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MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

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; 2019-2020

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) August 1, 2019, through July 31, 2020. The review covers five producers or exporters of the subject merchandise, including two mandatory respondents: Agro Sevilla Aceitunas S.COOP Andalucia (Agro Sevilla) and Angel Camacho Alimentacion S.L. (Angel Camacho). 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.[1] On August 4, 2020, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.[2] On August 31, 2020, a domestic interested party, Musco Family Olive Company (Musco), requested an administrative review of the following three producers and/or exporters of ripe olives: Agro Sevilla; Angel Camacho; and Alimentary Group Dcoop S.Coop. And. (Dcoop).[3] Also on August 31, 2020, Agro Sevilla, Angel Camacho, Aceitunas Guadalquivir, S.L. (Guadalquivir), Internacional Olivarera, S.A. (Olivarera), and

[1] *See Ripe Olives from Spain: Antidumping Duty Order*, 83 FR 37465 (August 1, 2018) (*Order*).
[2] *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 47167 (August 4, 2020).
[3] *See* Musco's Letter, "Ripe Olives from Spain; 2nd Administrative Review; Request for Antidumping Duty Administrative Review," dated August 31, 2020.

Dcoop requested an administrative review.[4] On October 6, 2020, based on timely requests, Commerce initiated an administrative review of five companies: Guadalquivir, Agro Sevilla, Dcoop, Angel Camacho, and Olivarera, in accordance with 19 CFR351.221(c)(1)(i).[5]

In the *Initiation Notice* we explained that, in the event we were to 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.[6] On October 13, 2020, Commerce placed on the record the CBP data for U.S. imports of subject merchandise from the companies subject to this administrative review.[7] Commerce determined to individually examine two companies and, on November 24, 2020, we issued the AD questionnaire to Agro Sevilla and Angel Camacho.[8]

Musco submitted a market viability allegation with regard to Agro Sevilla's home market viability on January 4, 2021.[9] For a detailed discussion concerning this allegation, *see* Comparison Market section below.

Angel Camacho submitted timely responses to Commerce's AD questionnaire between December 22, 2020, and January 22, 2021. Between April 1, 2021, and July 28, 2021, Angel Camacho timely responded to Commerce's supplemental questionnaires. Agro Sevilla submitted timely responses to Commerce's AD questionnaire between December 22, 2020, and January 27, 2021. Between February 10, 2021, and July 30, 2021, Agro Sevilla submitted its responses to Commerce's supplemental questionnaires. On August 13, 2021, Musco submitted pre-preliminary comments regarding Camacho. On August 19, 2021, Musco submitted pre-preliminary comments regarding Agro Sevilla. On August 24, 2021, we issued a supplemental questionnaire to Agro Sevilla, the response of which is due after the preliminary results. Commerce intends to continue examining Agro Sevilla's reported standard costs. On August 24, 2021, Agro Sevilla submitted comments responding to Musco's pre-preliminary comments.

On April 5, 2021, Commerce extended the deadline for the preliminary results of this review to August 31, 2021, pursuant to section 751(a)(3)(A) of the Act.[10]

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,

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[4] *See* Agro Sevilla, Angel Camacho, Guadalquivar, Olivarera, and Dcoop's Letter, "Request for Administrative Review of Antidumping Order: Ripe Olives from Spain POR2," dated August 31, 2020.
[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 63081 (October 6, 2020) (*Initiation Notice*).
[6] *See Initiation Notice*, 85 FR at 63081.
[7] *See* Commerce's Letter, Release of CBP Data, dated October 13, 2020.
[8] *See* Commerce's Letters, AD Questionnaire, dated November 24, 2020; *see also* Memorandum, "Ripe Olives from Spain: Respondent Selection," dated November 23, 2020.
[9] *See* Musco's Letter, "Ripe Olives from Spain; 2nd Administrative Review Market Viability Allegation and Request for Verification for Agro Sevilla," dated January 4, 2021 (Musco MVA).
[10] *See* Memorandum, "Ripe Olives from Spain: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019-2020," dated April 5, 2021.

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[11] (including "Spanish-style," "Sicilian-style," 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

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[11] 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 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.

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. RATE FOR THE RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION

Three companies were not selected for individual examination in this review. Generally, Commerce looks to section 735(c)(5) of the Tariff Act of 1930, as amended (the Act), which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for the respondents not selected for individual examination in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available.[12]

In these preliminary results, we found non-*de minimis* weighted-average margins for Agro Sevilla and Angel Camacho. We cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and dumping margins for Agro Sevilla and Angel Camacho because doing so could indirectly disclose business proprietary information for both of these companies. Alternatively, we have previously applied the simple average of the dumping margins we determined for the selected companies.[13] In order to strike a balance between our duty to safeguard parties' business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected respondents using the publicly available, ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the AD margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.[14]

Accordingly, for the preliminary results of this review, we are assigning to the non-selected respondents the public weighted-average margin of Agro Sevilla's and Angel Camacho's dumping margins.[15]

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[12] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum (IDM) at Comment 16.
[13] *See, e.g.*, *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008).
[14] *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying IDM at Comment 1.
[15] *See* Memorandum, "Ripe Olives from Spain: Calculation of the Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.

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)(l)(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.[16]

In numerous investigations and reviews, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[17] Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

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,

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

[17] *See, e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

time periods, and comparable merchandise. Purchasers are based on the consolidated customer codes reported by Angel Camacho[18] and Agro Sevilla.[19] 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 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.

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[18] *See* Angel Camacho's Letter, "Angel Camacho Alimentación S.L.'s Response to Section C of the Department's Questionnaire: Ripe Olives from Spain," dated January 14, 2021 (Angel Camacho CQR) at 12 and Exhibit C-6.
[19] *See* Agro Sevilla's Letter, "Agro Sevilla's Section C Response: Ripe Olives from Spain (08/01/2019 – 07/31/2020)," dated January 15, 2021 (Agro Sevilla CQR) at 13-14.

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 Agro Sevilla, based on the results of the differential pricing analysis, Commerce preliminarily finds that 82.51 percent of the value of U.S. sales pass the Cohen's *d* test,[20] 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 the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when 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 89.13 percent of the value of U.S. sales pass the Cohen's d test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.[21] Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when

[20] *See* Memorandum, "Ripe Olives from Spain: Preliminary Analysis Memorandum for Agro Sevilla Aceitunas S.COOP Andalusia; 2019-2020," dated concurrently with this Preliminary Decision Memorandum (Agro Sevilla Preliminary Analysis Memorandum).

[21] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Ripe Olives from Spain: Preliminary Analysis Memorandum for Angel Camacho Alimentacion S.L.; 2019-2020," dated concurrently with this memorandum (Angel Camacho Preliminary Analysis Memorandum).

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 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 Agro Sevilla and Angel Camacho 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. As discussed in the "Normal Value" section below, we compared U.S. sales to sales made in the home market, Spain, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by Agro Sevilla and Angel Camacho in the following order of importance: olive form, drain weight, package type, and variety.[22]

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."[23] 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 producer establishes the material terms of sale.[24] 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.[25]

For comparison market and U.S. sales, both companies claimed that the invoice date best represents the date of sale.[26] 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

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[22] *See* Agro Sevilla Preliminary Analysis Memorandum and Angel Camacho Preliminary Analysis Memorandum.
[23] *See* 19 CFR 351.401(i).
[24] *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)).
[25] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.
[26] *See* Angel Camacho's Letters, "Camacho's Section A Response: Ripe Olives from Spain (08/01/2019-07/31/2020)," dated December 22, 2020 at 17-18 (Angel Camacho AQR); "Camacho's Section B Response: Ripe Olives from Spain," dated January 15, 2021 at 20 (Angel Camacho BQR); and Angel Camacho CQR at 14; *see also* Agro Sevilla's Letters, "Agro Sevilla's Section B Response: Ripe Olives from Spain (08/01/2019 – 07/31/2020)," dated January 15, 2021 (Agro Sevilla BQR) at 18-19 and Agro Sevilla CQR at 15-16.

or the shipment date was used to report the date of sale.[27] 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 Angel Camacho'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'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 and Agro Sevilla, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

For Angel Camacho, 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.

For both companies, 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. For Agro Sevilla, we made adjustments for movement expenses, including foreign inland freight, U.S. inland insurance, international freight, 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. For Angel Camacho, we made adjustments for movement expenses, including foreign inland freight, foreign inland insurance, 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 CEP for Agro Sevilla's countervailable export subsidies.[28]

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[27] *Id.*

[28] The portion of the countervailing duty (CVD) rate attributable to export subsidies in effect during the POR is 0.07 percent for Agro Sevilla. Angel Camacho's export subsidy rate was 0.00 percent and, therefore, did not warrant adjustment. *See Ripe Olives from Spain: Final Results of Countervailing Duty Administrative Review; 2017-2018*, 86 FR 35266 (July 2, 2021).

E. Normal Value

1. Selection of Comparison Market

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.

On January 4, 2021, Musco submitted a market viability allegation with respect to Agro Sevilla's home market.[29] On January 28, 2021, Musco submitted factual information pertaining to its market viability allegation in response to Agro Sevilla's section B response.[30] Musco argued that Agro Sevilla's sales to a certain customer in the home market are intended for export and thus, its volume of home market sales of the foreign like product is less than five percent of the aggregate volume of its U.S. sales of subject merchandise. On February 3, 2021, Agro Sevilla submitted its response to Musco's market viability allegation.[31] On February 17, 2021, and June 21, 2021, Musco submitted deficiency comments with additional arguments that Agro Sevilla's home market is not a viable comparison market.[32] On July 13, 2021, Commerce issued a supplemental questionnaire to Agro Sevilla requesting information pertaining to Musco's market viability allegation.[33] On July 21, 2021, Agro Sevilla submitted its response to Commerce's July 13, 2021 supplemental questionnaire.[34]

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for Agro Sevilla and Angel Camacho was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Angel Camacho and Agro Sevilla, 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.[35] Because the home market

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[29] *See* Musco MVA.

[30] *See* Musco's Letter, "Ripe Olives from Spain; 2nd Administrative Review Factual Information Related to Market Viability for Agro Sevilla," dated January 28, 2021.

[31] *See* Agro Sevilla's Letter, "Agro Sevilla's Response to Musco's Market Viability Allegations and Factual Information: Ripe Olives from Spain (08/01/2019 – 07/31/2020)," dated February 3, 2021.

[32] *See* Musco's Letters, "Ripe Olives from Spain; 2nd Administrative Review Comments on Agro Sevilla Sections B-C Responses," and "Ripe Olives from Spain; 2nd Administrative Review Supplemental Deficiency Comments Concerning Agro Sevilla," dated February 17, 2021 and June 21, 2021, respectively.

[33] *See* Commerce's Letter, "Supplemental Questionnaire (A-469-817) Agro Sevilla Aceitunas S.Coop. Andalusia (Agro Sevilla) Period of Review: August 1, 2019, through July 31, 2020," dated July 13, 2021.

[34] *See* Agro Sevilla's Letter, "Agro Sevilla's Section B Third Supplemental Questionnaire Response: Ripe Olives from Spain (08/01/2019 – 07/31/2020)," dated July 21, 2021.

[35] *See Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair*

viability analysis contains business proprietary information, we discuss these findings further in the analysis memorandum for Agro Sevilla.

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.[36] 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."[37]

Agro Sevilla reported that it made a small volume of home market sales to affiliates during the POR.[38] We preliminarily find that Agro Sevilla's home market sales to its affiliates passed the arm's-length test.[39] Angel Camacho reported sales of merchandise under consideration to an affiliated party in the home market during the POR.[40] We preliminarily find that Angel Camacho's home market sales to its affiliate 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.[41]

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).[42] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[43] 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.

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.")

36 *See* 19 CFR 351.403(c).

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

38 *See* Agro Sevilla BQR at 17.

39 *See* Agro Sevilla Preliminary Analysis Memorandum.

40 *See* Angel Camacho BQR at 3.

41 *See* section 771(15) of the Act; 19 CFR 351.102(b)(35).

42 *See* 19 CFR 351.412(c)(2).

43 *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) (*Orange Juice from Brazil*), and accompanying IDM at Comment 7.

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),[44] 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.[45]

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. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[46]

Agro Sevilla reported that it made sales through two 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.[47] 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.[48] 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; (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.[49] Agro Sevilla reported a single LOT for its CEP sales.[50] Agro Sevilla reported that the selling functions undertaken for its CEP sales were made at substantially lower levels of intensity for the selling function categories identified above, in contrast to its comparison market sales.[51]

Angel Camacho reported two channels of distribution in the home market: (1) direct sales to unaffiliated food service/industrial customers; and (2) sales to unaffiliated retail customers.[52] Angel Camacho reported dissimilar selling functions and/or intensities thereof across its comparison market channels of distribution for the following selling function categories:

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[44] 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).
[45] *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[46] *See, e.g.*, *Orange Juice from Brazil* IDM at Comment 7.
[47] *See* Agro Sevilla BQR at 18.
[48] *See* Agro Sevilla's Letter, "Agro Sevilla's Section A Response: Ripe Olives from Spain (08/01/2019 – 07/31/2020)," dated December 23, 2020 (Agro Sevilla AQR) at 16-22 and Exhibit A-5, and Agro Sevilla BQR at 27.
[49] *See* Agro Sevilla CQR at 14-15.
[50] *Id.* at 25.
[51] *See* Agro Sevilla AQR at 17-18 and Exhibit A-5.
[52] *See* Angel Camacho AQR at Exhibit A-5.

provision of sales support, provision of logistical services, and performance of sales related administrative activities.[53] 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 unaffiliated U.S. customers.[54] Angel Camacho reported that it undertook fewer selling functions for its CEP and EP sales or that certain selling functions were made at substantially lower levels of intensity for the selling function categories identified above, in contrast to its comparison market sales.[55]

We find that none of the respondents in this administrative review (Agro Sevilla and Angel Camacho) 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 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')."[56] 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.[57] Due to the absence of requested documentation and quantitative analysis, the record lacks any means of supporting the LOT claim of each respondent. 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 and Angel Camacho we have not made a

[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *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).
[57] *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.

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.[58]

4. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, Commerce requested cost information from Angel Camacho and Agro Sevilla and they submitted timely responses. We examined the respondents' respective cost data and determined that the quarterly cost methodology is not warranted for these respondents and, therefore, we applied our standard methodology of using annual costs based on the reported data.[59]

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 and Agro Sevilla in their questionnaire responses for the COP calculation.

We relied on the COP data submitted by Agro Sevilla, except as follows:[60]

- 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:[61]

- We negated a certain adjustment to direct materials cost because the amount for the adjustment (for certain raw materials purchases) that Angel Camacho derived, based on the estimated quantity of purchases and valued at standard cost, may not be representative of the actual POR value of the purchases in question, and supported by the information in Angel Camacho's accounting system. For this reason, we increased the cost of direct materials.

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

[58] *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.
[59] *See* Angel Camacho Preliminary Analysis Memorandum; *see also* Agro Sevilla Preliminary Analysis Memorandum.
[60] *See* Agro Sevilla Preliminary Analysis Memorandum.
[61] *See* Angel Camacho Preliminary Analysis Memorandum at 6.

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 and Agro Sevilla, 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.

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. For both respondents, when comparing U.S. sales with home market sales of similar merchandise, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.[62] We also deducted comparison market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Agro Sevilla

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made adjustments, where appropriate, from the starting price for billing adjustments, freight revenue, packing revenue and CVD export subsidies, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for packing expenses (offset by packing revenue) and inland freight expenses from the factory and/or warehouse to the customer (offset by freight revenue) under section 773(a)(6)(B)(ii) of the Act. In accordance with our practice,[63] we capped

[62] *See* 19 CFR 351.411(b).
[63] *See*, e.g., *Orange Juice from Brazil* IDM at Comment 2.

packing revenue by the amount of packing expenses, and freight revenue by the amount of inland freight expenses from the factory and/or warehouse to the customer incurred on each sale.[64]

For comparisons to CEP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses).

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

Angel Camacho

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts, billing adjustments, and late payment fees, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight expenses from the factory and/or warehouse to the customer (offset by freight revenue) under section 773(a)(6)(B)(ii) of the Act. In accordance with our practice,[65] we capped freight revenue by the amount of inland freight expenses from the factory and/or warehouse to the customer incurred on each sale.[66]

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses and commissions) and added U.S. direct selling expenses (*i.e.*, credit expenses and commissions).

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

6. Calculation of Normal Value Based on Constructed Value

For Angel Camacho, where we were unable to find a comparison market match of identical or similar merchandise, we based NV on constructed 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.

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[64] *See* Agro Sevilla Preliminary Analysis Memorandum.
[65] *See*, *e.g.*, *Orange Juice from Brazil* IDM at Comment 2.
[66] *See* Angel Camacho Preliminary Analysis Memorandum.

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Angel Camacho'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 Angel Camacho 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.

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

8/31/2021

X

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations