



A-549-822

AR8: 2/1/2012 – 1/31/2013

Public Document

AD/CVD/OII: DM

DATE: March 18, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

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

---

## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from Thailand.<sup>1</sup> The review covers 159<sup>2</sup> producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2012, through January 31, 2013. We 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 AD order on shrimp from Thailand.<sup>3</sup> Subsequently, on February 1, 2013, the Department published in the Federal Register a notice of opportunity to request an administrative review of the AD order on shrimp from Thailand for the period February 1, 2012, through January 31, 2013.<sup>4</sup>

---

<sup>1</sup> The deadline for the preliminary results of this review was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (i.e., March 18, 2014). 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).

<sup>2</sup> This figure does not include two companies for which the Department is rescinding the administrative review.

<sup>3</sup> 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).

<sup>4</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to



Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in February 2013, the Department received requests to conduct an administrative review of the AD order on shrimp from Thailand from two domestic interested parties, the Ad Hoc Shrimp Trade Action Committee (the petitioner) and the American Shrimp Processors Association (ASPA), for numerous Thai producers/exporters. The Department also received requests to conduct an administrative review from certain individual companies.<sup>5, 6</sup> On April 2, 2013, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for 161 companies.<sup>7</sup>

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 Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.<sup>8</sup> In April 2013, we received comments on the issue of respondent selection from the petitioner and ASPA, as well as two potential respondents, Marine Gold, and Thai Union.

Also in April 2013, we received an improperly-filed statement of no shipments from one company (CP Retailing and Marketing Co., Ltd. (CP Retailing)) and an improperly-filed notification from an additional company (Thai Ocean Venture Co., Ltd. (Thai Ocean Venture)) that it is not a producer/exporter of frozen warmwater shrimp. Because these companies did not remedy procedural deficiencies with respect to their submissions, we have not considered their submissions for purposes of the preliminary results. For further discussion, see the “Preliminary Determination of No Shipments” section of this memorandum.

---

Request Administrative Review, 78 FR 7397 (February 1, 2013).

<sup>5</sup> In their request for review, four companies requested treatment as voluntary respondents in the event that they were not selected as mandatory respondents. As noted below, the Department revoked the order with respect to one of these companies, Marine Gold Products Limited (Marine Gold), and it is individually examining two others, Pakfood Public Co. Ltd. and its affiliates (collectively, Pakfood) and Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. (collectively, Thai Union). The fourth company, Thai Royal Frozen Food Co., Ltd., submitted a response to section A of the questionnaire (i.e., the section related to general information) but did not respond to the remaining sections, and therefore we have not addressed its request for voluntary treatment further.

<sup>6</sup> Pakfood consists of Pakfood Public Co. Ltd, and its five wholly-owned subsidiaries, Asia Pacific (Thailand) Company Limited, Okeanos Food Company Limited, Okeanos Company Limited, Chaophraya Cold Storage Company Limited, and Takzin Samut Company Limited. We have treated these companies as a single entity in all administrative reviews in which they have been named as a respondent. See, e.g., Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 40574 (July 10, 2012).

<sup>7</sup> See Certain Frozen Warmwater Shrimp from India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews, 78 FR 19639 (April 2, 2013) (Initiation Notice).

<sup>8</sup> See Initiation Notice, 78 FR at 19639.

In April and May 2013, we received statements from 13 companies indicating that they had no shipments of subject merchandise to the United States during the POR, all of which were properly-filed and confirmed by CBP.<sup>9</sup>

In May 2013, 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.<sup>10</sup> As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine 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 AD questionnaire to these companies.

Also in May 2013, we received a letter from Thai Union notifying the Department that it intended submit a full questionnaire response in this review for Pakfood, because Thai Union and Pakfood became affiliated during the POR.<sup>11</sup> On May 28, 2013, we requested that Thai Union and Pakfood provide the Department with additional information in order to determine whether the two companies should be “collapsed” (*i.e.*, treated as a single entity) in this proceeding.

In June 2013, we received Thai Union’s and Pakfood’s response to the Department’s request for additional information. We also received Thai Union’s and Pakfood’s responses to section A of the Department’s questionnaire. We issued a supplemental questionnaire related to this information to the respondents in July 2013.

In July 2013, the Department determined that it was appropriate to collapse Thai Union and Pakfood, as of April 23, 2013 (*i.e.*, the date on which they became affiliated).<sup>12</sup> In addition, we published the final results of the seventh administrative review of the AD order on Thai shrimp and revoked the order in part with respect to Marine Gold.<sup>13</sup> Therefore, Marine Gold is no

---

<sup>9</sup> These companies are: 1) Anglo-Siam Seafoods Co., Ltd.; 2) Daedong (Thailand) Co. Ltd.; 3) Grobest Frozen Foods Co., Ltd.; 4) GSE Lining Technology Co., Ltd.; 5) Leo Global Logistics Co., Ltd.; 6) Leo Transports; 7) Lucky Union Foods Co., Ltd.; 8) Namprick Maesri Ltd. Part.; 9) Shing-Fu Seaproducts Development Co., Ltd.; 10) S.K. Foods (Thailand) Public Co. Limited; 11) Surapon Nichirei Foods Co., Ltd.; 12) Thai Union Manufacturing; and 13) V. Thai Food Product Co., Ltd.

<sup>10</sup> See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Blaine Wiltse, Senior Analyst, Office 2, AD/CVD Operations entitled, “Selection of Respondents for Individual Review,” dated May 8, 2013 (Respondent Selection Memo).

<sup>11</sup> See May 22, 2013, letter from Thai Union and Pakfood.

<sup>12</sup> See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team, Senior Analyst, Office 2, AD/CVD Operations entitled, “Whether to Collapse Thai Union Frozen Products Public Company Limited/Thai Union Seafood Company Ltd. and Pakfood Public Co. Ltd. and its Affiliates in the 2012-2013 Antidumping Duty Administrative Review of Certain Frozen Warm water Shrimp from Thailand,” dated July 26, 2013 (“Thai Union and Pakfood Collapsing Memo”). The collapsed entity is hereafter referred to as “Thai/Union/Pakfood.”

<sup>13</sup> See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part): 2011-2012, 78 FR 42497 (July 16, 2013) (Final Results of 2011-2012 Administrative Review).

longer a mandatory respondent in this administrative review, and we are rescinding this review with respect to Marine Gold. In addition, in the Final Results of 2011-2012 Administrative Review, we rescinded the review with respect to one non-selected respondent also named in the notice of initiation here, Tanaya International Co., Ltd. (Tanaya), because it was neither a producer nor an exporter of Thai shrimp. Consistent with this determination, we are also rescinding this review with respect to Tanaya. For further discussion, see the “Rescission of Review, In Part” section of this memorandum.

In August 2013, we received Thai Union’s and Pakfood’s responses to sections B and C, (*i.e.*, the sections covering comparison market and U.S. sales, respectively) of the questionnaire, as well as section D (*i.e.*, the section covering cost of production (COP) and constructed value (CV)); we also received a response to the supplemental section A questionnaire in this month. In September 2013, we issued supplemental sales and cost questionnaires to the respondents; we received responses to these questionnaires from September through November 2013.

In October 2013, as explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.<sup>14</sup> Thus, all deadlines in this segment of the proceeding have been extended by 16 days. Additionally, on October 29, 2013, we extended the preliminary results of the current review by 120 days.<sup>15</sup> Because the extended deadline of March 16 falls on a non-business day, the preliminary results of this review are due on the next business day (*i.e.*, March 17, 2014).<sup>16</sup>

In December 2013, we issued an additional supplemental sales questionnaire to Thai Union and Pakfood. We received responses to these questionnaires in January 2014. In February 2014, at the Department’s request, Thai Union clarified certain information in its response.

## **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,<sup>17</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

---

<sup>14</sup> See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” dated October 18, 2013.

<sup>15</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary, AD/CVD Operations, from Blaine Wiltse, Senior International Trade Analyst, Office II, AD/CVD Operations entitled, “Certain Frozen Warmwater Shrimp from India and Thailand: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Reviews,” dated October 29, 2013.

<sup>16</sup> 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).

<sup>17</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

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.

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 this order is dispositive.<sup>18</sup>

---

<sup>18</sup> 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

## PRELIMINARY DETERMINATION OF NO SHIPMENTS

During the review, we received no-shipment claims from 15 companies named in the Initiation Notice.<sup>19</sup> We subsequently confirmed with CBP the no-shipment claims made by 13 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 13 companies had no reviewable transactions during the POR:

- 1) Anglo-Siam Seafoods Co., Ltd.;
- 2) Daedong (Thailand) Co. Ltd.;
- 3) Grobest Frozen Foods Co., Ltd.;
- 4) GSE Lining Technology Co., Ltd.;
- 5) Leo Global Logistics Co., Ltd.;
- 6) Leo Transports;
- 7) Lucky Union Foods Co., Ltd.;
- 8) Namprick Maesri Ltd. Part.;
- 9) Shing-Fu Seaproducts Development Co., Ltd.;
- 10) S.K. Foods (Thailand) Public Co. Limited;
- 11) Surapon Nichirei Foods Co., Ltd.;
- 12) Thai Union Manufacturing; and
- 13) V. Thai Food Product Co., Ltd.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents had been to rescind the administrative review if the respondent certified that it had no shipments and we had confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.<sup>20</sup> As a result, in such circumstances, we previously instructed 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.<sup>21</sup> 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 13 companies

---

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).

<sup>19</sup> As noted in the “Background” section above, certain of these claims contained procedural deficiencies which were remedied prior to these preliminary results.

<sup>20</sup> See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27393 (May 19, 1997).

<sup>21</sup> See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

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.<sup>22</sup> 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 13 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, CP Retailing and Thai Ocean Venture, 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, CP Retailing 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; Thai Ocean Venture failed both to respond to the Department’s request that it support its statement that it was not a producer/exporter of subject merchandise and properly to file its initial submission in IA ACCESS.<sup>23</sup> Because neither of these companies submitted a properly-filed statement of no shipments and/or failed to support its statement at the Department’s request, we are continuing to include both companies in this administrative review for purposes of the preliminary results.

### **RESCISSION OF REVIEW, IN PART**

As noted in the “Background” section of this memorandum, above, on July 16, 2013, we published the final results of the seventh administrative review of the Shrimp Order and revoked the order in part with respect to imports of merchandise produced and sold by Marine Gold.<sup>24</sup> Therefore, considering we revoked the order in part for Marine Gold, we are rescinding this review as it pertains to Marine Gold. In addition, we are rescinding this review as it pertains to Tanaya because it is neither an exporter nor a producer of the subject merchandise.<sup>25</sup>

### **COLLAPSING OF THAI UNION AND PAKFOOD**

As noted above, on July 26, 2013, we determined that it was appropriate to collapse Thai Union and Pakfood in this segment of the proceeding, based on the fact that they are now affiliated parties and they otherwise satisfied the collapsing criteria in 19 CFR 351.401(f).<sup>26</sup> Therefore, we are treating Thai Union and Pakfood as a single-entity in this administrative review, effective April 23, 2012, the date on which their affiliation began. We computed a weighted-average

---

<sup>22</sup> 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.

<sup>23</sup> IA ACCESS is Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System.

<sup>24</sup> Final Results of 2011-2012 Administrative Review.

<sup>25</sup> See id.

<sup>26</sup> See Thai Union and Pakfood Collapsing Memo.

dumping margin for Thai Union/Pakfood for the period April 23, 2012, through January 31, 2013. This rate will be assigned as Thai Union/Pakfood's preliminary cash deposit rate, and the underlying data will also form the basis for assessment of AD duties (if any) at the conclusion of the review for entries made from April 23, 2012, through January 31, 2013.

Both Thai Union and Pakfood also reported U.S. sales during the period February 1, 2012 through April 22, 2012. Because the companies were not affiliated during this portion of the POR, we computed separate dumping margins for each company covering this period. These calculations will form the basis for the assessment of AD duties (if any) at the conclusion of the administrative review for entries made from February 1, 2012, through April 22, 2012.

## **DISCUSSION OF THE METHODOLOGY**

### Fair 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 Thai Union's, Pakfood's, and Thai Union/Pakfood'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, below.

When making these comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section of this memorandum, 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 home market merchandise, as described below, were reported, 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.

### Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method), unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping duty investigations.<sup>27</sup> In recent investigations, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department has

---

<sup>27</sup> See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

applied a “differential pricing” analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation.<sup>28</sup> The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.<sup>29</sup> The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination zip code and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

---

<sup>28</sup> See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and the accompanying Issues and Decision Memorandum at Comment 3; and Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

<sup>29</sup> See, e.g., Certain Activated Carbon From the People’s Republic of China: Final results of Antidumping Duty Administrative Review: 2011-2012, 78 FR 70533 (November 26, 2013), and accompanying Issues & Decision Memorandum at comment 2.

was considered significant, and passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large threshold (i.e., 0.8).

Next, the "ratio test" assesses the extent of the significance of the price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent but less than 66 percent of the value of total sales, then the results support the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support the application of an alternative to the average-to-average method.

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

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

For Pakfood, based on the results of differential pricing analysis for the period February 1, 2012, through April 22, 2012, the Department finds that less than 33 percent of Pakfood's U.S. sales pass the Cohen's *d* test, which confirms that a pattern of EPs does not exist for comparable merchandise which differs significantly among purchasers, regions or time periods. Accordingly, the Department determined to use the average-to-average method to calculate the weighted-average dumping margin for Pakfood for sales during the period February 1, 2012, through April 22, 2012.

For Thai Union, based on the results of differential pricing analysis for the period February 1, 2012, through April 22, 2012, the Department finds that between 33 percent and 66 percent of

Thai Union's U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to those U.S. sales which passed the Cohen's *d* test. Accordingly, the Department determined to use the average-to-transaction method for those U.S. sales which passed the Cohen's *d* test and the average-to-average method for those U.S. sales which do not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Thai Union regarding its sales for the period February 1, 2012, through April 22, 2012.

For Thai Union/Pakfood, based on the results of differential pricing for the period April 23, 2012, through January 31, 2013, the Department finds that more than 66 percent of Thai Union/Pakfood's U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of EPs and CEPs for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method as applied to all U.S. sales. Accordingly, the Department determined to use the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Thai Union/Pakfood regarding its sales for the period April 23, 2012, through January 31, 2013.

### Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Thai Union, Pakfood, and Thai Union/Pakfood 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), we compared U.S. sales of shrimp by each of these companies to sales of its shrimp made in the home market within the contemporaneous window period (where possible). The window period in this case for Thai Union and Pakfood extends from three months prior to the month of the first U.S. sale through April 22, 2012; the period for Thai Union/Pakfood's sales extends from April 23, 2012, until two months after the month of the last U.S. sale. For further discussion, see the "Collapsing Thai Union and Pakfood" section above.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of non-broken shrimp to sales of the most similar non-broken foreign like product made in the ordinary course of trade. Similarly, we compared U.S. sales of broken shrimp to sales of the most similar broken foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on 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.

#### Export Price/Constructed Export Price

For all sales by Pakfood and certain sales by Thai Union/Pakfood, 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 methodology for Thai Union's and the remainder of Thai Union/Pakfood'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 methodology was not otherwise indicated.

##### A. *Pakfood*

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for warehouse expenses, movement expenses to the port of export, brokerage and handling expenses in Thailand, U.S. brokerage and handling expenses, international freight expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and marine insurance, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

##### B. *Thai Union*

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 billing adjustments, discounts, and rebates in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for international freight expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight from port to warehouse, U.S. warehouse expenses, freight expenses between warehouses, U.S. inland freight from the warehouse to the unaffiliated U.S. customer, and other movement expenses, 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, other direct selling expenses, and bank charges) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). 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.

C. *Thai Union/Pakfood*

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions from the starting price for warehouse expenses, movement expenses to the port of export, brokerage and handling expenses in Thailand, U.S. brokerage and handling expenses, international freight expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), marine insurance 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 billing adjustments, discounts, and rebates, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for domestic warehouse expenses, movement expenses to the port of export, brokerage and handling expenses in Thailand, international freight expenses, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight from port to warehouse, U.S. warehouse expenses, freight expenses between warehouses, U.S. inland freight from the warehouse to the unaffiliated U.S. customer, and other movement expenses, 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, other direct selling expenses, and bank charges) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). 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/Pakfood 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 Thai Union's, Pakfood's, and Thai Union/Pakfood'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 and 19 CFR 351.404. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), 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 and Thai Union/Pakfood 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 billing adjustments, discounts, 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 parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length.<sup>30</sup> 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.<sup>31</sup>

## C. *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).<sup>32</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>33</sup> 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>34</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.<sup>35</sup>

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

---

<sup>30</sup> 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).

<sup>31</sup> See section 771(15) of the Act and 19 CFR 351.102(b).

<sup>32</sup> See 19 CFR 351.412(c)(2).

<sup>33</sup> Id.; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (Aug. 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

<sup>34</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.

<sup>35</sup> See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>36</sup>

In this administrative review, we obtained information from the respondents regarding the marketing stages involved in making the reported home 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. Pakfood*

In the U.S. market, Pakfood reported sales to traders/distributors through one channel of distribution (*i.e.*, direct sales to unaffiliated U.S. customers).<sup>37</sup> We examined the selling activities performed for these sales and found that Pakfood performed the following selling functions: sales forecasting, market research/economic planning, customer contact/negotiations, order processing, packing, making delivery arrangements, having dedicated sales personnel, inventory maintenance, and quality assurance/warranty services. 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, based on the selling function categories, we find that Pakfood performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its EP sales. Because all sales in the United States are made through a single distribution channel and the selling activities to Pakfood's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Pakfood made sales to five customer categories (*i.e.*, trading companies, distributors, retailers, other end-users, and companies that further process the shrimp) through one channel of distribution (*i.e.*, direct sales to unaffiliated customers). We examined the selling activities performed and found that Pakfood 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 selling function categories noted above, we find that Pakfood performed sales and marketing, inventory maintenance and warehousing, and warranty and technical services for its home market sales. Because all sales in the home market are made through a single distribution channel and the selling activities to Pakfood's customers did not vary within this channel, we preliminarily determine that there is one LOT in the home market.

---

<sup>36</sup> See, e.g., OJ from Brazil, at Comment 7.

<sup>37</sup> See Pakfood's Section C Response dated August 5, 2013, at C-20.

We evaluated the selling function categories in the U.S. and home market LOTs and found that selling functions in each of the categories (*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. Finally, we compared the EP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ so substantially that they meet the regulatory requirement of being made at “separate marketing stages.” Therefore, we 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.

## 2. *Thai Union*

In the U.S. market, Thai Union reported sales to wholesalers/distributors, end users, and retailers/restaurants, in two channels of distribution: 1) 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); and 2) COSFF’s sales to its customers.<sup>38</sup> These channels are referred to as Channels 2 and 3, respectively.

We examined the selling activities performed for CEP sales made to COSFF but shipped directly to the U.S. customer and found that Thai Union performed the following selling functions: sales forecasting, market research/economic planning, customer contact/negotiations, order processing, packing, making delivery arrangements, having dedicated sales personnel, inventory maintenance, and quality assurance/warranty services. Accordingly, based on the selling function categories noted above, we find that Thai Union performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its Channel 2 CEP sales shipped directly to the customer.

We also examined the selling activities performed for CEP sales to COSFF. 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 selling function categories, we find that Thai Union performed sales and marketing, freight and delivery services, inventory maintenance and warehousing and warranty and technical services for its Channel 3 CEP sales to COSFF.

We preliminarily find that Channel 2 CEP sales are at a different LOT than Channel 3 CEP sales. Specifically, the record evidence shows that Thai Union performs a full complement of selling activities for Channel 2 CEP sales, whereas the selling activities for Channel 3 CEP sales are minimal. Because Thai Union is proactive in its customer contacts and forecasting/planning activities (rather than merely waiting for orders to come in and inventorying/delivering merchandise as it does for Channel 3 CEP sales), we determine that Thai Union’s CEP sales in Channel 2 are sufficiently different from CEP sales in Channel 3 to find that they are made at different marketing stages. Therefore, we preliminarily determine that Channel 2 CEP sales are at one LOT in the U.S. market and Channel 3 CEP sales are at another LOT in the U.S. market.

---

<sup>38</sup> See Thai Union’s Section C Response dated August 5, 2013, at C-19 and 20.

With respect to the home market, Thai Union made sales to five customer categories (*i.e.*, trading companies, distributors, retailers, end-users, and companies that further process the shrimp). Thai Union stated that its home market sales were made through one channel of distribution (*i.e.*, direct sales to 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 selling function categories, 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 selling function categories in the U.S. and home market LOTs and found that selling functions in each of the categories (*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 we find that Thai Union performed almost no selling activities to sell to COSFF in Channel 3, we find that the activities performed in the home market are more significant. Specifically, the record evidence shows that Thai Union: 1) engaged in sales forecasting, both on a short- and long-term basis, and coordinated the results with its customers; 2) analyzed historical customer purchase data and solicited customer feedback on its products; 3) monitored trends in the home market via newspapers and periodicals; 4) participated in trade shows in Thailand where it promoted its products and provided samples; 5) employed a sales staff responsible for home market sales which was significantly larger than the staff responsible for sales to COSFF; 6) delivered some product to home market customers, as well as arranged deliveries for others; and 7) inspected home market merchandise for quality (on a limited basis) and made good on quality guarantees.<sup>39</sup> Individually, these selling activities are not sufficient to meet the regulatory standard of a “separate marketing stage”; however, in the aggregate we find that they are substantial, such that they constitute a marketing stage which differs from (and is more advanced than) the marketing stage at which Thai Union sells to COSFF in Channel 3. Therefore, we granted Thai Union a CEP offset for its Channel 3 CEP sales for the preliminary results.

With regard to Channel 2 CEP sales, we evaluated the selling function categories in the U.S. and home market LOTs and found that the selling functions in each of the categories (*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. Finally, we compared the Channel 2 CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ so substantially that they meet the regulatory requirement of being made at “separate marketing stages.” As noted above, Thai Union performs a full complement of selling activities for Channel 2 CEP sales, as it does for its home market sales.

---

<sup>39</sup> See, *e.g.*, Thai Union’s section A Response dated June 26, 2013, at Exhibit 9; and Thai Union’s section A Supplemental Response dated August 29, 2013, at 2-8, and Exhibit 3.

Moreover, as in the home market, it is proactive in its customer contacts and forecasting/planning activities for Channel 2 CEP sales. Therefore, we determine that Channel 2 CEP sales and home market sales during the POR were made at the same LOT, and as a result, a CEP offset is not warranted.

### 3. *Thai Union/Pakfood*

In the U.S. market, Thai Union/Pakfood reported sales to wholesalers/distributors, end users, and retailers/restaurants, in the following three channels of distribution: 1) direct sales from Thai Union/Pakfood to unaffiliated U.S. customers (EP sales); 2) sales negotiated with one particular customer by Thai Union but invoiced by COSFF (CEP sales); and 3) COSFF's sales to its customers (CEP sales).<sup>40</sup> These channels are referred to as Channels 1, 2 and 3, respectively.

We examined the selling activities performed for EP sales from Thai Union/Pakfood to unaffiliated U.S. customers (Channel 1) and found that Thai Union/Pakfood performed the following selling functions: sales forecasting, market research/economic planning, customer contact/negotiations, order processing, packing, making delivery arrangements, having dedicated sales personnel, inventory maintenance, and quality assurance/warranty services.<sup>41</sup> Thai Union/Pakfood reported the same selling functions for its Channel 2 sales. Accordingly, based on the selling function categories noted above, we find that Thai Union/Pakfood performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its Channel 1 and Channel 2 sales. Because Thai Union/Pakfood performed the same selling functions at the same relative level of intensity for both sales channels, we determine that sales in Channel 1 and Channel 2 are at the same LOT.

We also examined the selling activities performed for Channel 3 CEP sales to COSFF. Thai Union/Pakfood performed the following selling functions: customer contact/negotiations, order processing, packing, making delivery arrangements, inventory maintenance, and quality assurance/warranty services.<sup>42</sup> Accordingly, based on the selling function categories noted above, we find that Thai Union/Pakfood performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its Channel 3 CEP sales.

We preliminarily find that Channel 1 EP sales and Channel 2 CEP sales are at a different LOT than Channel 3 CEP sales. Specifically, the record evidence shows that Thai Union/Pakfood performs a full complement of selling activities for Channel 1 EP sales and Channel 2 CEP sales, whereas the selling activities for Channel 3 CEP sales are minimal. Because Thai Union/Pakfood is proactive in its customer contacts and forecasting/planning activities (rather than merely waiting for orders to come in and inventorying/delivering merchandise as it does for Channel 3 CEP sales), we determine that Thai Union/Pakfood's EP sales in Channel 1 and CEP

---

<sup>40</sup> See Thai Union's section C Response dated August 5, 2013, at C-19 and 20.

<sup>41</sup> See Thai Union's and Pakfood's Section A Responses dated June 26, 2013, at Exhibits 9 and 6, respectively.

<sup>42</sup> See *id.*

sales in Channel 2 are sufficiently different from CEP sales in Channel 3 to find that they are made at different marketing stages. Therefore, we preliminarily determine that Channel 1 EP sales and Channel 2 CEP sales are at the same LOT in the U.S. market and Channel 3 CEP sales are at another LOT in the U.S. market.

With respect to the home market, Thai Union/Pakfood made sales to five customer categories (*i.e.*, trading companies, distributors, retailers, end-users, and companies that further process the shrimp). Thai Union/Pakfood stated that its home market sales were made through one channel of distribution (*i.e.*, direct sales to its customers).<sup>43</sup> We examined the selling activities performed and found that Thai Union/Pakfood 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 selling function categories, we find that Thai Union/Pakfood 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 selling function categories in the U.S. and home market LOTs and found that the selling functions in each of the categories (*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. While we find that Thai Union performed almost no selling activities to sell to COSFF, we find that the activities performed in the home market are more significant. Specifically, the record evidence shows that Thai Union: 1) engaged in sales forecasting, both on a short- and long-term basis, and coordinated the results with its customers; 2) analyzed historical customer purchase data and solicited customer feedback on its products; 3) monitored trends in the home market via newspapers and periodicals; 4) participated in trade shows in Thailand where it promoted its products and provided samples; 5) employed a sales staff responsible for home market sales which was significantly larger than the staff responsible for sales to COSFF; 6) delivered some product to home market customers, as well as arranged deliveries for others; and 7) inspected home market merchandise for quality (on a limited basis) and made good on quality guarantees.<sup>44</sup> Individually, these selling activities are not sufficient to meet the regulatory standard of a “separate marketing stage”; however, in the aggregate we find that they are substantial, such that they constitute a marketing stage which differs from (and is more advanced than) the marketing stage at which Thai Union/Pakfood sells to COSFF in Channel 3. Therefore, we granted Thai Union/Pakfood a CEP offset for its Channel 3 CEP sales for the preliminary results.

With regard to Channel 1 EP sales and Channel 2 CEP sales, we evaluated the selling function categories in the U.S. and home market LOTs and found that the selling functions in each of the

---

<sup>43</sup> See Thai Union’s and Pakfood’s Section B Responses dated August 5, 2013, at B-22 and B-23, respectively.

<sup>44</sup> See, *e.g.*, Thai Union’s and Pakfood’s Section A Responses dated June 26, 2013, at Exhibits 9 and 6, respectively; and Section A Supplemental Response dated August 29, 2013, at 2-8, 17-20, and Exhibit 3.

categories (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. Finally, we compared the Channel 1 EP and Channel 2 CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ substantially, such that they meet the regulatory requirement of being made at “separate marketing stages.” As noted above, Thai Union/Pakfood performs a full complement of selling activities for Channel 1 EP and Channel 2 CEP sales, as it does for its home market sales. Moreover, as in the home market, it is proactive in its customer contacts and forecasting/planning activities for Channel 1 EP and Channel 2 CEP sales. Therefore, we determine that Channel 1/Channel 2 sales and home market sales during the POR were made at the same LOT, and as a result, a CEP offset is not warranted.

#### D. *Cost of Production Analysis*

We found that Thai Union and Pakfood made sales to the home 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.<sup>45</sup> 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 Thai Union and Pakfood 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, the respondents 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.

##### 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

---

<sup>45</sup> 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.

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 market 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 also applied our standard cost-recovery test with no adjustments.

We found that, for certain products, more than 20 percent of Thai Union's, Pakfood's, and Thai Union/Pakfood'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.

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

#### 1. *Pakfood*

We calculated NV for Pakfood on the reported packed, delivered or packed, ex-factory prices to 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 warehouse expenses and 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 Pakfood's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses and other direct selling expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses and other direct selling expenses) and U.S. commissions.<sup>46</sup>

---

<sup>46</sup> See section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c).

In accordance with 19 CFR 351.410(e), we deducted indirect selling expenses incurred in the home market, up to the amount of the reported U.S. commission (i.e., the “commission offset”).

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.<sup>47</sup>

## 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, where appropriate, for inland freight expenses under section 773(a)(6)(B) of the Act.

For home market sales compared to CEP transactions, we made deductions for home market credit expenses, pursuant to 773(a)(6)(C) of the Act. In accordance with 19 CFR 351.410(e), we made a commission offset by deducting indirect selling expenses incurred in the home market, up to the amount of the reported U.S. commission.

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.<sup>48</sup>

## 3. *Thai Union/Pakfood*

We calculated NV for Thai Union/Pakfood 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 warehouse expenses and 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/Pakfood’s EP transactions by deducting direct selling expenses incurred for home market sales (i.e., credit expenses and other direct selling expenses) and

---

<sup>47</sup> See 19 CFR 351.411(b).

<sup>48</sup> See 19 CFR 351.411(b).

adding U.S. direct selling expenses (i.e., credit expenses, bank charges, and other direct selling expenses) and U.S. commissions.<sup>49</sup> For home market sales compared to CEP transactions, we made deductions for home market credit expenses, pursuant to 773(a)(6)(C) of the Act. In accordance with 19 CFR 351.410(e), we made a commission offset by deducting indirect selling expenses incurred in the home market, up to the amount of the reported U.S. commission.

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.<sup>50</sup>

### Currency Conversion

We made currency conversions into U.S. dollars for all transactions by Thai Union, Pakfood, and Thai Union/Pakfood, 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, Thai Union/Pakfood and Pakfood 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.<sup>51</sup> Therefore, for Thai Union/Pakfood and Pakfood, we used the reported forward exchange rates for currency conversions where applicable.

---

<sup>49</sup> See section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c).

<sup>50</sup> See 19 CFR 351.411(b).

<sup>51</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From 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).

Recommendation

Based on our analysis, we recommend adopting the above positions in these preliminary results. If this recommendation is accepted, we will publish the preliminary results of the review and the preliminary dumping margin for Thai Union/Pakfood in the Federal Register.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

18 MARCH 2014  
(Date)