-specific weighted-average costs.<sup>79</sup> Because the information regarding the costs of the excluded merchandise meets all of the criteria of section 782(e) of the Act, we relied on facts available to adjust Dcoop’s reported CONNUM-specific weighted-average costs to include the COM of the identical products sold in third country markets.<sup>80</sup>

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed 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.<sup>81</sup> In so doing, Commerce is not required to determine, or make any adjustments to, estimated dumping margins based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>82</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to

---

<sup>79</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Supplemental Section D Questionnaire Response,” dated August 21, 2020 (Dcoop’s Third Supplemental Questionnaire Response) at 10; *see also* Dcoop’s Letter, “Ripe Olives from Spain: Pre-Preliminary Comments and Response to Musco’s Pre-preliminary Comments,” dated December 1, 2020 at 2.

<sup>80</sup> See Dcoop’s Preliminary Cost Memorandum.

<sup>81</sup> See 19 CFR 351.308(a); *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).

<sup>82</sup> See section 776(b)(1)(B) of the Act.

cooperate than if it had cooperated fully.”<sup>83</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>84</sup> It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>85</sup>

Commerce requested that Dcoop provide documentation that supported the COP calculation of the olives Dcoop’s affiliated cooperative purchased from one of its affiliated member growers.<sup>86</sup> Dcoop reported that it was unable to obtain the affiliated grower’s costs.<sup>87</sup> In its supplemental section D questionnaire, Commerce again requested that Dcoop provide the member grower’s COP information.<sup>88</sup> Because Dcoop failed to provide the requested information, we find that partial adverse facts available are warranted in regard to the member grower’s COP.<sup>89</sup> As adverse facts available, we relied on the per-unit COP of a different member grower in our analysis of Dcoop’s purchases of olives from the affiliated cooperative in accordance with the major input rule.<sup>90</sup> As a result of the analysis, we adjusted Dcoop’s reported transfer price of the olives purchased from this affiliated cooperative to reflect the higher COP.<sup>91</sup> In its original questionnaire, Commerce instructed Dcoop to calculate its G&A expenses using, as the G&A expense rate, the ratio of the company-wide G&A expenses to the company-wide cost of goods sold (COGS).<sup>92</sup> In its section D response, Dcoop provided a G&A expense rate for its olive division rather than a G&A rate for the company as a whole.<sup>93</sup> In its supplemental section D questionnaire, Commerce instructed Dcoop to revise its G&A expense rate in accordance with Commerce’s original instructions.<sup>94</sup> In response, Dcoop revised the numerator of its G&A expense rate to reflect the company-wide G&A expenses but failed to revise the denominator of the G&A expense rate to reflect the company-wide COGS.<sup>95</sup> Instead, Dcoop used its company-wide net revenue (total revenue less G&A expenses) as the denominator of the

---

<sup>83</sup> See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>84</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless-Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and Preamble, 62 FR at 27340.

<sup>85</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>86</sup> See Commerce’s Letter, dated April 29, 2020 (for Alimentary Group Dcoop S. Coop. And. Growers’ Cost of Production Questionnaire).

<sup>87</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Notification of Errata with respect to Dcoop’s April 3, 2020 Response to Section D Questionnaire for Unaffiliated Suppliers and Notification of Reporting Difficulty with respect to the Department’s April 29, 2020 Growers Cost of Production Questionnaire,” dated May 8, 2020 at 5.

<sup>88</sup> See Commerce’s Letter, dated May 14, 2020.

<sup>89</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Response to Growers’ Cost Of Production Questionnaire,” dated June 3, 2020 at 3.

<sup>90</sup> See Dcoop’s Preliminary Cost Memorandum.

<sup>91</sup> *Id.*

<sup>92</sup> See AD Questionnaire – Alimentary Group Dcoop dated October 29, 2019 at 110.

<sup>93</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Response of Alimentary Group Dcoop’s. Coop. to Section D of the Department’s October 20, 2019 Questionnaire,” dated December 19, 2019 (Dcoop’s Section D Response) at D-24 and Exhibit D-11.

<sup>94</sup> See Commerce’s Letter, dated August 7, 2020 at 5.

<sup>95</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Supplemental Section D Questionnaire Response,” dated August 21, 2020 (Third Supplemental Questionnaire Response) at 14 and Exhibit SD3-12.

G&A expense ratio.<sup>96</sup> Dcoop acknowledged Commerce's established practice of using COGS as the denominator of the G&A rate but claimed that because Dcoop is a cooperative that returns excess revenues (profits) to its members, the company-wide net revenue was the more appropriate denominator in this proceeding.<sup>97</sup> We preliminarily find that the use of partial adverse facts available is warranted in selection of the denominator of the G&A expense rate because Dcoop failed to act to the best of its ability in responding to Commerce's repeated requests for Dcoop's company-wide COGS. Because Dcoop's company-wide COGS is not available on the record of this proceeding, we relied on Dcoop's olive division's COM as the denominator of Dcoop's revised G&A expense rate.<sup>98</sup> We recalculated Dcoop's G&A expenses using the revised G&A expense rate.<sup>99</sup>

b. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the adjusted (where applicable) weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

Our cost tests indicated that, for Angel Camacho, Agro Sevilla, and Dcoop, more than 20 percent of sales of certain home market products were made at prices below the COP within an extended period of time and were made at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis for each respondent and used the remaining above-cost sales to determine NV.

---

<sup>96</sup> See Dcoop's Letter, "Ripe Olives from Spain: Fourth Section D Supplemental Questionnaire (Question2)," dated November 2, 2020 (Fourth Supplemental Questionnaire Response) at 2 and Exhibit SD4-2; *see also* Third Supplemental Questionnaire Response at 14.

<sup>97</sup> *Id.*

<sup>98</sup> See Dcoop's Preliminary Cost Memorandum.

<sup>99</sup> *Id.*

## 5. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on comparison market prices. We calculated NV for Angel Camacho, Agro Sevilla, and Dcoop based on prices to unaffiliated customers in the respective comparison market, and prices to affiliated customers, where applicable, which were determined to be at arm's length.<sup>100</sup>

We made deductions, where appropriate, from the starting price for billing adjustments, rebates, and discounts, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight, inland insurance, and warehousing expenses, where appropriate, under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act, and in circumstances of sale (imputed credit expenses, commissions, and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>101</sup>

## 6. Calculation of Normal Value Based on Constructed Value

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

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

---

<sup>100</sup> See the "Affiliated Party Transactions and Arm's-Length Test" section above.

<sup>101</sup> See 19 CFR 351.411(b).

## VI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

## VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

☐

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

12/18/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance