

## DEPARTMENT OF COMMERCE

## International Trade Administration

A-533-840

**Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from India with respect to 201 companies.<sup>1</sup> The respondents which the Department selected for individual review are Devi Sea Foods Limited (Devi) and Falcon Marine Exports Limited (Falcon). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the second administrative review of this order. The period of review (POR) is February 1, 2006, through January 31, 2007.

We preliminarily determine that sales made by Devi and Falcon have been made at below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

**EFFECTIVE DATE:** March 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3874.

**SUPPLEMENTARY INFORMATION:**

<sup>1</sup> This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.

**Background**

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain warmwater shrimp from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*). Subsequently, on February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from India for the period February 1, 2006, through January 31, 2007. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (Feb. 2, 2007). In response to timely requests from interested parties pursuant to 19 CFR 351.213(b)(1) and (2) to conduct an administrative review of the sales of certain frozen warmwater shrimp from numerous producers/exporters of subject merchandise, the Department published a notice of initiation of administrative review for 319 companies<sup>2</sup> and requested that each provide data on the quantity and value (Q&V) of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From Brazil, Ecuador, India and Thailand*, 72 FR 17100 (Apr. 6, 2007) (*Notice of Initiation*).

On April 5, 2007, the petitioner<sup>3</sup> requested that the Department determine whether antidumping duties had been absorbed by the respondents that were to be required to participate in this review.

During the period April through July 2007, we received responses to the Department's Q&V questionnaire from numerous companies. We were unable to locate 16 companies, and we did not receive properly filed responses to this questionnaire from the remaining companies.<sup>4</sup> For further discussion of our treatment of this latter group of

companies, see the "Application of Facts Available" section of this notice.

On May 25, 2007, Surya Marine Exports (Surya), one of the companies that responded to our Q&V questionnaire, notified us that it had changed its name during the POR and is now doing business under the name Suryamitra Exim Private Limited (Suryamitra). As a result, we solicited information on this change from Suryamitra, which the company supplied in June 2007 and February 2008. After analyzing this information, we preliminarily find that Suryamitra is the successor-in-interest to Surya Marine. For further discussion, see the "Successor-in-Interest" section of this notice, below.

On July 5, 2007, the Louisiana Shrimp Association (LSA) withdrew its request for an administrative review for 17 companies, with respect to which the petitioner also withdrew its request on March 16, 2007.

Based upon our consideration of the responses received to the Q&V questionnaire and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on July 19, 2007, we selected the two largest producers/exporters of certain frozen warmwater shrimp from India during the POR (*i.e.*, Devi and Falcon) as the mandatory respondents in this proceeding. See the memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James Maeder, Director, Office 2, AD/CVD Operations, entitled, "2006-2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review," dated July 19, 2007. On this same date, we issued the antidumping duty questionnaire to Devi and Falcon.

On July 26, 2007, we issued a letter to a non-selected Indian producer/exporter, Gajula Exim (P) Ltd. (Gajula), requesting that it reconcile its claim made in response to the Q&V questionnaire that it did not ship subject merchandise to the United States during the POR with information obtained from CBP. Although Gajula responded to this request for information in August 2007, it failed to properly file its response with the Department, despite repeated requests that it do so. Therefore, we have preliminarily assigned to Gajula a margin based on AFA. For further discussion, see the "Application of Facts Available" section of this notice, below.

<sup>2</sup> We note that we incorrectly stated in the Notice of Initiation that we were initiating administrative reviews for 313 companies for India.

<sup>3</sup> The petitioner is the Ad Hoc Shrimp Trade Action Committee.

<sup>4</sup> As discussed below, for certain of these companies, the petitioner subsequently withdrew its request for review.

We received responses to sections A, B, and C of the questionnaire from Devi and Falcon in August and September 2007. We also received a response to section D of the questionnaire from Devi in September 2007.

On August 24, 2007, the petitioner submitted comments regarding third country market selection with respect to Falcon, and on September 10, 2007, we determined that Japan is the appropriate third country comparison market for this respondent. *See* the memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "2006–2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India - Selection of the Appropriate Third Country Market for Falcon Marine Exports Limited," dated September 10, 2007 (Selection of Third Country Markets Memo). *See also* the "Home Market Viability and Selection of Comparison Markets" section of this notice, below, for further discussion.

On September 24, 2007, we provided Devi and Falcon an opportunity to submit proof that their unaffiliated purchasers will ultimately pay any antidumping duties assessed in this administrative review on their merchandise. Neither company responded to this request.

On September 25, 2007, we issued a letter to four Indian exporters/producers participating in this review (*i.e.*, Kadalkanny Frozen Foods (Kadalkanny), Edhayam Frozen Foods Pvt. Ltd. (Edhayam), Diamond Seafood Exports (Diamond), and Theva & Co. (Theva) (collectively, the "Kadalkanny Group")) regarding the companies' relationships with each other.

On September 27, 2007, the petitioner requested that the Department initiate a sales-below-cost investigation related to Falcon's sales to Japan.

On October 11, 2007, we received a response to the Department's September 25, 2007, letter from the Kadalkanny Group.

On October 16, 2007, we initiated a sales-below-cost investigation for Falcon. *See* the memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "The Petitioner's Allegation of Sales Below the Cost of Production for Falcon Marine Exports Limited," dated October 16, 2007 (Sales-Below-Cost-Memo for Falcon). On this same date, we required Falcon to respond to section D of the questionnaire. It submitted its response in December 2007.

On October 19, 2007, an Indian governmental agency, the Marine Products Export Development Authority (MPEDA), requested that the

Department rescind the administrative review with respect to the following Indian companies: 1) those exporters for which the review was requested solely by either the petitioner or the LSA, based on the claim that these requests did not meet the requirements of 19 CFR 351.213(b); and 2) any exporters which are not registered with MPEDA and did not respond to the Department's request for information, based on the claim that these companies are not permitted to export products from India (and, thus, could not have shipped subject merchandise to the United States during the POR). For further discussion of this request, see the "Partial Rescission of Review" section of this notice, below.

On October 26, 2007, the Department postponed the preliminary results in this review until no later than February 28, 2008. *See Certain Frozen Warmwater Shrimp From Brazil, Ecuador, India, Thailand, and the Socialist Republic of Vietnam: Notice of Extension of Time Limits for the Preliminary Results of the Second Administrative Reviews*, 72 FR 60800 (Oct. 26, 2007).

On November 13, 2007, we again contacted the Kadalkanny Group regarding the affiliation among the individual members of the Group. We received its response in December 2007.

On December 10, 2007, we requested that Devi provide additional information related to its reported comparison market sales.

On December 20, 2007, we determined that it was appropriate to collapse the companies within the Kadalkanny Group and thus to treat them as a single entity in this proceeding, in accordance with 19 CFR 351.401(f). For further discussion, see the "Collapsing the Kadalkanny Group" section of this notice, below.

During the period October 2007 through February 2008, we issued to Falcon and Devi several supplemental questionnaires regarding sections A, B, C, and D of the original questionnaires. We received responses to these questionnaires during the period November 2007 through February 2008.

On January 8, 2008, we notified interested parties of our intent to rescind this administrative review with respect to a number of Indian producers/exporters of subject merchandise. *See* the memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled, "Intent to Rescind In Part the 2006–2007 Antidumping Duty Administrative Review on Frozen Warmwater Shrimp from India," dated January 8, 2008 (Intent to Rescind Memo).

On January 11, 2008, we received comments on the Intent to Rescind Memo from a non-selected Indian producer/exporter participating in this review, Asvini Fisheries Private Limited (Asvini). In its January 11 submission, Asvini notified us that it had changed its name during the POR from Asvini Fisheries Limited to Asvini, and it requested that the Department not rescind the review with respect to Asvini under its former name.

On January 25, 2008, we published a notice rescinding the administrative review with respect to 114 companies, based on: 1) timely withdrawals of the review requests; 2) confirmed statements of no shipments during the POR; 3) our inability to locate certain companies; and/or 4) duplicated names in our notice of initiation. *See Certain Frozen Warmwater Shrimp from India; Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 6125 (Feb. 1, 2008) (*Notice of Rescission*). *See also* the Intent to Rescind Memo.

On February 5, 2008, we solicited information from Asvini regarding its name change, which the company supplied on February 19, 2008. After analyzing this information, we preliminarily find that Asvini Fisheries Private Limited is the successor-in-interest to Asvini Fisheries Limited. For further discussion, see the "Successor-in-Interest" section of this notice, below.

Finally, on February 28, 2008, we requested additional information from Devi and Falcon regarding their reported U.S. sales of subject merchandise. Because this information is not due until after the date of these preliminary results, we will consider it for purposes of the final results.

#### Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>5</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of

<sup>5</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the

following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

#### Successor-in-Interest

In making a normal successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. See *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002), and *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no one of these factors is dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. See *Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (Feb. 14, 1994); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (Jan. 13, 2006).

As noted above, during the course of this review, two Indian producers/exporters of subject merchandise informed the Department that they have changed their names and are now doing business under new names. As a result, we are conducting investigations to determine whether the new companies are successors-in-interest to the former entities. Our findings are discussed below.

#### A. Asvini

In April 2007, Asvini submitted a consolidated response to the Department's Q&V questionnaire on behalf of itself and Asvini Fisheries Limited. In this submission, Asvini informed the Department that the two companies are the same entity, and that, until March 2005, Asvini had operated under the name Asvini Fisheries Limited. Asvini provided a "Fresh Certificate of Incorporation Consequent on Change of Name" demonstrating that

Asvini Fisheries Limited was converted from a public company to a private company at that time and renamed Asvini Fisheries Private Limited.

In January 2008, based on Asvini's assertions in its April 2007 submission, the Department notified all interested parties that it intended to rescind the review with respect to Asvini Fisheries Limited because it considered this company name to be a duplicate of Asvini. See the Intent to Rescind Memo. At that time, we afforded all interested an opportunity to comment on this action. On January 11, 2008, Asvini requested that the Department not rescind the review for Asvini Fisheries Limited because, although this company name no longer legally existed during the POR, Asvini continued to use it to make shipments of subject merchandise to the United States. According to Asvini, this occurred because the customs bond required by CBP was still in the name of Asvini Fisheries Limited and CBP insisted that the company name on the entry documents conform to the bond. On February 5, 2008, we requested information related to Asvini's name change to determine if Asvini is the successor-in-interest to Asvini Fisheries Limited. Specifically, we requested that Asvini address any changes in the four factors noted above (i.e., management, production facilities for the subject merchandise, supplier relationships, and customer base) in the former company and the reincorporated entity.

On February 19, 2008, Asvini responded to the Department's request. In this submission, Asvini provided evidence that, in March 2005, Asvini Fisheries Limited changed its name to Asvini Fisheries Private Limited, and that the name change had no effect on the company's operations. According to Asvini, there were no changes to Asvini Fisheries Limited's management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. Specifically, Asvini maintained that the only change as a result of the name change was to convert the company from a public limited company under Indian law to a private limited company.

Based on our analysis of Asvini's February 19, 2008, submission, we preliminarily find that Asvini Fisheries Limited's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we preliminarily find that Asvini operates as the same business entity as Asvini Fisheries Limited with respect to the production and sale of

shrimp. Thus, we preliminarily find that Asvini is the successor-in-interest to Asvini Fisheries Limited, and, as a consequence, the Department has treated these companies as the same entity for purposes of this proceeding. For further discussion, see the memorandum to James Maeder, Office Director, from Henry Almond, Analyst, entitled, "Successor-In-Interest Determination for Asvini Fisheries Private Limited and Asvini Fisheries Limited in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2008.

#### B. Surya

In May 2007, Surya informed the Department that the company changed its name at the beginning of the POR to Suryamitra, and it is now doing business under this new name. As a result, on June 13, 2007, we requested that Suryamitra address the four factors noted above (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base) with respect to this change in name in order to determine whether Suryamitra is the successor-in-interest to Surya.

On June 27, 2007, Suryamitra responded to the Department's request. In this submission, Suryamitra provided evidence that, in February 2006, Surya changed its name to Suryamitra, and that the name change had no effect on the company's operations. According to this evidence, Suryamitra explained that there were no changes to Surya's management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. Specifically, Suryamitra maintained that the only change as a result of the name change was to convert the company from a partnership firm under Indian law to a private limited company. On January 29, 2008, we requested additional documentation from Suryamitra to support its statements that the name change did not affect its production facilities, supplier relationships, and customer base. Suryamitra provided this information on February 27, 2008.

Based on our analysis of Suryamitra's June 27, 2007, and February 27, 2008, submissions, we preliminarily find that Surya's organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we preliminarily find that Suryamitra operates as the same business entity as Surya with respect to the production and sale of shrimp.

Thus, we preliminarily find that Suryamitra is the successor-in-interest to Surya and, as a consequence, the Department has treated these companies as the same entity for purposes of this proceeding. For further discussion, see the memorandum to James Maeder, Office Director, from Elizabeth Eastwood, Senior Analyst, entitled, "Successor-In-Interest Determination for Surya Marine Exports and Suryamitra Exim Pvt. Ltd. in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2008.

#### Collapsing the Kadalkanny Group

As noted above, on April 23, 2007, the Kadalkanny Group submitted a consolidated response to the Department's Q&V questionnaire. In October and December 2007, we received information from these companies regarding their relationships with each other during the POR. After an analysis of this information, we determined that, in accordance with 19 CFR 351.401(f), it is appropriate to collapse these entities for purposes of this review because: 1) entities within the group are affiliated and have production facilities for identical or similar merchandise that would not require significant retooling in order to restructure manufacturing priorities; and 2) a significant potential for manipulation exists due to common ownership, overlapping management and board of directors, and intertwined operations. For further discussion, see the memorandum from The Team to James Maeder, Director, Office 2, entitled "Whether to Collapse Kadalkanny Frozen Foods, Edhayam Frozen Foods Pvt. Ltd., Diamond Seafood Exports, and Theva & Co. in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated December 20, 2007.

#### Preliminary Partial Rescission of Review

As noted above, in February 2007, the Department received timely requests, in accordance with 19 CFR 351.213(b)(1), from the petitioner and the LSA to conduct a review of the four Indian producers/exporters of subject merchandise in the Kadalkanny Group. The Department initiated a review of these four companies and requested that they supply data on the quantity and value of their exports of shrimp during the POR. In April 23, 2007, the Kadalkanny Group submitted a consolidated response to the Department's Q&V questionnaire, in

which it indicated that only one of its members (*i.e.*, Kadalkanny) exported subject merchandise to the United States during the POR.

Both the petitioner and the LSA withdrew their administrative review requests for Kadalkanny. Moreover, we confirmed with CBP the claims made by two additional members of this group, Diamond and Theva, that they had no shipments of subject merchandise during the POR. Finally, on January 17 and February 7, 2008, we received information from Edhayam which demonstrated that its sole entry of subject merchandise during the POR was not a reportable transaction because it was a free sample. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are preliminarily rescinding our review with respect to the Kadalkanny Group. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

In addition, also as noted above, in October 2007 MPEDA requested that the Department rescind the administrative review with respect to the following Indian companies: 1) those exporters for which the review was requested solely by either the petitioner or the LSA, based on the claim that these requests did not meet the requirement of 19 CFR 351.213(b); and 2) any exporters which are not registered with MPEDA and did not respond to the Department's request for information, based on the claim that these companies do not have export licenses and are not permitted to export products from India (and, thus, could not have shipped subject merchandise to the United States during the POR). After considering these requests, we find that there is no basis to rescind this administrative review for any companies other than those in the Kadalkanny Group. Specifically, regarding MPEDA's first point, under 19 CFR 351.213(b), a party requesting an administrative review must list the individual exporters or producers for which it is requesting administrative reviews and state why it desires the Department to review those particular exporters or producers. The review requests submitted by both the petitioner and the LSA satisfied the requirements of 19 CFR 351.213(b), and thus there is no basis to rescind the administrative reviews requested by these parties. Regarding MPEDA's second point, under the regulations the Department may only rescind administrative reviews for which the

requester maintains its request if the Department concludes that the respondent had no shipments during the POR pursuant to 19 CFR 351.213(d)(3). We have examined the evidence placed on the record by MPEDA to demonstrate that certain respondents could not have shipped subject merchandise during the POR and find that this information is contradicted by information placed on the record by other parties to this proceeding. Specifically, we note that certain of the companies that MPEDA claims are prohibited from exporting subject merchandise did, in fact, provide data on their exports of such merchandise to the Department in their Q&V questionnaire responses, and thus the information submitted by MPEDA is not reliable. *See, e.g.,* the April 20, 2007, Q&V questionnaire response of Devi Sea Foods Limited; and the April 23, 2007, Q&V questionnaire responses of Asvini Fisheries Limited, Selvam Exports Private Limited, Asvini Exports, Devi Fisheries Limited, Satya Seafoods Private Limited, Usha Seafoods, Five Star Marine Exports Private Limited, Sagar Grandhi Exports Pvt. Ltd., GVR Exports Pvt. Ltd., Star Agro Marine Exports Private Limited, Wellcome Fisheries Limited, and Vinner Marine. Further, because our review covers the first party in the commercial chain that had knowledge that the merchandise was ultimately destined for the United States, the mere fact that a company subject to the review did not have an export license and was not the official exporter does not disqualify it from the review or otherwise require that we rescind the review of these companies. *See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (Sept. 12, 2007), and accompanying Issues and Decisions Memorandum at Comment 12 (*citing Hyundai Elecs. Indus. Co. v. United States*, 342 F. Supp.2d 1141, 1146 (CIT 2004)); and *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 12, 2006), and accompanying Issues and Decisions Memorandum at Comment 1 (“[U]nder section 772(a) of the Act, the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of

the destination, is the appropriate party to be reviewed.”). Consequently, we preliminarily determine that it is not appropriate to rely upon the information submitted by MPEDA or to partially rescind the review based on MPEDA’s October 19, 2007, request.

#### Application of Facts Available

Section 776(a) of the Tariff Act of 1930, as amended, provides that the Department will apply “facts otherwise available” if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, 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 discussed in the “Background” section above, in April 2007, the Department requested that all companies subject to review respond to the Department’s Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 23, 2007. Of the 319 companies initially subject to review, numerous companies did not respond to the Department’s initial requests for information. Subsequently, in May 2007 and then again in June 2007, the Department issued letters to these companies affording them additional opportunities to submit a response to the Department’s Q&V questionnaire. However, 126 companies also failed to respond to the Department’s final requests for Q&V data.<sup>6</sup> On February 25, 2008, the Department placed documentation on the record confirming delivery of the questionnaires to each of these companies. *See* the memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled, “Placing Delivery Information on the Record of the 2006–2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India,” dated February 25, 2008. By failing to respond to the Department’s Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department’s questionnaire, the

Department preliminarily finds that the use of total facts available is warranted.

Furthermore, one additional company, Gajula, claimed that it made no shipments of subject merchandise to the United States during the POR. However, because we were unable to confirm the accuracy of Gajula’s claim with CBP, we requested further information/clarification from this exporter. Gajula responded to the Department’s inquiry via e-mail on August 16, 2007, but did not indicate if its submission contained either public or business proprietary information. Therefore, on August 16, 2007, we informed Gajula via e-mail of the Department’s filing requirements. *See* the memorandum to the File from Nichole Zink, Analyst, entitled, “Placing E-mail to Gajula Exim (P) Ltd. on the Record in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India” (First Gajula E-Mail Memo), dated August 16, 2007. On August 22, 2007, Gajula submitted a hard copy of its response, but again failed to follow the Department’s filing requirements and failed to indicate if the submission contained business proprietary or public information. On September 7, 2007, we issued a letter to Gajula again informing the company of the Department’s filing requirements, providing information regarding the treatment of proprietary information and the preparation of a public version of a response, and requiring it to properly file its response. On September 29, 2007, Gajula faxed a letter to the Department in which it stated that the information contained in its August submission should be treated as business proprietary information. However, Gajula did not indicate the specific information in the August submission which should be designated as business proprietary. As a result, on October 1 and 17, 2007, we provided Gajula additional detailed instructions regarding the treatment of proprietary information and the preparation of a public version of a response, and we again required it to properly file its submissions on the record of this proceeding. *See* the memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled, “Placing October E-Mail Correspondence with Gajula Exim (P) Ltd. on the Record of the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India” (Second Gajula E-Mail Memo), dated October 17, 2007. Gajula failed to respond to the Department’s October communications

<sup>6</sup> These companies are listed in the “Preliminary Results of the Review” section of this notice under the heading “AFA Rate Applicable to the Following Companies.”

and did not remedy the deficiencies in its August submission.

Although the Department afforded Gajula multiple opportunities to correct the procedural deficiencies in its response, it failed to do so. By failing to respond to the Department's requests, Gajula withheld requested information and significantly impeded the proceeding. Consequently, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available for Gajula is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.A.N. 4040, 4198-99.

Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that each of the 127 companies listed under the heading "AFA Rate Applicable to the Following Companies" in the "Preliminary Results of the Review" section of this notice, below, did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. See *Nippon*, 337 F.3d at 1382-83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts

available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 110.9 percent, which is the highest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation). See *Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3880 (Jan. 27, 2004). The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (i.e., we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

Information from the petition constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); see also SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the margins in the petition, we compared them to the transaction-specific rates calculated for each respondent in this review. We find that the highest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation), 110.9 percent, is reliable and relevant because it is similar to a transaction-specific margin calculated for a mandatory respondent and there is no evidence on the record of this administrative review to indicate that this transaction-specific margin is aberrational. See *Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006). For the company-specific information used to corroborate this rate, see the memorandum to the File from Henry

Almond, Analyst, entitled "Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2006-2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2008. Therefore, we have determined that the 110.9 percent margin is appropriate as AFA and are assigning it to the uncooperative companies listed above.

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. We were unable to find any information that would discredit the selected AFA rate.

Because we did not find evidence indicating that the selected margin is not appropriate and because this margin is similar to a transaction-specific margins calculated for a mandatory respondent, we have preliminarily determined that the 110.9 percent margin, as alleged in the petition and adjusted at the initiation of the LTFV investigation, is appropriate as AFA and are assigning this rate to the 127 companies listed under the heading "AFA Rate Applicable to the Following Companies" in the "Preliminary Results of the Review" section of this notice, below.

#### Duty Absorption

On April 5, 2007, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Although this review was initiated two years after the publication of the order, Falcon, one of the two mandatory respondents, made only

export price (EP) sales to unaffiliated parties during the POR, while Devi, the other mandatory respondent, acted as the importer of record for both its EP and constructed export price (CEP) sales during the POR. Therefore, it is not appropriate to make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act. *See Agro Dutch Industries Ltd. v. United States*, 508 F.3d 1024, 1033 (Fed. Cir. 2007).

#### Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp from India to the United States were made at less than NV, we compared the EP or CEP to the NV, as described in the “Constructed Export Price/Export Price” and “Normal Value” sections of this notice.

Pursuant to sections 773(a)(1)(B)(i) and 777A(d)(2) of the Act, for Devi and Falcon, we compared the EPs or CEPs of individual U.S. transactions, as applicable, to the weighted-average NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the “Cost of Production Analysis” section below.

#### Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Devi and Falcon covered by the description in the “Scope of the Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of non-broken shrimp to sales of non-broken shrimp made in Canada (for Devi) and Japan (for Falcon) within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical non-broken merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. For Devi and Falcon, where there were no sales of identical or similar merchandise, we made product comparisons using constructed value (CV). *See* section 773(a)(4) of the Act.

With respect to sales comparisons involving broken shrimp, we compared Falcon’s sales of broken shrimp in the United States to CV because Falcon

made no sales of broken shrimp in its comparison market.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Devi and Falcon in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

#### Constructed Export Price/Export Price

For all U.S. sales made by Falcon, and for certain U.S. sales made by Devi, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

For the remaining U.S. sales made by Devi, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of this company by its subsidiary in the United States to unaffiliated purchasers.

##### A. Devi

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight expenses, other miscellaneous shipment charges, foreign brokerage and handling expenses, international freight expenses (including terminal handling charges), marine insurance, U.S. customs duties, U.S. brokerage and handling expenses, U.S. warehousing expenses, and U.S. inland freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes in accordance with section 772(c)(2)(B) of the Act.

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for discounts and rebates in accordance with 19 CFR 351.401(c). We

made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance expenses, U.S. inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), and U.S. warehousing expenses.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, export inspection agency (EIA) fees, imputed credit expenses, and other direct selling expenses), commissions, and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). For those sales for which Devi had not received payment as of the date of its most recent questionnaire response, we recalculated U.S. credit expenses using the date of the preliminary results as the date of payment. Finally, where commissions were paid in the U.S. market but not in the comparison market, we offset these commissions by the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market. We recalculated inventory carrying costs using the manufacturing costs reported in Devi’s most recent COP database, adjusted as noted in the “Calculation of Cost of Production” section of this notice, below.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Devi and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

##### B. Falcon

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for cold storage



expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, port charges, export survey charges, terminal and handling charges, other miscellaneous shipment charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes in accordance with section 772(c)(2)(B) of the Act.

### Normal Value

#### *A. Home Market Viability and Selection of Comparison Markets*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for Devi and Falcon was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to Canada and Japan as the basis for comparison market sales for Devi and Falcon, respectively, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404 because, among other things, sales of foreign like product in these third country markets were the most similar to the subject merchandise. See the Selection of Third Country Markets Memo for further discussion.

#### *B. Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in

the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, 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>7</sup> we consider 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. See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

When the Department 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, the Department 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 an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See, *e.g.*, *Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

#### *1. Devi*

Devi reported that it made sales through two channels of distribution in the United States (*i.e.*, EP sales made directly to unaffiliated customers and CEP sales via an affiliated reseller); however, it stated that the selling activities it performed did not vary by channel of distribution. Devi reported performing the following selling functions for its U.S. sales: handling of sales inquiries, order processing, sales

planning, personnel training, sales promotion, warranty service, freight and delivery services (including pre-shipment inspection, foreign transportation, export customs clearance, U.S. import clearance, and U.S. transportation), inventory maintenance in India, extension of credit to U.S. customers, and packing. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and, 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Devi performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for U.S. sales. Because Devi's selling activities did not vary by distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to Canada, Devi reported that it made sales through a single channel of distribution (*i.e.*, sales made directly to unaffiliated customers). We examined the selling activities performed for third country sales and found that Devi performed the following selling functions: handling of sales inquiries, order processing, sales planning, personnel training, sales promotion, warranty service, freight and delivery services (including pre-shipment inspection and foreign transportation), inventory maintenance in India, extension of credit to Canadian customers, and packing. Accordingly, based on the core selling functions noted above, we find that Devi performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing, and warranty and technical services for third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Devi's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Devi.

Finally, we compared the U.S. LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

<sup>7</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.



## 2. Falcon

Falcon reported that it made EP sales in the U.S. market to trading companies and distributors. Because Falcon reported no difference in the selling activities it performed for these two customer categories, we find that there is only one channel of distribution for Falcon's EP sales. We examined the selling activities performed for this channel and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; cold storage and inventory maintenance; quality assurance related activities; payment receipt; and packaging services. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Falcon reported that it made sales to trading companies. We examined the selling activities performed for third country sales, and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; cold storage and inventory maintenance; quality assurance related activities; payment receipt; and packaging services. Accordingly, based on the core selling functions, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Falcon.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determine that sales to

the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

### C. Cost of Production Analysis

We found that Devi had made sales below the COP in the LTFV investigation, the most recently completed segment of this proceeding as of the date the questionnaire was issued in this review, and such sales were disregarded. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47116–17 (Aug. 4, 2004); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (Dec. 23, 2004) (*LTFV Final Determination*). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Devi made sales in the third country market at prices below the cost of producing the merchandise in the current review period.

Moreover, based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that Falcon's sales of frozen warmwater shrimp in the third country comparison market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales–below-cost investigation to determine whether Falcon's sales were made at prices below their respective COPs. See the Sales–Below-Cost Memo for Falcon.

### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except for the following instances:

#### a. Devi

- i. We included hatchery expenses, as well as Devi's reported input taxes, in the calculation of Devi's total cost of manufacture.

- ii. We recalculated Devi's financial and G&A expense ratios to include windmill power generation expenses and hatchery expenses in the cost of goods sold used as the denominator of both ratios. In calculating Devi's financial expense ratio, we also added interest on a term loan for the windmill to net interest expenses.

For further discussion of these adjustments, see the memorandum from Laurens van Houten, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Devi Sea Foods Limited," dated February 28, 2008.

#### b. Falcon

We relied on the cost database submitted by Falcon in its February 19, 2008, response.

### 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the "Price-to-Price Comparisons" section.

### 3. Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost

sales when: 1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Devi's and Falcon's third country sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable third country sales in the ordinary course of trade, we compared CEPs or EPs, as appropriate, to the CV in accordance with section 773(a)(4) of the Act. See “Calculation of Normal Value Based on Constructed Value” section below.

#### *D. Calculation of Normal Value Based on Comparison Market Prices*

##### *1. Devi*

For Devi, we calculated NV based on delivered prices to unaffiliated customers in Canada. We made adjustments to the starting price, where appropriate, for discounts in accordance with 19 CFR 351.401(c). We made deductions for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 18165, 18169 (Apr. 15, 2002) (*Steel Wire Rod from Brazil Preliminary Determination*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62134 (Oct. 3, 2002) (*Steel Wire Rod from Brazil Final Determination*). We also made deductions for foreign inland freight expenses, other miscellaneous shipment charges, foreign brokerage and handling expenses, and international freight expenses (including terminal handling charges) under section 773(a)(6)(B) of the Act.

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 for direct selling expenses (including bank charges, EIA fees,

imputed credit expenses, and other direct selling expenses), and commissions. Where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. See 19 CFR 351.410(e). If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. *Id.*

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (including bank charges, EIA fees, imputed credit expenses, and other direct selling expenses), and commissions. Where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. See 19 CFR 351.410(e). If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. *Id.*

For all price-to-price comparisons, 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 also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

##### *2. Falcon*

We based NV for Falcon on delivered prices to unaffiliated customers in Japan. We made adjustments, where appropriate, to the starting price for discounts in accordance with 19 CFR 351.401(c). We made deductions from the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. See *Steel Wire Rod from Brazil Preliminary Determination*, 67 FR at 18169, unchanged in *Steel Wire Rod from Brazil Final Determination*. We also made deductions, where appropriate, from the starting price for cold storage expenses, loading and unloading expenses, trailer hire expenses, inland freight expenses, port charges, export survey charges, other miscellaneous shipment charges, foreign brokerage and handling expenses, and international freight expenses (including terminal and handling

charges), under section 773(a)(6)(B)(ii) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for commissions, imputed credit expenses, bank fees, EIA fees, export credit guarantee corporation premiums, outside inspection/lab expenses, letter of credit amendment charges, and other miscellaneous selling expenses. For those sales for which Falcon had not received payment as of the date of its most recent questionnaire response, we recalculated U.S. credit expenses using the date of the preliminary results as the date of payment. Finally, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market. See 19 CFR 351.410(e). If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. *Id.* We recalculated inventory carrying costs using the manufacturing costs reported in Falcon's most recent COP database.

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 also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### *E. Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section, above. We based SG&A and profit for each respondent on

the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV. *See* 19 CFR 351.410(c). For those U.S. sales for which the respondents had not received payment as of the date of their most recent questionnaire responses, we recalculated U.S. credit expenses using the date of the preliminary results as the date of payment. For comparisons to Devi's CEP, we made circumstance-of-sale adjustments by deducting comparison market direct selling expenses from CV. *Id.* We also made adjustments, when applicable, for comparison market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons. *See* 19 CFR 351.410(e).

#### Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by Devi and Falcon 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. In addition, both Devi and Falcon reported that they purchased forward exchange contracts which were used to convert the currency in which certain sales transactions were made into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency. *See LTFV Final Determination and accompanying Issues and Decisions Memorandum at Comment 6; see also Certain Frozen Warmwater Shrimp from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10658, 10667 (Mar. 9, 2007), unchanged in 2004–2006 *Final Results*. Therefore, for Devi and Falcon we used the reported forward exchange rates for currency conversions where applicable.

#### Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2006, through January 31, 2007, as follows:

| Manufacturer/Exporter             | Percent Margin |
|-----------------------------------|----------------|
| Devi Sea Foods Limited .....      | 0.70           |
| Falcon Marine Exports Limited ... | 1.69           |

Review-Specific Average Rate Applicable to the Following Companies:<sup>8</sup>

| Manufacturer/Exporter                                           | Percent Margin |
|-----------------------------------------------------------------|----------------|
| Ananda Aqua Exports (P) Ltd. ...                                | 1.09           |
| Ananda Foods .....                                              | 1.09           |
| Andaman Sea Foods Pvt. Ltd. ...                                 | 1.09           |
| Angelique International Ltd. ....                               | 1.09           |
| Apex Exports .....                                              | 1.09           |
| Asvini Exports .....                                            | 1.09           |
| Asvini Fisheries Limited/Asvini Fisheries Private Limited ..... | 1.09           |
| Avanti Feeds Limited .....                                      | 1.09           |
| Bhatsons Aquatic Products .....                                 | 1.09           |
| Bluepark Seafoods Pvt. Ltd. ....                                | 1.09           |
| Calcutta Seafoods .....                                         | 1.09           |
| Castlerock Fisheries Pvt. Ltd. ....                             | 1.09           |
| Choice Canning Company .....                                    | 1.09           |
| Choice Trading Corporation Pvt. Ltd. ....                       | 1.09           |
| Coreline Exports .....                                          | 1.09           |
| Devi Fisheries Limited .....                                    | 1.09           |
| Digha Sea Food Exports .....                                    | 1.09           |
| Five Star Marine Exports Private Limited .....                  | 1.09           |
| GVR Exports Pvt. Ltd. ....                                      | 1.09           |
| Gayatri Sea Foods .....                                         | 1.09           |
| Haripriya Marine Export Pvt. Ltd. ....                          | 1.09           |
| Hindustan Lever, Ltd. ....                                      | 1.09           |
| IFB Agro Industries Limited .....                               | 1.09           |
| ITC Limited, International Business Division .....              | 1.09           |
| Jaya Satya Marine Exports Pvt. Ltd. ....                        | 1.09           |
| Jaya Lakshmi Sea Foods Pvt. Ltd. ....                           | 1.09           |
| K V Marine Exports .....                                        | 1.09           |
| Kings Marine Products .....                                     | 1.09           |
| Konark Aquatics & Exports Pvt. Ltd. ....                        | 1.09           |
| Magnum Estate Private Limited .....                             | 1.09           |
| Magnum Export .....                                             | 1.09           |
| Magnum Sea Foods Private Limited .....                          | 1.09           |
| Mangala Marine Exim India Pvt. Ltd. ....                        | 1.09           |
| Mangala Sea Products .....                                      | 1.09           |
| NGR Aqua International .....                                    | 1.09           |
| Navayuga Exports Ltd. ....                                      | 1.09           |
| Nekkanti Sea Foods Limited .....                                | 1.09           |
| Nila Sea Foods Pvt. Ltd. ....                                   | 1.09           |
| Penver Products (P) Ltd. ....                                   | 1.09           |
| RVR Marine Products Private Limited .....                       | 1.09           |

<sup>8</sup> This rate is based on the weighted average of the margins calculation for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on AFA.

| Manufacturer/Exporter                                                                                                                                                                                                                                                               | Percent Margin |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Raa Systems Pvt. Ltd. ....                                                                                                                                                                                                                                                          | 1.09           |
| Raju Exports .....                                                                                                                                                                                                                                                                  | 1.09           |
| Ram's Assorted Cold Storage Ltd. ....                                                                                                                                                                                                                                               | 1.09           |
| S A Exports .....                                                                                                                                                                                                                                                                   | 1.09           |
| Sagar Grandhi Exports Pvt. Ltd. ....                                                                                                                                                                                                                                                | 1.09           |
| Sai Marine Exports Pvt. Ltd. ....                                                                                                                                                                                                                                                   | 1.09           |
| Sandhya Marines Limited .....                                                                                                                                                                                                                                                       | 1.09           |
| Satya Seafoods Private Limited .....                                                                                                                                                                                                                                                | 1.09           |
| Seagold Overseas Pvt. Ltd. ....                                                                                                                                                                                                                                                     | 1.09           |
| Selvam Exports Private Limited .....                                                                                                                                                                                                                                                | 1.09           |
| Sprint Exports Pvt. Ltd. ....                                                                                                                                                                                                                                                       | 1.09           |
| Sri Chandrantha Marine Exports .....                                                                                                                                                                                                                                                | 1.09           |
| Sri Sakthi Marine Products P Ltd. ....                                                                                                                                                                                                                                              | 1.09           |
| Star Agro Marine Exports Private Limited .....                                                                                                                                                                                                                                      | 1.09           |
| Sun-Bio Technology Limited .....                                                                                                                                                                                                                                                    | 1.09           |
| Surya Marine Exports/Suryamitra Exim Private Limited .....                                                                                                                                                                                                                          | 1.09           |
| Suvarna Rekha Exports Private Limited .....                                                                                                                                                                                                                                         | 1.09           |
| Suvarna Rekha Marines P Ltd. ..                                                                                                                                                                                                                                                     | 1.09           |
| The Liberty Group (Devi Marine Food Exports Private Limited/Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Private Limited/Liberty Oil Mills Limited/Premier Marine Products/Universal Cold Storage Private Limited) ..... | 1.09           |
| The Waterbase Ltd. ....                                                                                                                                                                                                                                                             | 1.09           |
| Usha Seafoods .....                                                                                                                                                                                                                                                                 | 1.09           |
| Veejay IMPEX .....                                                                                                                                                                                                                                                                  | 1.09           |
| Vinner Marine .....                                                                                                                                                                                                                                                                 | 1.09           |
| Wellcome Fisheries Limited .....                                                                                                                                                                                                                                                    | 1.09           |

AFA Rate Applicable to the Following Companies:

| Manufacturer/Exporter                 | Percent Margin |
|---------------------------------------|----------------|
| A.S. Marine Industries Pvt. Ltd. .... | 110.90         |
| Adani Exports Ltd. ....               | 110.90         |
| Aditya Udyog .....                    | 110.90         |
| Agri Marine Exports Ltd. ....         | 110.90         |
| Al Mustafa Exp & Imp .....            | 110.90         |
| Alapatt Marine Exports .....          | 110.90         |
| All Seas Marine P. Ltd. ....          | 110.90         |
| Alsa Marine & Harvests Ltd. ....      | 110.90         |
| Ameena Enterprises .....              | 110.90         |
| Anjani Marine Traders .....           | 110.90         |
| Aqua Star Marine Foods .....          | 110.90         |
| Arsha Seafood Exports Pvt. Ltd. ....  | 110.90         |
| ASF Seafoods .....                    | 110.90         |
| Ashwini Frozen Foods .....            | 110.90         |
| Aswin Associates .....                | 110.90         |
| Balaji Seafood Exports I Ltd. ....    | 110.90         |
| Baraka Overseas Traders .....         | 110.90         |
| Bell Foods (Marine Division) .....    | 110.90         |
| Bharat Seafoods .....                 | 110.90         |
| Bhisti Exports .....                  | 110.90         |
| Bilal Fish Suppliers .....            | 110.90         |
| Capital Freezing Complex .....        | 110.90         |
| Cham Exports Ltd. ....                | 110.90         |
| Cham Ocean Treasures Co., Ltd. ....   | 110.90         |
| Cham Trading Organization .....       | 110.90         |
| Chand International .....             | 110.90         |

| Manufacturer/Exporter                                | Percent Margin | Manufacturer/Exporter                         | Percent Margin |
|------------------------------------------------------|----------------|-----------------------------------------------|----------------|
| Danda Fisheries .....                                | 110.90         | Samrat Middle East Exports (P) Ltd. ....      | 110.90         |
| Dariapur Aquatic Pvt. Ltd. ....                      | 110.90         | Sarveshwari Ice & Cold Storage P Ltd. ....    | 110.90         |
| Deepmala Marine Exports .....                        | 110.90         | Satyam Marine Exports .....                   | 110.90         |
| Dhananjaya Impex P. Ltd. ....                        | 110.90         | Sea Rose Marines (P) Ltd. ....                | 110.90         |
| Dorothy Foods .....                                  | 110.90         | Sealand Fisheries Ltd. ....                   | 110.90         |
| El-Te Marine Products .....                          | 110.90         | Seaperl Industries .....                      | 110.90         |
| Excel Ice Services/Chirag Int'l ....                 | 110.90         | Sharat Industries Ltd. ....                   | 110.90         |
| Firoz & Company .....                                | 110.90         | Shimpo Exports .....                          | 110.90         |
| Freeze Engineering Industries (Pvt. Ltd.) .....      | 110.90         | Shipper Exporter National Steel               | 110.90         |
| Gajula Exim (P) Ltd. ....                            | 110.90         | Siddiq Seafoods .....                         | 110.90         |
| Gausia Cold Storage P. Ltd. ....                     | 110.90         | Skyfish .....                                 | 110.90         |
| Goan Bounty .....                                    | 110.90         | Sonia Fisheries .....                         | 110.90         |
| Gold Farm Foods (P) Ltd. ....                        | 110.90         | Sourab .....                                  | 110.90         |
| Golden Star Cold Storage .....                       | 110.90         | Sreevas Export Enterprises .....              | 110.90         |
| Gopal Seafoods .....                                 | 110.90         | Sri Sidhi Freezers & Exporters Pvt. Ltd. .... | 110.90         |
| Gtc Global Ltd. ....                                 | 110.90         | Star Fish Exports .....                       | 110.90         |
| Hanswati Exports P. Ltd. ....                        | 110.90         | Supreme Exports .....                         | 110.90         |
| HMG Industries Ltd. ....                             | 110.90         | The Canning Industries (Cochin) Ltd. ....     | 110.90         |
| Honest Frozen Food Company ..                        | 110.90         | Tony Harris Seafoods Ltd. ....                | 110.90         |
| India CMS Adani Exports .....                        | 110.90         | Tri Marine Foods Pvt. Ltd. ....               | 110.90         |
| India Seafoods .....                                 | 110.90         | Trinity Exports .....                         | 110.90         |
| Indian Seafood Corporation .....                     | 110.90         | Tri-Tee Seafood Company .....                 | 110.90         |
| Interfish .....                                      | 110.90         | Ulka Seafoods (P) Ltd. ....                   | 110.90         |
| J R K Seafoods Pvt. Ltd. ....                        | 110.90         | Uniroyal Marine Exports Ltd. ....             | 110.90         |
| Kaushalya Aqua Marine Product Exports Pvt. Ltd. .... | 110.90         | Upasana Exports .....                         | 110.90         |
| Keshodwala Foods .....                               | 110.90         | V Marine Exports .....                        | 110.90         |
| Key Foods .....                                      | 110.90         | Varnita Cold Storage .....                    | 110.90         |
| King Fish Industries .....                           | 110.90         | Veraval Marines & Chemicals P Ltd. ....       | 110.90         |
| Konkan Fisheries Pvt. Ltd. ....                      | 110.90         | Vijayalaxmi Seafoods .....                    | 110.90         |
| Lakshmi Marine Products .....                        | 110.90         | Winner Seafoods .....                         | 110.90         |
| Lanseal Foods Pvt. Ltd. ....                         | 110.90         | Z A. Food Products .....                      | 110.90         |
| Laxmi Narayan Exports .....                          | 110.90         |                                               |                |
| M K Exports .....                                    | 110.90         |                                               |                |
| M.R.H. Trading Company .....                         | 110.90         |                                               |                |
| Malabar Marine Exports .....                         | 110.90         |                                               |                |
| Mamta Cold Storage .....                             | 110.90         |                                               |                |
| Marina Marine Exports .....                          | 110.90         |                                               |                |
| Marine Food Packers .....                            | 110.90         |                                               |                |
| Miki Exports International .....                     | 110.90         |                                               |                |
| Mumbai Kamgar MGSM Ltd. ....                         | 110.90         |                                               |                |
| N.C. Das & Company .....                             | 110.90         |                                               |                |
| Naik Ice & Cold Storage .....                        | 110.90         |                                               |                |
| Nas Fisheries Pvt Ltd. ....                          | 110.90         |                                               |                |
| National Seafoods Company .....                      | 110.90         |                                               |                |
| New Royal Frozen Foods .....                         | 110.90         |                                               |                |
| Noble Aqua Pvt. Ltd. ....                            | 110.90         |                                               |                |
| Omsons Marines Ltd. ....                             | 110.90         |                                               |                |
| Padmaja Exports .....                                | 110.90         |                                               |                |
| Partytime Ice Pvt Ltd. ....                          | 110.90         |                                               |                |
| Philips Foods India Pvt Ltd. ....                    | 110.90         |                                               |                |
| Premier Exports International ....                   | 110.90         |                                               |                |
| R K Ice & Cold Storage .....                         | 110.90         |                                               |                |
| Rahul Foods (GOA) .....                              | 110.90         |                                               |                |
| Rahul International .....                            | 110.90         |                                               |                |
| Raj International .....                              | 110.90         |                                               |                |
| Ramalmgeswara Proteins & Foods Ltd. ....             | 110.90         |                                               |                |
| Rameshwar Cold Storage .....                         | 110.90         |                                               |                |
| Ravi Frozen Foods Ltd. ....                          | 110.90         |                                               |                |
| Regent Marine Industries .....                       | 110.90         |                                               |                |
| Relish Foods .....                                   | 110.90         |                                               |                |
| Royal Link Exports .....                             | 110.90         |                                               |                |
| Rubian Exports .....                                 | 110.90         |                                               |                |
| Ruby Marine Foods .....                              | 110.90         |                                               |                |
| Ruchi Worldwide .....                                | 110.90         |                                               |                |
| S K Exports (P) Ltd. ....                            | 110.90         |                                               |                |
| SLS Exports Pvt. Ltd. ....                           | 110.90         |                                               |                |
| S S International .....                              | 110.90         |                                               |                |
| Sabri Food Products .....                            | 110.90         |                                               |                |
| Sagar Samrat Seafoods .....                          | 110.90         |                                               |                |
| Salet Seafoods Pvt Ltd. ....                         | 110.90         |                                               |                |

discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Where Devi and Falcon reported the entered value for their U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. For Falcon's U.S. sales reported without entered values, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of

#### Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be

estimated duties, where applicable. *See* 751(a)(2)(C) of the Act.

The Department clarified its “automatic assessment” regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation. *See Shrimp Order*, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping

duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8-4417 Filed 3-5-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-331-802]

### Certain Frozen Warmwater Shrimp From Ecuador: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador with respect to 45 companies.<sup>1</sup> The respondents which the Department selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents which were not selected for individual review are listed in the “Preliminary Results of Review” section of this notice. This is the second administrative review of this order. The period of review (POR) covers February 1, 2006, through January 31, 2007.

We preliminarily determine that sales made to the United States by OceanInvest have been made below normal value (NV) and that sales made to the United States by Promarisco have not been made below NV. In addition, based on the preliminary results for the respondents selected for individual review, we have determined a preliminary weighted-average margin for those companies that were not selected for individual review but were

responsive to the Department's requests for information.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

**EFFECTIVE DATE:** March 6, 2008.

### FOR FURTHER INFORMATION CONTACT:

David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration—Room 1117, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-3773, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Ecuador. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156 (February 1, 2005) (*LTFV Amended Final Determination and Order*). On February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Ecuador for the period February 1, 2006, through January 31, 2007. *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (February 2, 2007). On February 28, 2007, the petitioner<sup>2</sup> and the Louisiana Shrimp Association (LSA), a domestic interested party, submitted timely requests that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1).

On April 5, 2007, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. *See* “Duty Absorption” section below for further discussion.

On April 6, 2007, the Department published a notice of initiation of administrative review for 64 companies

<sup>1</sup> This figure does not include those companies for which the Department is preliminarily rescinding the administrative review. *See* “Partial Rescission of Review” section for further discussion.

<sup>2</sup> The petitioner is the Ad Hoc Shrimp Trade Action Committee.