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DATE: March 4, 2016

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. The review covers 163 producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2014, through January 31, 2015. We preliminarily found that sales of the subject merchandise have been made at prices below normal value (NV). Additionally, we preliminarily determine that certain companies for which we initiated a review did not have any shipments during the POR. Finally, we are rescinding this review of a company for which we received a timely withdrawal of the request for review.

BACKGROUND

In February 2005, the Department published in the Federal Register an AD order on shrimp from Thailand.¹ Subsequently, on February 2, 2015, 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, 2014, through January 31, 2015.²

¹ 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).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 80 FR 5509 (February 2, 2015).



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 2015, 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. In February and March 2015, the Department also received requests to conduct an administrative review from certain individual companies.³ On March 30, 2015, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for 163 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 Act, we would select mandatory respondents for individual examination based upon U.S. Customs and Border Protection (CBP) entry data.⁵ In April 2015, we received comments on the issue of respondent selection from various potential respondents, including Mayao; Ongkorn Cold Storage Co., Ltd.; Thai Royal; Thai Union; and Xian-Ning Seafood Co., Ltd.

Also in April 2015, 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.⁶ 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.*, Mayao and Thai Union).⁷ Accordingly, we issued the AD questionnaire to these companies.

In May 2015, we received statements from five companies indicating that they had no shipments of subject merchandise to the United States during the POR.⁸ In the same submissions, two of these companies, Gallant Ocean and Southport, also withdrew their requests for review.⁹

³ In their request for review, nine companies requested treatment as voluntary respondents in the event that they were not selected as mandatory respondents. As noted below, the Department is individually examining six of these companies: A Foods 1991 Co., Limited (A Foods) and May Ao Foods Co., Ltd. (May Ao) (collectively, Mayao); and Pakfood Public Company Limited, Okeanos Food Co., Ltd., Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. (collectively, Thai Union). We received a voluntary questionnaire response from only one of the remaining three companies, Thai Royal Frozen Food Co., Ltd. (Thai Royal). For further discussion, see the “Voluntary Respondents” section, below.

⁴ See Certain Frozen Warmwater Shrimp from India and Thailand; Notice of Initiation of Antidumping Duty Administrative Reviews, 80 FR 16634 (March 30, 2015) (Initiation Notice).

⁵ See Initiation Notice, 80 FR at 16635.

⁶ See Memorandum to Irene Darzenta Tzafolias, Acting Director, Office II, AD/CVD Operations, from Dennis McClure, Senior Analyst, Office II, AD/CVD Operations entitled, “Selection of Respondents for Individual Review,” dated April 29, 2015 (Respondent Selection Memo).

⁷ The Department initiated this review for Mayao as a single entity, consistent with our treatment of its two affiliated producers in previous segments of the proceeding. See Initiation Notice. Consequently, we considered any entries by A Foods and May Ao on an aggregate basis for purposes of respondent selection in the instant administrative review. See Respondent Selection Memo.

⁸ These companies are: 1) Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean); Lucky Union Foods Co., Ltd. (Lucky Union); Marine Gold Products Ltd. (Marine Gold); Southport Seafood Co., Ltd. (Southport); and Thai Union

In June 2015, we received responses from Mayao and Thai Union to section A (*i.e.*, the section related to general information) of the questionnaire, as well as a voluntary section A response from Thai Royal. We issued supplemental questionnaires related to this information to Mayao and Thai Union in this same month, and we received responses from Mayao and Thai Union in July 2015.

Also in July 2015, we received responses to sections B and C (*i.e.*, the sections covering comparison market and U.S. sales, respectively) of the questionnaire from Mayao and Thai Union, as well as a response to section D (*i.e.*, the section covering cost of production (COP) and constructed value (CV)) from Thai Union. In this month, we also received a voluntary response to sections B, C, and D from Thai Royal.

In July and August 2015, we issued supplemental sales questionnaires to Mayao and Thai Union, as well as a supplemental cost questionnaire to Thai Union. Also in August 2015, the Department determined that it was appropriate to collapse the individual producers within Mayao, and, thus, to treat them as the same company for purposes of this proceeding.¹⁰ In addition, we received an allegation from ASPA that Mayao sold shrimp in Thailand at prices below the COP; after considering this allegation, we initiated a sales-below-cost investigation for Mayao and requested that it respond to section D of the Department's questionnaire.¹¹ We received Mayao's response to this section of the questionnaire in September 2015.

From September through November, we issued additional supplemental sales and cost questionnaires to Mayao and Thai Union, and we received responses to these questionnaires during the same time period. Also from September through December 2015, we conducted verification of the sales and cost data reported by Thai Union at its offices in the United States and Thailand.

In October 2015, we extended the preliminary results of the current review by 120 days.¹² In January 2016, as explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of

Manufacturing Company Limited (Thai Union Manufacturing).

⁹ *See* letters from Gallant Ocean and Southport, "AD Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Certification of No Shipments and Withdrawal of Request for Administrative Review," dated May 28, 2015.

¹⁰ *See* Memorandum to Melissa Skinner, Director, Office II, AD/CVD Operations, from The Team, entitled, "Whether To Collapse A Foods 1991 Co., Ltd. and Mayao Foods Co., Ltd. in the 2014-2015 Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from Thailand," dated August 3, 2015.

¹¹ *See* Memorandum to Melissa G. Skinner, Director, Office II, AD/CVD Operations, from The Team, entitled, "Allegation of Home Market Sales Below the Cost of Production for A Foods 1991 Co., Ltd. and Mayao Foods Co., Ltd. (collectively, Mayao)," dated August 28, 2015 (Mayao Cost Initiation Memo).

¹² *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 2, 2015.

the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review is now March 4, 2016.¹³

In January and February 2016, we requested, and received, additional sales and cost information from Mayao.

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.

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

¹³ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,” dated January 27, 2016.

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

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.¹⁵

TREATMENT OF VOLUNTARY RESPONDENTS

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 782(a) of the Act. The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.¹⁶ Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review. When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination who voluntarily provide the information requested of the mandatory respondents if: 1) the information is submitted by the due date specified for the mandatory respondents; and 2) the number of exporters or producers subject to the review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the review.

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 See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46795 (August 6, 2015).

On February 27, 2015, Thai Royal, a producer/exporter of subject merchandise in Thailand, requested treatment as a voluntary respondent in the event that it was not selected as a mandatory respondent.¹⁷ On April 29, 2015, we determined that it was not practicable to examine all 163 exporters/producers of the subject merchandise involved in this review, in light of our resource constraints.¹⁸ Therefore, in accordance with section 777A(c)(2) of the Act, we selected the two exporters accounting for the largest volume of shrimp exported from Thailand during the period of review (*i.e.*, Mayao and Thai Union) based on the largest U.S. entry volume,¹⁹ and we issued the AD questionnaire to Mayao and Thai Union on April 29, 2015. We received timely questionnaire responses from Mayao and Thai Union, as well as a timely voluntary response from Thai Royal.

On February 24, 2016, pursuant to section 782(a) of the Act, the Department determined not to select Thai Royal as a voluntary respondent because selecting any additional company for individual examination would be unduly burdensome and would inhibit the timely completion of this review.²⁰

RESCISSION OF REVIEW, IN PART

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. This review was initiated on March 30, 2015.²¹ Gallant Ocean and Southport withdrew their requests for review on May 28, 2015, which is within the 90-day deadline.²² While no other party requested an administrative review of Southport, we received other requests for review of Gallant Ocean. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review only with respect to Southport. We are continuing the administrative review with respect to Gallant Ocean because we received properly-filed requests for a review of this company from the petitioner and ASPA, which were not withdrawn.

¹⁷ See from letter Thai Royal, “Frozen Warmwater Shrimp from Thailand: Request for Administrative Review and Request Voluntary Treatment,” dated February 27, 2015, at 2.

¹⁸ See Respondent Selection Memo.

¹⁹ *Id.*

²⁰ See Memorandum to Melissa Skinner, Director, Office II, Antidumping and Countervailing Duty Operations, through Shawn Thompson, Program Manager, Antidumping and Countervailing Duty Operations, Office II, from Dennis McClure, Senior International Trade Analyst, Office II, Antidumping and Countervailing Duty Operations entitled “Antidumping Duty Review of Frozen Warmwater Shrimp (Shrimp) from Thailand: Selection of Voluntary Respondent,” dated February 24, 2016.

²¹ See Initiation Notice.

²² See letters from Gallant Ocean and Southport, “AD Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Certification of No Shipments and Withdrawal of Request for Administrative Review,” dated May 28, 2015.

PRELIMINARY DETERMINATION OF NO SHIPMENTS

During the review, we received no-shipment claims from five companies named in the Initiation Notice. However, as noted above, we are rescinding the review for one of these companies, Southport. Therefore, we are not addressing Southport's no-shipments statement in this administrative review.

With respect to two of the four remaining companies, Gallant Ocean and Lucky Union, we subsequently confirmed with CBP their no-shipment claims.²³ 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 these two companies had no reviewable transactions during the POR.

With respect to the two remaining companies, Marine Gold²⁴ and Thai Union Manufacturing, 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. Therefore, we are continuing to include both Marine Gold and Thai Union Manufacturing in this administrative review for purposes of the preliminary results. However, we requested additional information from CBP with respect to any potential entries made by these companies during the POR, and we will consider this information in making a final determination on this issue for purposes of the final results.

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.²⁵ 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 the 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.²⁶ 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

²³ See Customs and Border Protection Message 6039303 from Director AD/CVD & Revenue Policy & Programs to Directors of Field Operations, Port Directors, entitled "No shipments inquiry for certain frozen warmwater shrimp from Thailand (A-549-822)," dated February 8, 2016.

²⁴ Shrimp produced and exported by Marine Gold was excluded from the AD Thailand order effective February 1, 2012. 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, 42499 (July 16, 2013) (2011-2012 Thai Shrimp). Accordingly, we are conducting this administrative review with respect to Marine Gold only for shrimp produced in Thailand where Marine Gold acted as either the manufacturer or the exporter (but not both).

²⁵ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27393 (May 19, 1997).

²⁶ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

instruct CBP to liquidate any existing entries of merchandise produced by Gallant Ocean or Lucky Union, 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.²⁷ 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 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.

DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Mayao’s and Thai Union’s sales of shrimp from Thailand to the United States were made at less than NV, the Department compared the export price (EP) or constructed export price (CEP) to the NV, as described in the “Export Price/Constructed Export Price,” and “Normal Value” sections of this memorandum.

A) Determination of the Comparison Method

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

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation

²⁷ 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.

²⁸ 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; see also JBF RAK LLC v. United States, 790 F.3d 1358, 1363-65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁹ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on 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 a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, 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 period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that 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* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

²⁹ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); and Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

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

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 comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

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

B) Results of the Differential Pricing Analysis

Mayao

For Mayao, based on the results of the differential pricing analysis, the Department preliminarily finds that 73.16 percent of the value of U.S. sales pass the Cohen’s *d* test,³⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time

³⁰ See the Memorandum to the File from Alice Maldonado, entitled “Calculations for A Foods 1991 Co., Limited (A Foods) and May Ao Foods Co., Ltd. (May Ao) (collectively, Mayao) for the Preliminary Results,” dated March 4, 2016.

periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Mayao.

Thai Union

For Thai Union, based on the results of the differential pricing analysis, the Department preliminarily finds that 80.23 percent of the value of U.S. sales pass the Cohen's *d* test,³¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Thai Union.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Mayao and Thai Union 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 Mayao's and Thai Union's U.S. sales of shrimp to sales of its shrimp made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

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. 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.

³¹ See the Memorandum to the File from Dennis McClure, entitled "Calculations for Thai Union Frozen Products Public Co., Ltd., Thai Union Seafood Co. Ltd., Pakfood Public Company Limited, and Okeanos Food Co., Ltd. (collectively, Thai Union) for the Preliminary Results," dated March 4, 2016 (Thai Union Preliminary Analysis Memo).

Export Price/Constructed Export Price

For certain sales by Mayao and 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 methodology for the remainder of Mayao's and 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 methodology was not otherwise indicated.

A. *Mayao*

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses to the port of export, brokerage and handling expenses in Thailand, U.S. brokerage and handling expenses, and international freight 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. We made deductions from the starting price for discounts, where appropriate, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses to the port of export, brokerage and handling expenses in Thailand, 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, and U.S. warehouse expenses, where appropriate, 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 (U.S.-dollar-denominated commissions 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 Mayao and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. *Thai Union*

We revised Thai Union's reported sales data to take into account our findings at verification.³² We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for billing adjustments, in accordance

³² See the Memorandum to the File, through Melissa Skinner, Director, AD/CVD Operations, Office II, from Dennis McClure, Senior Analyst, AD/CVD Operations, Office II, entitled, "Verification of the Sales Response of Thai Union Frozen Products Public Co., Ltd. (TUF), Thai Union Seafood Co., Ltd. (TUS), Pakfood Public Company Limited (Pakfood), and Okeanos Food Co., Ltd. (OKF) (collectively, Thai Union) in the 2014-2015 Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand," dated February 5, 2016; see also Thai Union Preliminary Analysis Memo.

with 19 CFR 351.401(c). We also 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 and 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.

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 Mayao'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 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 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.³³ 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.³⁴

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 LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁶ 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),³⁷ 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.³⁸

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make 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

³³ 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).

³⁴ See section 771(15) of the Act and 19 CFR 351.102(b).

³⁵ See 19 CFR 351.412(c)(2).

³⁶ *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum, at Comment 7 (OJ from Brazil).

³⁷ 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.

³⁸ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

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.³⁹

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. Mayao

In the U.S. market, Mayao reported sales to distributors, retailers, wholesalers, and restaurants, in the following three channels of distribution: 1) direct sales from Mayao to unaffiliated U.S. customers (EP sales); 2) sales shipped to unaffiliated U.S. customers by Mayao but invoiced by Mayao's U.S. subsidiary, Top Trade LLC (Top Trade) (CEP sales); and 3) sales made out of U.S. inventory to Top Trade customers (also CEP sales).⁴⁰ These channels are referred to as Channels 1, 2 and 3, respectively.

We examined the selling activities performed for EP sales from Mayao to unaffiliated U.S. customers (Channel 1), as well as the selling activities performed for CEP sales through Top Trade in Channel 2. We found that Mayao performed the following selling activities: sales forecasting, market research/economic planning, sales promotion/advertising, customer contact/negotiations, long-term period fulfillment, order processing, packing, making delivery arrangements, having dedicated sales personnel, making commission payments, inventory maintenance, quality assurance/warranty services, and procurement/sourcing services.⁴¹ 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 noted above, we find that Mayao performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its Channel 1 and Top Trade's Channel 2 sales. Because Mayao 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 Top Trade. Mayao performed the following selling functions: customer contact/negotiations, order processing, packing, having dedicated sales personnel, and quality assurance/warranty services.⁴²

³⁹ See, e.g., OJ from Brazil, at Comment 7.

⁴⁰ See Mayao's section C Response, dated July 2, 2015, at C-19.

⁴¹ See Mayao's supplemental sections A - C Response, dated September 9, 2015, at Exhibit SQ-8. In this response, Mayao stated that Mayao and Top Trade share employees in Thailand, and that most, if not all, of these selling activities are performed there by the same individuals who make Mayao's other U.S. sales (both EP and CEP). Id. at SQ-9. Therefore, we included the selling functions performed in Thailand for EP and CEP sales equally in our analysis.

⁴² See Mayao's supplemental sections A - C Response, dated September 9, 2015, at Exhibit SQ-8.

Further, Mayao claimed that Top Trade performed the following additional selling functions related to these sales: sales forecasting, market research/economic planning, sales promotion/advertising, long-term period fulfillment, making delivery arrangements, making commission payments, and procurement/sourcing services.⁴³ However, the individuals who performed these activities in Thailand were employed by Mayao, and, thus, we treated them as Mayao selling functions. Accordingly, based on the selling function categories noted above, we find that Mayao performed sales and marketing, freight and delivery services, and warranty and technical services for its Channel 3 CEP sales.

We determine that Mayao's Channel 3 CEP sales are not significantly different from EP sales in Channel 1 or CEP sales in Channel 2 to find that they are made at different marketing stages. Therefore, because the selling functions performed by Mayao in Thailand do not differ significantly between Channels 1, 2, and 3, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Mayao made sales to six customer categories (*i.e.*, restaurants, hotels, trading companies, individual traders, retailers, and processing companies that further process the shrimp). Mayao stated that its home market sales were made through two channels of distribution (*i.e.*, direct sales to its unaffiliated customers (Channel 1) and indirect sales through its affiliated reseller, Sea-Tech Intertrade Co., Ltd. (Sea-Tech) (Channel 2)).⁴⁴ We examined the selling activities performed for Mayao's direct sales to unaffiliated home market customers (Channel 1) and found that Mayao performed the following selling functions: sales forecasting, market research/economic planning, sales promotion/advertising, participating in trade shows, customer contact/negotiations, long-term period fulfillment, order processing, packing, making delivery arrangements and deliveries, having dedicated sales personnel, inventory maintenance, and quality assurance/warranty services.⁴⁵ Accordingly, based on the selling function categories, we find that Mayao performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its Channel 1 sales.

We also examined the selling activities performed for indirect sales through Sea Tech (Channel 2). Mayao performed the following selling functions to sell to Sea Tech: long-term period fulfillment, storage of goods prior to sale, order processing, packing, order processing, issuance of invoices, payment collection, coordination with Sea-Tech over downstream pricing, making delivery arrangements, making price/billing adjustments, quality assurance/warranty services, and customer support for production questions.⁴⁶ In addition, Sea Tech performed sales forecasting, market research/economic planning, sales promotion/advertising, participating in trade shows, customer contact/negotiation, order processing, and having dedicated sales personnel. Accordingly, based on the selling function categories, we find that Mayao performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and

⁴³ Id.

⁴⁴ See Mayao's Section A Responses, dated June 3, 2015, at A-16.

⁴⁵ See Mayao's supplemental sections A - C Response, dated September 9, 2015, at Exhibit SQ-8.

⁴⁶ See Mayao's supplemental section A Response, dated July 6, 2015, at A-4.

warranty and technical services for its Channel 2 sales. Further, while Mayao reported many of the same selling functions for its Channel 1 and 2 sales, we note that Sea Tech performed a full complement of selling activities for Channel 2 sales as well. Thus, we find that the number and intensity of the selling functions performed for Channel 2 was significantly higher, such that Channels 1 and 2 constitute “separate marketing stages.” Therefore, we determine that the sales in Channels 1 and 2 are at different LOTs in the home market.

Finally, we compared the U.S. LOT to the home market LOTs and found that the selling functions performed for the U.S. LOT and for home market customers in Channel 1 do not differ substantially, such that they meet the regulatory requirement of being made at “separate marketing stages.” Therefore, we determine that Mayao’s U.S. and direct home market sales during the POR were made at the same LOT. As a result, we find that neither an LOT adjustment nor a CEP offset is warranted when U.S. sales are compared to direct home market sales.

However, with respect to home market sales made by Sea Tech, as noted above, we found that these sales are at a different LOT. In comparing U.S. sales to NV based on sales at a different LOT in the comparison market, where the difference affects price comparability, as manifested by a pattern of consistent price differences between comparison-market sales at the home market LOT and comparison-market sales at the LOT of the U.S. transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. In analyzing whether there exists a pattern of consistent price differences, the Department’s practice has been to consider whether average prices are higher at one of the LOTs for a preponderance of products and quantity sold at the different LOTs in the NV market.⁴⁷ Thus, in this case, we made an LOT adjustment where appropriate.

2. *Thai Union*

In the U.S. market, Thai Union 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 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).⁴⁸ These channels are referred to as Channels 1, 2 and 3, respectively.

We examined the selling activities performed for EP sales from Thai Union to unaffiliated U.S. customers (Channel 1) 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.⁴⁹ Thai Union reported the same selling

⁴⁷ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 72 FR 26591 (May 10, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁸ See Thai Union’s Section C Response, dated July 7, 2015, at C-21 and 22.

⁴⁹ See Thai Union’s Section A Response, dated June 3, 2015, at Exhibit 10.

functions for its Channel 2 sales. 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 1 and Channel 2 sales. Because Thai Union 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 performed the following selling functions: customer contact/negotiations, order processing, packing, making delivery arrangements, inventory maintenance, and quality assurance/warranty services.⁵⁰ 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 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 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 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 EP sales in Channel 1 and 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 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 a different LOT in the U.S. market.

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 its customers).⁵¹ 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, participating in 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.

⁵⁰ Id.

⁵¹ See Thai Union's and Pakfood's Section B Responses, dated July 7, 2015, at B-22.

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.⁵² 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, because there is only one LOT in the home market and, consequently, we are unable to make an LOT adjustment, we granted Thai Union 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 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 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 LOT adjustment (for Channel 1) or a CEP offset (for Channel 2) is not warranted.

D. *Cost of Production Analysis*

I. *Mayao*

Based on our analysis of ASPA’s allegation, we found that there were reasonable grounds to believe or suspect that Mayao’s sales of shrimp in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost

⁵² See, *e.g.*, Thai Union’s Section A Response, dated June 3, 2015, at Exhibit 10; and Section A Supplemental Response dated July 21, 2015, at SA-3 – SA-9, and Exhibit SA-8.

investigation to determine whether Mayao's sales were made at prices below their respective COPs.⁵³

2. *Thai Union*

We found that Thai Union 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.⁵⁴ 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 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 except as follows:⁵⁵

Thai Union

1. We adjusted Thai Union's reported G&A and financial expense rates so that all financial expense items were included in the calculation of the financial expense rate rather than the G&A expense rate.
2. We removed scrap revenue from Thai Union's calculation of its net G&A expenses and used the scrap revenue to calculate a scrap offset to the cost of manufacturing.

2. *Test of Comparison Market Sales Prices*

⁵³ See Mayao Cost Initiation Memo.

⁵⁴ See Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013, 79 FR 15951 (March 24, 2014) and accompanying Preliminary Decision Memorandum, at 21, unchanged in Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013, 79 FR 51306 (August 28, 2014) (Thai Shrimp Final AR8).

⁵⁵ See Memorandum from Kristin Case, Senior Accountant, to Neal M. Halper "Constructed Value Calculation Adjustments for the Preliminary Results – Thai Union Frozen Products Public Co., Ltd.," dated March 4, 2016.

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 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 Mayao'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.

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

1. *Mayao*

We calculated NV for Mayao based on the reported packed, delivered or ex-factory prices to unaffiliated customers in the home market. We 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 Mayao'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.⁵⁶ In accordance with 19 CFR 351.410(e), we made a

⁵⁶ See section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c).

commission offset by deducting indirect selling expenses incurred in the home market, up to the amount of the reported U.S. commission. For home market sales compared to CEP transactions, we made adjustments to NV by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses and bank charges) and adding U.S. direct selling expenses incurred in Thailand (*i.e.*, credit expenses and bank charges) and U.S. commissions incurred in Thailand, pursuant to section 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.⁵⁷

2. *Thai Union*

We calculated NV for Thai Union based 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 and discounts, 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 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, bank charges, and other direct selling expenses) and U.S. commissions.⁵⁸ 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. For home market sales compared to CEP transactions, we made deductions for home market credit expenses and other direct selling expenses, pursuant to 773(a)(6)(C) of the Act.

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.⁵⁹

⁵⁷ See 19 CFR 351.411(b).

⁵⁸ See section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c).

⁵⁹ See 19 CFR 351.411(b).

Currency Conversion

We made currency conversions into U.S. dollars for all transactions by Mayao 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, Mayao 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.⁶⁰ Therefore, we used the reported forward exchange rates for currency conversions where applicable.

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 margins for Mayao and Thai Union in the Federal Register.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2016

(Date)

⁶⁰ See, e.g., Thai Shrimp Final AR8; 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).