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DATE: March 4, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review on Certain Frozen
Warmwater Shrimp from Thailand

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. The review covers 150¹ producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2011, through January 31, 2012. We have preliminarily found that sales of the subject merchandise have been made at prices below normal value (NV).

BACKGROUND

In February 2005, the Department published in the Federal Register an antidumping duty order on shrimp from Thailand.² On February 1, 2012, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order of shrimp from Thailand for the period February 1, 2011, through January 31, 2012.³ 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 U.S. sales of shrimp by numerous Thai

¹This figure does not include those companies for which the Department is rescinding the administrative review.

² See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (February 1, 2005) (Shrimp Order).

³ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 77 FR 4990 (February 1, 2012).



producers/exporters, the Department published a notice of initiation of administrative review for 152 companies.⁴

In the Initiation Notice, the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.⁵ In April 2012, we received comments on the issue of respondent selection from the petitioner⁶; the American Shrimp Processors Association (ASPA); Marine Gold; Pakfood Public Company Limited and its affiliated subsidiaries, Asia Pacific (Thailand) Co., Ltd.; Chaophraya Coldstorage Co., Ltd.; Okeanos Co., Ltd.; Okeanos Food Co., Ltd.; and Takzin Samut Co., Ltd. (collectively, Pakfood); Thai Union Frozen Products Public Co., Ltd. (TUF) and Thai Union Seafood Co., Ltd. (TUS) (collectively, Thai Union); and Thai Royal Frozen Food Co., Ltd. (Thai Royal). The Thai manufacturers/exporters requested that the Department accept the companies not selected as mandatory respondents as voluntary respondents.

In May 2012, after considering the large number of potential producers/exporters involved in this administrative review, 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.⁷ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from Thailand during the POR (*i.e.*, Marine Gold and Thai Union). Accordingly, we issued the antidumping duty questionnaire to these companies.

In May and June 2012, we received properly-filed statements from six companies indicating that they had no shipments of subject merchandise to the United States during the POR.⁸ During these months, we also received improperly-filed statements of no shipments from seven

⁴ See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation of Order in Part, 77 FR 19612 (April 2, 2012) (Initiation Notice). The Department also received a request from Marine Gold Products Limited (Marine Gold) for revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b).

⁵ See Initiation Notice, at 19612.

⁶ The petitioner is the Ad Hoc Shrimp Trade Action Committee.

⁷ See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Holly Phelps, Analyst, Office 2, AD/CVD Operations entitled, "2011-2012 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review," dated May 2, 2012 (Respondent Selection Memo).

⁸ These companies are: 1) Lucky Union Foods Co., Ltd. (Lucky Union); 2) Namprick Maesri Ltd. Part. (Namprick); 3) S&P Syndicate Public Company Ltd. (S&P); 4) S.K. Foods (Thailand) Public Co. Limited (S.K. Foods); 5) Thai Union Manufacturing Company Limited (Thai Union Manufacturing); and 6) V. Thai Food Product Co., Ltd. (V. Thai).

companies⁹ and an improperly-filed notification from an additional company (Tanaya International Co., Ltd./Tanaya Intl. (Tanaya)) that it is not a producer/exporter of frozen warmwater shrimp.

In June 2012, we received responses from Marine Gold, Pakfood, Thai Union, and Thai Royal to section A (i.e., the section related to general information) of the questionnaire.¹⁰

In July 2012, we received responses from Marine Gold and Thai Union to sections B, C, and D (i.e., the sections covering comparison market sales, U.S. sales, and cost of production (COP) and constructed value (CV), respectively) of the questionnaire. We did not receive responses to these sections of the questionnaire from Pakfood or Thai Royal.

Also in July 2012, Marine Gold placed on the record its voluntary response to the Department's antidumping questionnaire in the 2010-2011 administrative review. Marine Gold indicated that it provided this information for consideration in the Department's revocation analysis.

In August 2012, we issued supplemental sales questionnaires to Marine Gold and Thai Union. We received responses to these questionnaires in August and September 2012.

In September 2012, ASPA filed targeted dumping allegations with respect to Marine Gold and Thai Union. Also in September 2012, we extended the preliminary results in the current review to no later than February 28, 2013.¹¹ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been tolled by two days. The revised deadline for the preliminary results of this review is now March 2, 2013.¹² Because the tolled deadline of March 2 falls on a weekend, these preliminary results are due on the next business day (i.e., March 4, 2013).¹³

From October 2012 through January 2013, we issued additional supplemental sales and cost questionnaires to Marine Gold and Thai Union. Marine Gold and Thai Union responded to these

⁹ These companies are: 1) Anglo-Siam Seafoods Ltd. (Anglo-Siam); 2) C Y Frozen Food Co., Ltd. (C Y Frozen Food); 3) Daedong (Thailand) Co. Ltd. (Daedong); 4) Grobest Frozen Foods Co., Ltd. (Grobest); 5) Kosamut Frozen Foods Co., Ltd. (Kosamut); 6) Leo Transport Corporation Ltd. (Leo Transport) and 7) Siamchai International Food Co., Ltd. (Siamchai).

¹⁰ Pakfood and Thai Royal submitted responses to section A of the Department's questionnaire as voluntary respondents.

¹¹ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations entitled, "Certain Frozen Warmwater Shrimp from India and Thailand: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Reviews," dated September 25, 2012.

¹² See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane," dated October 31, 2012.

¹³ See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

questionnaires from November 2012 through January 2013. In January and February 2013, we verified Marine Gold's sales and cost responses, respectively.

In February 2013, we received a submission from ASPA which provided expanded targeted dumping allegations for Marine Gold and Thai Union. Also in February 2013, we contacted Tanaya, as well as the seven companies which submitted improperly-filed no shipment statements, and afforded them an opportunity to correct the procedural deficiencies in their submissions. We received responses from all of these companies except C Y Frozen Food.

Finally, in February 2013, we requested that Kosamut provide information regarding its relationship with an affiliated company, The Siam Union Frozen Foods Co., Ltd. (Siam Union). We received a response to this letter on February 21, 2013. After reviewing this response, we have determined that we need additional information from Kosamut before evaluating its no shipments claim.

SCOPE OF THE ORDER

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹⁴ 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 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 (including dusted shrimp), 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.

¹⁴ "Tails" in this context means the tail fan, which includes the telson and the uropods.

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); and (7) certain battered shrimp. Battered 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 ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. 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 these orders is dispositive.¹⁵

PRELIMINARY DETERMINATION TO REVOKE ORDER, IN PART

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222.¹⁶ This regulation requires, *inter alia*, that a company requesting revocation submit the following: 1) a certification that the company has

¹⁵ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

¹⁶ In May 2012, the Department amended its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, and the termination of suspended antidumping and countervailing duty investigations. See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 77 FR 29875 (May 21, 2012) (Final Rule). Specifically, the Department's Final Rule eliminates the provision for revocation of an antidumping or countervailing duty order with respect to individual exporters or producers based on those individual exporters or producers having received antidumping rates of zero for three consecutive years, or countervailing duty rates of zero for five consecutive years. This Final Rule will apply to all reviews that are initiated on or after June 20, 2012; however, this provision does not apply to Marine Gold because the instant review was initiated prior to the aforementioned date.

sold the subject merchandise at not less than NV in the current review period and that the company will not sell subject merchandise at less than NV in the future; 2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and 3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.¹⁷ Upon receipt of such a request, the Department will consider: 1) whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; 2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and 3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.¹⁸

On February 1, 2012, Marine Gold requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b). This request was accompanied by a certification that: 1) Marine Gold sold the subject merchandise at not less than NV during the current POR and will not sell the merchandise at less than NV in the future; and 2) it sold subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Marine Gold also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the revocation, it sold the subject merchandise at less than NV. We preliminarily determine that the request dated February 1, 2012, from Marine Gold meets all of the criteria under 19 CFR 351.222(e)(1).

Based on our examination of the sales data submitted by Marine Gold, we preliminarily determine that Marine Gold sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Marine Gold to support its request for revocation.¹⁹ Additionally, we found that Marine Gold sold shrimp at not less than NV in the previous administrative review in which it was individually examined.²⁰ In the instant review, our preliminary margin calculations show that Marine Gold also sold shrimp at not less than NV during the POR. See the “Preliminary Results of Reviews” section below. Moreover, in the course of the current review, we examined Marine Gold’s sales and cost data from the 2010-2011 administrative review period for the purpose of determining Marine Gold’s eligibility for revocation.²¹ The results of this examination revealed that Marine Gold did not engage in

¹⁷ See 19 CFR 351.222(e)(1).

¹⁸ See 19 CFR 351.222(b)(2)(i).

¹⁹ See the Memorandum to the File, from Blaine Wiltse, Senior Analyst, Office 2, AD/CVD Operations, entitled, “Analysis of Commercial Quantities for Marine Gold Products Limited’s Request for Revocation,” dated March 4, 2013.

²⁰ See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 76 FR 40881, 40883 (July 12, 2011).

²¹ On July 18, 2012, Marine Gold submitted its voluntary responses to the Department’s antidumping questionnaire, with the corresponding U.S. and comparison market sales and cost databases, from the 2010-2011 administrative review. On September 27, 2012, Marine Gold stated that it submitted this information from the prior year to demonstrate to the Department that it had sales in commercial quantities and was not engaged in dumping

dumping during the 2010-2011 review period.²² Therefore, we preliminarily find that Marine Gold did not engage in dumping during the three years under consideration.

Also, we preliminarily determine, pursuant to section 751(d) of the Act and 19 CFR 351.222(b)(2), that the application of the antidumping duty order with respect to Marine Gold is no longer warranted for the following reasons: 1) the company did not make sales of subject merchandise at less than NV for a period of at least three consecutive years; 2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and, 3) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we preliminarily determine that subject merchandise produced and exported by Marine Gold qualifies for revocation from the antidumping duty order on frozen warmwater shrimp from Thailand and that the order with respect to such merchandise should be revoked. If these preliminary findings are affirmed in our final results, we will revoke this order, in part, with respect to shrimp produced and exported by Marine Gold and, in accordance with 19 CFR 351.222(f)(3), terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after February 1, 2012, and instruct CBP to release any cash deposits for such entries.

PRELIMINARY DETERMINATION OF NO SHIPMENTS

In May and June 2012, we received no-shipment claims from 13 companies named in the Initiation Notice.²³ We subsequently confirmed with CBP the no-shipment claims made by 11 of these companies. Because the evidence on the record indicates that these companies did not export subject merchandise to the United States during the POR, we preliminarily determine that the following 11 companies had no reviewable transactions during the POR:

- 1) Anglo-Siam
- 2) Daedong
- 3) Grobest
- 4) Leo Transport
- 5) Lucky Union
- 6) Namprick
- 7) S&P
- 8) S.K. Foods
- 9) Siamchai
- 10) Thai Union Manufacturing
- 11) V. Thai

during the 2010-2011 administrative review period.

²² See the Memorandum to the File, from Blaine Wiltse, Senior Analyst, Office 2, AD/CVD Operations, entitled, "Calculation Adjustments for Marine Gold Products Limited, for the Preliminary Results in the 2011-2012 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand," dated March 4, 2013 (Marine Gold Prelim Calc Memo), for a discussion of the methodology used in these calculations.

²³ As noted in the "Background" section above, six of these claims contained procedural deficiencies which were remedied prior to these preliminary results.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.²⁴ As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.²⁵

Because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the 11 companies listed above, and exported by other parties, at the all-others rate, should we continue to find that these companies had no shipments of subject merchandise during the POR in our final results.²⁶ In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these 11 companies and issue appropriate instructions to CBP based on the final results of the review. See the “Assessment Rates” section of the Federal Register notice accompanying this memorandum.

With respect to the remaining two companies, C Y Frozen Food and Kosamut, we preliminarily find that there is insufficient evidence on the record of this review to conclude that these companies made no shipments of subject merchandise to the United States during the POR. Specifically, C Y Frozen Foods failed to certify its statement of no shipments in accordance with 19 CFR 351.303(g)(1), despite the Department’s request that it do so. Moreover, while Kosamut did submit a properly-certified no shipment statement, it did so only for itself and not its affiliated shrimp exporter, Siam Union (a company which has to date been treated as the same entity as Kosamut for cash deposit purposes).²⁷ Therefore, we are continuing to include both C Y Frozen Foods and Kosamut in this administrative review for purposes of the preliminary results.

²⁴ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997).

²⁵ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

²⁶ See, e.g., Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination, 77 FR 13275, 13277 (March 6, 2012) unchanged in Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 40848 (July 11, 2012). This instruction only applies where there is no rate established for the intermediate company(ies) involved in the transaction.

²⁷ On February 7, 2013, we requested that Kosamut provide information regarding its relationship with Siam Union; the Department intends to use this information to consider whether we should continue to assign these companies a single rate in this proceeding. After reviewing Kosamut’s February 21, 2013, response, we have determined that we need additional information from Kosamut before evaluating its no shipments claim.

PRELIMINARY RESCISSION OF REVIEW, IN PART

As noted in the “Background” section of this memorandum, above, on May 2, 2012, Tanaya notified the Department that it is not a producer or exporter of subject merchandise and that Tanaya has never produced or exported subject merchandise, and thus it requested that the Department remove it from this proceeding. Tanaya certified the accuracy of its submission on February 15, 2013, at our request. Therefore, we are preliminarily rescinding this review for Tanaya under both names included in our notice of initiation (*i.e.*, Tanaya International Co., Ltd. and Tanaya Intl.), in accordance with 19 CFR 351.213(d)(3).

DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Marine Gold’s and Thai Union’s sales of shrimp from Thailand were made in the United States at less than NV, we compared the export price (EP) and constructed export price (CEP), as applicable, to the NV as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this memorandum. Based on the results of our targeted dumping analysis, we found that it was appropriate for the Department to apply the average-to-average comparison methodology adopted in the Final Modification for Reviews.²⁸ In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margins.

When making these comparisons in accordance with section 771(16) of the Act, we considered all products sold in the comparison market as described in the “Scope of the Order” section of this notice, above, that were in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If contemporaneous sales of identical comparison market merchandise, as described below, were reported, then we made comparisons to the monthly weighted-average comparison market prices that were based on all such sales. If there were no contemporaneous sales of identical merchandise, then we identified sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e).

Where there were no sales of identical or similar merchandise, we made product comparisons using CV, as discussed in the “Calculation of Normal Value Based on Constructed Value” section, below.²⁹

²⁸ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews).

²⁹ See section 773(a)(4) of the Act.

Targeted Dumping

In antidumping investigations, the Department examines whether to use the average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations may be instructive for purposes of examining whether to apply the average-to-transaction method in this administrative review.

In recent antidumping investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the Nails test³⁰ for each respondent subject to an allegation.³¹ The Department has applied the Nails test to Marine Gold and Thai Union, a two-step process as described below, in order to consider whether to use the average-to-transaction method so that parties may comment on this approach.

In the first stage of the test, the "standard deviation test," the Department determined the share of alleged targeted group's sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. The Department calculated the standard deviation on a product-specific basis (i.e., by control number (CONNUM)) using the weighted-average prices for the alleged targeted groups and the groups not alleged to have been targeted. If that share did not exceed 33 percent, then the Department did not conduct the second stage of the Nails test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the Nails test.

In the second stage, the "gap test," the Department examined all sales of identical merchandise (i.e., by CONNUM) sold to the alleged targeted group which passed the standard deviation test. From those sales, the Department determined the total volume of sales for which the difference

³⁰ See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (collectively, Nails), as modified in more recent investigations, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011); see also Mid Continent Nail Corp. v. United States, Slip. Op. 2010-47 (CIT 2010) and Mid Continent Nail Corp. v. United States, Slip. Op. 2010-48 (CIT 2010).

³¹ See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010); Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010); and Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).³² See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

between the weighted-average price of sales to the alleged targeted group and the next higher weighted-average price of sales to a non-targeted group exceeds the average price gap (weighted by sales volume) between the non-targeted groups. The Department weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, then the Department considered these sales to have been targeted.

If the Department's two-step analysis confirmed the allegation of targeting and sufficient sales were found to have been targeted (i.e., to have passed the two-step Nails test), then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method. Where there was a meaningful difference between the results of the average-to-average method, then the Department would find that the average-to-average method could not take into account the observed price differences, and the average-to-transaction method would be used to calculate the weighted-average margin of dumping for the respondent in question.

Results of the Targeted Dumping Analysis

The Department preliminarily finds, for Marine Gold, that a pattern of EP for comparable merchandise that differ significantly among time does not exist, and, therefore, the Department has not considered whether the average-to-average method can account for the observed price differences. Accordingly, the Department determines, pursuant to 19 CFR 351.414(c)(1), to calculate the weighted-average dumping margin for Marine Gold using the average-to-average method for these preliminary results. For further discussion, see the Marine Gold Prelim Calc Memo.

The Department preliminarily finds, for Thai Union that a pattern of EPs/CEPs for comparable merchandise that differs significantly among purchasers and time periods exists. Further, the Department preliminarily finds that the observed price differences cannot be taken into account by the average-to-average method because there is a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average-to-transaction method. Accordingly, the Department preliminarily determines, pursuant to 19 CFR 351.414(c)(1) (2012), to base the weighted-average dumping margin for Thai Union on the average-to-transaction method for these preliminary results. For further discussion, see the Memorandum to the File from Dennis McClure, Senior Analyst, Office 2, AD/CVD Operations, entitled "Calculation Adjustments for Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. (collectively, Thai Union)," dated March 4, 2013 (Thai Union Prelim Calc Memo).

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by Marine Gold and Thai Union sold in the U.S. and home markets on the basis of the comparison product which

was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are 1) cooked form; 2) head status; 3) count size; 4) organic certification; 5) shell status; 6) vein status; 7) tail status; 8) other shrimp preparation; 9) frozen form; 10) flavoring; 11) container weight; 12) presentation; 13) species; and 14) preservatives.

Date of Sale

19 CFR 351.401(i) states that, normally, the Department will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. Accordingly, for both respondents, we preliminarily find invoice date to be the appropriate date of sale for sales to the U.S. and comparison markets, unless shipment occurred prior to invoice date. Consistent with the Department's practice, we used the shipment date as the date of sale where the shipment date occurred before the invoice date because the quantity is fixed at the time of shipment.³²

Export Price/Constructed Export Price

For all U.S. sales made by Marine Gold and certain sales made by Thai Union, 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. We used CEP for the remainder of Thai Union's sales, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and EP was not otherwise indicated.

A. *Marine Gold*

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 billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight expenses, foreign warehousing expenses, 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.

B. *Thai Union*

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for U.S. brokerage and handling expenses, international freight expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing

³² See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

fees), and other movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts and rebates, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses to the port of export, international freight expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), other movement expenses, U.S. inland freight from port to warehouse, U.S. warehouse expenses, U.S. inland freight from warehouse to the unaffiliated U.S. customer, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (commissions, imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). We recalculated imputed credit expenses to correct errors in the reported shipment and payment dates for certain sales.³³ Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Thai Union and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Marine Gold's and Thai Union's respective home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that the aggregate volume of home market sales of the foreign like product for each of the respondents was sufficient to permit a proper comparison with U.S. sales of the subject merchandise.

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

During the POR, Thai Union made sales of shrimp in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated

³³ For further discussion, see the Thai Union Prelim Calc Memo.

parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length.³⁴ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.³⁵

C. *Level of Trade*

To the extent practicable, we determined NV for sales at the same LOT as the U.S. sales. When there were no sales at the same LOT, we compared U.S. sales to home market sales at a different level of trade. The NV LOT is that of the starting price for sales in the home market or applicable third country market.³⁶ For EP, the LOT is that of the starting price for sales in the United States. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT, and the data available do not provide an appropriate basis to determine a LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁷ Company-specific LOT findings are summarized below.

1. *Marine Gold*

Marine Gold reported that it made sales through one channel of distribution in the United States (*i.e.*, EP sales made directly to unaffiliated customers). We examined the selling activities performed for U.S. sales and found that Marine Gold performed the following selling functions: sales forecasting/market research, paying commissions, order processing/sales documentation, packing/packaging, inventory maintenance, freight/delivery, providing financing, and warranty service. These selling activities can be generally grouped into four 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 selling function categories, we find that Marine Gold performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all U.S. sales. Because all sales in the United States are made through a single distribution channel (*i.e.*, direct sales to unaffiliated customers) and the selling activities to Marine Gold's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

³⁴ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

³⁵ See section 771(15) of the Act and 19 CFR 351.102(b).

³⁶ 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.

³⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732-33 (November 19, 1997).

With respect to the home market, Marine Gold reported that it made sales through two channels of distribution (*i.e.*, sales to one customer which purchases shrimp for processing into non-subject merchandise; and sales to all other customers). We examined the selling activities performed for these channels, and found that Marine Gold performed the following selling functions for both channels: sales forecasting/market research, order processing/sales documentation, inventory maintenance, limited freight/delivery, providing financing, warranty services, and packing/packaging. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, we find that Marine Gold performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all customers in the home market. In addition, Marine Gold reported that it performed sales forecasting/market research and employed direct sales personnel at a low-to-medium level of intensity for one home market channel, and did not perform these activities for the other home market channel. However, after analyzing the selling functions performed for both sales channels in the home market, we find that the distinctions in selling functions are not significant. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that there is one LOT in the home market for Marine Gold.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers are essentially the same, with the exception of commission payments made for certain U.S. sales. We note that this difference is not a sufficient basis to determine that the U.S. LOT is different from the home market LOT. Moreover, although there are some differences in the level of intensity at which some of the selling functions were performed in the two markets, we find that these differences are not significant. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted or possible.

2. Thai Union

In the U.S. market, Thai Union reported sales to wholesalers/distributors and retailers/restaurants, in the following three channels of distribution: 1) direct sales from Thai Union to unaffiliated U.S. customers (EP sales); 2) sales negotiated with one particular customer by Thai Union but invoiced by Thai Union's U.S. affiliate, Tri-Union Frozen Products Inc. (dba Chicken of the Sea Frozen Foods and Empress International Ltd.) (COSFF) (CEP sales); and 3) COSFF's sales to its customers (CEP sales).

We examined the selling activities performed for EP sales from Thai Union to unaffiliated U.S. customers and found that Thai Union performed the following selling functions: sales forecasting, market research/economic planning, trade shows, customer contact/negotiations, order processing, packing, making delivery arrangements, inventory maintenance, and quality assurance/warranty services. Accordingly, based on the core selling functions, we find that Thai Union performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its EP sales.

Further, we examined the selling activities performed for CEP sales made to Thai Union's U.S. affiliates (including sales negotiated by Thai Union but invoiced by COSFF) and found that Thai Union performed the following selling functions: customer contact/negotiations, order processing, packing, making delivery arrangements, inventory maintenance, and quality assurance/warranty services. Accordingly, based on the core selling functions, we find that Thai Union performed sales and marketing, freight and delivery services, inventory maintenance and warehousing and warranty and technical services for its CEP sales.

We preliminarily find that Thai Union performed freight and delivery services and inventory maintenance and warehousing at the same level of intensity for all customers in the United States regardless of distribution channel. In addition, although warranty and technical services were provided at a lower level of intensity for CEP sales than EP sales, we do not find this to be a material selling distinction significant enough to warrant a separate LOT. Further, although Thai Union performed additional sales and marketing functions (*i.e.*, sales forecasting, market research/economic planning, and trade shows) for its EP sales that it did not perform for its CEP sales, we also did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT in the U.S. market. Therefore, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Thai Union made sales to two customer categories (*i.e.*, restaurants, hotels, and other end-users; or companies that further process the shrimp). Thai Union stated that its home market sales were made through one channel of distribution directly to its customers. We examined the selling activities performed and found that Thai Union performed the following selling functions: sales forecasting, market research/economic planning, sales promotion/advertising, trade shows, customer contact/negotiations, review of upcoming sales orders, order processing, packing, making delivery arrangements, company delivery, inventory maintenance, providing company quality certificates, and quality assurance/warranty services. Accordingly, based on the core selling functions, we find that Thai Union performed sales and marketing, inventory maintenance and warehousing, and warranty and technical services at the same level of intensity for all customers and terms of delivery in the home market. Therefore, we preliminarily determine that there is one LOT in the home market.

We evaluated the core selling function categories in the U.S. and home market LOTs and found that each of the core selling functions (*i.e.*, sales and marketing, inventory maintenance, freight and delivery services, and warranty and technical support) were performed in both the U.S. and home markets. Although there are differences in the type of sales and marketing services provided for each market, we did not find this to be a material selling function distinction significant enough to warrant a separate LOT. Therefore, after analyzing the selling functions performed in each market, we find that the distinctions in selling functions are not material and thus, that the home market and U.S. LOTs are the same. Accordingly, we determine that no LOT adjustment is warranted or possible for Thai Union. Regarding the CEP offset provision, as described above, it is appropriate 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. Because we find that no difference in LOT exists, we do not find that a CEP offset is warranted for Thai Union.

D. *Cost of Production Analysis*

We found that Marine Gold and Thai Union made sales to the comparison market below the COP in the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded.³⁸ Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, we preliminarily find that there are reasonable grounds to believe or suspect that Marine Gold and Thai Union made sales in the comparison market at prices below the cost of producing the merchandise during the current POR.

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 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 comparison market selling expenses).

Based on our review of the record evidence, Marine Gold and Thai Union do not appear to have experienced significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost. The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except as noted below:

a. *Marine Gold*

For Marine Gold, we have calculated and applied an adjustment to reported shrimp costs to account for the difference between finished goods inventory input and fresh shrimp input costs.³⁹

b. *Thai Union*

Thai Union's two producer companies are TUS and TUF. For TUS, we revised TUS's G&A expense rate calculation to exclude from the numerator government coupon revenue. We also reclassified the revenue from the sales of raw materials from the numerator of the calculation to TUS's cost of manufacture (COM). In addition, we reduced the cost of goods sold (COGS) denominator in the calculation to reflect the above adjustment to TUS's COM.

For TUF, we revised TUF's G&A expense rate calculation to exclude from the numerator government coupon revenue, other revenue, and bad debt reported as indirect selling expenses.

³⁸ See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 76 FR 40881, 40882-40883 (July 12, 2011); and Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933, 50937 (August 29, 2008), respectively.

³⁹ See the Memorandum to Neal M. Halper, Director, Accounting, from Gina K. Lee, Accountant, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Marine Gold Products Limited," dated March 4, 2013.

In addition, we disallowed the offset to TUF's COGS because the offset was not included in TUF's reported COM.

For both TUS and TUF, we revised the financial expense rate calculation to increase the COGS denominator in the calculation to reflect the above adjustments to TUS's and TUF's COM. For additional details, see the Memorandum to Neal M. Halper, Director, Accounting, from Angie Sepulveda, Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Thai Union Frozen Products Public Co. Ltd. and Thai Union Seafood Co. Ltd.," dated March 4, 2013.

2. *Test of Comparison Market Sales Prices*

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, billing adjustments, direct selling expenses, indirect selling expenses, and packing expenses.

3. *Results of the COP Test*

In determining whether to disregard home country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and 2) based on our comparison of prices to the weighted-average COPs for the 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. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

We found that, for certain products, more than 20 percent of Marine Gold's and Thai Union's home market 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 comparable sales in the comparison market in the ordinary course of trade, we compared U.S. price to CV in accordance

with section 773(a)(4) of the Act. See “Calculation of Normal Value Based on Constructed Value” section below.

E. *Calculation of Normal Value Based on Comparison Market Prices*

1. *Marine Gold*

We calculated NV for Marine Gold based on the reported packed, delivered prices to unaffiliated customers in the home market. We made adjustments to the starting price, where appropriate, for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland freight expenses and foreign warehousing expenses, under section 773(a)(6)(B) 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 direct selling expenses (including bank fees and imputed credit expenses) and commissions, where appropriate. Because commissions were paid only on sales in the U.S. market, we also made a downward adjustment to NV for the lesser of: 1) the amount of commissions paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the home market.⁴⁰ We recalculated Marine Gold’s foreign indirect selling expense ratio to remove sales of scrap from the denominator of the calculation.⁴¹

We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁴²

2. *Thai Union*

We calculated NV for Thai Union on the reported packed, delivered or packed, ex-factory prices to affiliated and unaffiliated customers in the home market. We made deductions from the starting price, where appropriate, for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for inland freight expenses, under section 773(a)(6)(B) of the Act.

In addition, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Specifically, we made adjustments to NV for comparison to Thai Union’s EP transactions by deducting direct selling expenses incurred for home market sales (i.e., credit expenses) and adding U.S. direct selling expenses (i.e., credit expenses and bank charges) and U.S. commissions.⁴³ For home market sales compared to CEP

⁴⁰ See 19 CFR 351.410(e).

⁴¹ See the Marine Gold Prelim Calc Memo.

⁴² See 19 CFR 351.411(b).

⁴³ See section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c).

transactions, we made deductions for home market credit expenses, pursuant to 773(a)(6)(C) of the Act.

We also made adjustments for Thai Union, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the “commission offset.” Specifically, where commissions are incurred in one market, but not in the other, we limited the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.⁴⁴

We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁴⁵

F. *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 Marine Gold’s and Thai Union’s shrimp products for which we could not determine the NV based on home market sales because, as noted in the “Results of the COP Test” section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide 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 Marine Gold and Thai Union, 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 Marine Gold and Thai Union 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 home 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)(6)(C)(iii) and (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 Marine Gold’s and Thai Union’s home market sales from, and adding U.S. direct selling expenses to, CV.⁴⁶ We also made adjustments, when applicable, for Marine Gold’s and Thai Union’s home market indirect selling expenses to offset U.S. commissions in EP comparisons.⁴⁷

⁴⁴ See 19 CFR 351.410(e).

⁴⁵ See 19 CFR 351.411(b).

⁴⁶ See 19 CFR 351.410(c).

⁴⁷ See 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars for all transactions by Marine Gold and Thai Union, 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, Marine Gold and Thai Union reported that they purchased forward exchange contracts which were used to convert their sales prices 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 currency in the forward sale agreement to convert the foreign currency.⁴⁸ Therefore, for Marine Gold and Thai Union, we used the reported forward exchange rates for currency conversions where applicable.

Recommendation

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Paul Piquado

Paul Piquado
Assistant Secretary
for Import Administration

4 MARCH 2013

(Date)

⁴⁸ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 6; see also Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary No Shipment Determination, 76 FR 12025, 12031 (March 4, 2011), unchanged in Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination, 76 FR 41203 (July 13, 2011).