

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-533-840]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India

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

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain frozen and canned warmwater shrimp from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from India for Hindustan Lever Limited (HLL). We also preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from India for respondents Devi Sea Foods Ltd. (Devi) and Nekkanti Seafoods Limited (Nekkanti), or for companies subject to the "all others" rate.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

DATES: Effective Date: August 4, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3874 or (202) 482-4593, respectively.

Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp from India are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section

of this notice. In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from India by HLL. The critical circumstances analysis for the preliminary determination is discussed below under the section "Critical Circumstances."

Background

Since the initiation of this investigation (see *Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876 (January 27, 2004) (*Initiation Notice*)), the following events have occurred.

On February 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain frozen and canned warmwater shrimp from India are materially injuring the United States industry. See ITC Investigation Nos. 731-TA-1063-1068 (Publication No. 3672).

On February 20, 2004, we selected the three largest producers/exporters of certain frozen and canned warmwater shrimp from India as the mandatory respondents in this proceeding. See Memorandum to Louis Apple, Director Office 2, from the Team entitled, "Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from India—Selection of Respondents," dated February 20, 2004. We subsequently issued the antidumping questionnaire to Devi, HLL, and Nekkanti on February 20, 2004.

During the period February through June 2004, various interested parties, including the petitioners,¹ submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp concerning whether the following products are covered by the scope of the investigations: a certain seafood mix, dusted shrimp, battered shrimp, salad shrimp sold in counts of 250 pieces or higher, the species *Macrobrachium rosenbergii*, organic shrimp, and peeled shrimp used in breeding.² In addition,

¹ The petitioners in this investigation are the Ad Hoc Shrimp Trade Alliance (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

² Specifically, Ocean Duke Corporation (Ocean Duke), an importer and wholesaler of the subject

the Louisiana Shrimp Alliance (LSA), an association of domestic shrimp harvesters and processors, requested that the Department expand the scope to include fresh (never frozen) shrimp. See "Scope Comments" section of this notice.

We received section A questionnaire responses from the three respondents in March 2004, and section B, C, and D questionnaire responses in April 2004.

We issued and received responses to our supplemental questionnaires from May through July 2004.

On May 3, 2004, the petitioners alleged that Devi and HLL made third country sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales-below-cost investigation of these respondents.³ On May 28, 2004, the Department initiated a sales-below-cost investigation for Devi and HLL. See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Petitioners' Allegation of Sales Below the Cost of Production for Devi Sea Foods Limited," (Devi Cost Allegation Memo) dated May 28, 2004, and Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Petitioners' Allegation of Sales Below the Cost of Production for Hindustan Lever Limited," date May 28, 2004 (HLL Cost Allegation Memo).

On May 18, 2004, pursuant to sections 733(c)(1)(B) and (c)(2) of the Act and 19

merchandise, requested that the following products be excluded from the scope of this and the concurrent investigations on certain frozen and canned warmwater shrimp: (1) "Dusted shrimp," (2) "battered shrimp," and (3) "seafood mix." Another importer, Rubicon Resources LLP, supported Ocean Duke's request regarding dusted and battered shrimp. Eastern Fish Company and Long John Silver's, Inc. also requested that dusted and battered shrimp be excluded from the scope of the investigations. Furthermore, the Seafood Exporters' Association of India requested that the Department find that warmwater salad shrimp in counts of 250 pieces or higher are not within the scope, and that the species *Macrobrachium rosenbergii* is a separate class or kind of merchandise. Also, Exportadora de Alimentos S.A., one of the respondents in the Ecuador case, requested that the Department find that farm-raised organic shrimp is not covered by the scope of the investigations. Finally, the American Breaded Shrimp Processors Association, comprised of importers of peeled shrimp which they consume in the production of breaded shrimp products, requested that peeled shrimp imported for the sole purpose of breading be excluded from the scope of the investigations.

³ Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of foreign-like product in the relevant third country market for Nekkanti, *i.e.*, Japan, were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide cost investigation relating to third-country sales to Japan at the time of the initiation to determine whether sales were made at prices below their respective COPs. See *Initiation Notice*, 69 FR at 3880.

CFR 351.205(f), the Department determined that the case was extraordinarily complicated and postponed the preliminary determination until no later than July 28, 2004. See *Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil (A-351-838), Ecuador (A-331-802), India (A-533-840), Thailand (A-549-822), the People's Republic of China (A-570-893), and the Socialist Republic of Vietnam (A-503-822)*, 69 FR 29509 (May 24, 2004).

On May 21, 2004, the Department denied LSA's request to amend the scope to include fresh (never frozen) shrimp. See Memorandum from Jeffrey A. May, Deputy Assistant Secretary, AD/CVD Enforcement Group I, and Joseph A. Spetrini, Deputy Assistant Secretary AD/CVD Enforcement Group III, to James J. Jochum, Assistant Secretary for Import Administration entitled: "Antidumping Investigations on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, the People's Republic of China, Thailand and the Socialist Republic of Vietnam: Scope Determination Regarding Fresh (Never Frozen) Shrimp," dated May 21, 2004 (Scope Decision Memorandum I).

On May 26, 2004, HLL provided a third country sales listing for its second largest third country market, Italy, in response to the Department's concerns that certain of its sales to Spain were not destined for that country.

Pursuant to the Department's solicitation, on June 7, 2004, various interested parties, including the petitioners, submitted comments on the issue of whether product comparisons and margin calculations in this and the concurrent investigations of certain frozen and canned warmwater shrimp should be based on data provided on an "as sold" basis or data converted to a headless, shell-on (HLSO) basis.⁴

⁴ Specifically, the Department received comments from the following interested parties, in addition to the petitioners, on June 7: the Brazilian Shrimp Farmers' Association and Central de Industrializacao e Distribuicao de Alimentos Ltda.; Empresa De Armazenagem Frigorifica Ltda.; Camara Nacional de Acuicultura (National Chamber of Aquaculture) of Ecuador; the Rubicon Group (comprised of Andaman Seafood Co., Ltd. Chanthaburi Seafoods Co., Ltd. And Thailand Fishery Cold Storage Public Co., Ltd.); Thai I-Mei Frozen Foods Co., Ltd. and its affiliated reseller Ocean Duke; the Seafood Exporters of India and its members Devi, HLL, and Nekkanti; the VASEP Shrimp Committee and its members; and Shantou Red Garden Foodstuff Co., Ltd. In addition to addressing the "as sold"/HLSO issue, some of these parties also commented on the significance of species and container weight in the Department's product characteristic hierarchy.

Additional comments were subsequently submitted on June 15 and 25, 2004. See "Product Comparison Comments" section, below.

On June 8, 2004, the petitioners alleged that HLL made below-cost sales to Italy and, therefore, requested that the Department initiate a sales-below-cost investigation. However, because we have not selected Italy as HLL's comparison market in this case, we have not considered this allegation. See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from India—Third-Country Market Selection for Hindustan Lever, Limited," dated July 28, 2004 (HLL Third Country Comparison Market Selection Memorandum), for further discussion.

On June 15, 2004, the petitioners objected to Devi's use of Canada as its third country comparison market, and they requested that the Department obtain sales data for the company's second largest third country market, Japan. In July 2004, the Department determined that it is appropriate to use the third country market initially reported by Devi (*i.e.*, Canada). See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from India—Third-Country Market Selection for Devi Sea Foods Limited," dated July 28, 2004 (Devi Third Country Comparison Market Selection Memorandum), for further discussion.

On July 2, 2004, the Department made preliminary scope determinations with respect to the following shrimp products: Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii*, organic shrimp, peeled shrimp used in breading, dusted shrimp, and battered shrimp. See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration entitled: "Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Scope Clarifications: (1) Ocean Duke's Seafood Mix; (2) Salad Shrimp Sold in Counts of 250 Pieces or Higher; (3) *Macrobrachium rosenbergii*; (4) Organic Shrimp; and (5) Peeled Shrimp Used in Breading," dated July 2, 2004 (Scope Decision Memorandum II); and Memorandum from Edward C. Yang,

Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration entitled: "Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Scope Clarification: Dusted Shrimp and Battered Shrimp," dated July 2, 2004 (Scope Decision Memorandum III). See also "Scope Comments" section below.

On July 12, 2004, HLL requested that the Department find that one of its third country sales was made outside the ordinary course of trade. While we were unable to consider this request for the preliminary determination, we will consider it for purposes of the final determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on June 22, 2004, Seafood Exporters Association of India (SEAI) and the individual respondents in this investigation, Devi, HLL and Nekkanti, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the respondents account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal**

Register. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation (POI) is October 1, 2002, through September 30, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2003).

Scope of Investigation

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

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 the investigation. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the investigation.

Excluded from the scope are (1) breaded shrimp⁶ and prawns

(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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classifiable under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice* at 69 FR 3877. Throughout the 20 days and beyond, the Department received many comments and submissions regarding a multitude of scope issues, including: (1) Fresh (never frozen) shrimp, (2) Ocean Duke's seafood mix, (3) salad shrimp sold in counts of 250 pieces or higher, (4) *Macrobrachium rosenbergii*, (5) organic shrimp, (6) peeled shrimp used in breading, (7) dusted shrimp and (8) battered shrimp. On May 21, 2004, the Department determined that the scope of this and the concurrent investigations remains unchanged, as certain frozen and canned warmwater shrimp, without the addition of fresh (never frozen) shrimp. See Scope Decision Memorandum I.

On July 2, 2004, the Department made scope determinations with respect to Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii*, organic shrimp and peeled shrimp used in breading. See Scope Decision Memorandum II. Based on the information presented by interested parties, the Department determined that

Ocean Duke's seafood mix is excluded from the scope of this and the concurrent investigations; however, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii*, organic shrimp and peeled shrimp used in breading are included within the scope of these investigations. See Scope Decision Memorandum II at 33.

Additionally, on July 2, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. See Scope Decision Memorandum III. Based on the information presented by interested parties, the Department preliminarily finds that, while substantial evidence exists to consider battered shrimp to fall within the meaning of the breaded shrimp exclusion identified in the scope of these proceedings, there is insufficient evidence to consider that shrimp which has been dusted falls within the meaning of "breaded" shrimp. However, there is sufficient evidence for the Department to consider excluding this merchandise from the scope of these proceedings provided an appropriate description can be developed. See Scope Decision Memorandum III at 18. To that end, along with the previously solicited comments regarding breaded and battered shrimp, the Department solicits comments from interested parties which enumerate and describe a clear, administrable definition of dusted shrimp. See Scope Decision Memorandum III at 23.

Fair Value Comparisons

To determine whether sales of certain frozen and canned warmwater shrimp from India to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to NVs.

For this preliminary determination, we have determined that Devi, HLL, and Nekkanti did not have viable home market sales during the POI. Therefore, as the basis for NV, we used third country sales to Canada (Devi), Spain (HLL), and Japan (Nekkanti) when making comparisons in accordance with section 773(a)(1)(C) of the Act. See Devi Third Country Comparison Market Selection Memorandum and HLL Third Country Comparison Market Selection Memorandum for further discussion.

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

⁶ Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes

battered shrimp as discussed in the "Scope Comments" section below. See Scope Memorandum III.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Devi in Canada, HLL in Spain, and Nekkanti in Japan, as appropriate, during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country, where appropriate. Where there were no sales of identical merchandise in the third country made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using constructed value (CV).

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Processed form, cooked form, head status, count size (on an "as sold" basis), shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

Product Comparison Comments

As Sold v. HLSO Methodology

We received comments from various interested parties concerning whether to perform product comparisons and margin calculations using data provided on an "as sold" basis or on data converted to an HLSO basis.⁷

The petitioners argue that using a consistent HLSO equivalent measure permits accurate product comparisons and margin calculations whereas the "as sold" measures do not. In particular, the petitioners emphasize that it is necessary to translate the actual sold volumes (weights) and count sizes to a uniform unit of measure that takes into account the various levels of processing of the different shrimp products sold and the allegedly large difference in value between the shrimp tail meat and

other parts of the shrimp that may constitute "as sold" weight or count size, such as the head or shell. The petitioners' contention is premised upon their belief that the shrimp tail meat is the value-driving component of the shrimp. The respondents disagree, maintaining generally that using HLSO-equivalent data violates the antidumping duty law and significantly distorts product comparisons and margin calculations. In particular, they argue that: (1) Shrimp is sold based on its actual size and form, not on an HLSO basis, and it is the Department's practice to use actual sales/cost data in its margin analysis; (2) the rates used to convert price, quantity and expense data to an HLSO basis are uncertain as they are not maintained by the respondents in the ordinary course of business, and are generally based on each individual company's experience rather than any accepted industry-wide standard; and (3) the HLSO methodology introduces a significant distortion through the incorrect assumption that the value of the product varies solely in direct proportion to the change in weight resulting from production yields, when in fact the value of the product depends also on other factors such as quality and form.

Our analysis of the company responses shows that: (1) No respondent uses HLSO equivalents in the normal course of business, for either sales or cost purposes; and (2) there is no reliable or consistent HLSO conversion formula for all forms of processed shrimp across all companies, as each company defined its conversion factors differently and derived these factors based on its own production experience. Therefore, we preliminarily determine it is appropriate to perform product comparisons and margin calculations using data "as sold." This approach is in accordance with our normal practice and precludes the use of conversion rates, the accuracy of which is uncertain. Given the variety and overlap of the "as sold" count size ranges reported by the respondents, we also preliminarily determine that it is appropriate to standardize product comparisons across respondents by fitting the "as sold" count sizes into the count size ranges specified in the questionnaire.

Product Characteristics Hierarchy

We also received comments from various interested parties regarding the significance of the species and container weight criteria in the Department's product comparison hierarchy.

Various parties requested that the species criterion be ranked higher in the

Department's product characteristic hierarchy—as high as the second most important characteristic, rather than the thirteenth—based on their belief that species is an important factor in determining price. One party provided industry publications indicating price variations according to species type. Another party requested further that the Department revise the species categories specified in the Department's questionnaire to reflect characteristics beyond color (*i.e.*, whether the shrimp was farm-raised or wild-caught). In addition, several parties requested that container weight, the eleventh characteristic in the Department's product characteristic hierarchy, be eliminated altogether as a product matching criterion, as they believe it is commercially insignificant and relates to packing size or form, rather than the physical attributes of the product.

With respect to the arguments regarding the species criterion, the petitioners disagree, maintaining that there is no credible evidence that species drives pricing to such a significant extent that buyers consider it more important than product characteristics such as head and cooked status. Rather, the petitioners contend that once shrimp is processed (*e.g.*, cooked, peeled, etc.), the species classification becomes essentially irrelevant. Therefore, the petitioners assert that while species type has some, not entirely insignificant effect on shrimp prices, it is appropriately captured in the Department's product matching hierarchy. Furthermore, with respect to the container weight criterion, the petitioners assert that, while the shrimp inside the container may be identical, in many cases the size of the container is an integral part of the product and an important determinant of the markets and channels through which shrimp can be sold. For this reason, the petitioners maintain that the Department should continue to include container weight as a product matching characteristic.

Regarding the species criterion, we have not changed the position of this criterion in the product characteristic hierarchy for the preliminary determination. We agree that the physical characteristic of species type may impact the price or cost of processed shrimp. For that reason, we included species type as one of the product matching criteria. However, based on our review of the record evidence, we find that other physical characteristics of the subject merchandise, such as head status, count size, shell status, and frozen form, appear to be more significant in setting

⁷ In this notice, we address only those comments pertaining to market-economy dumping calculation methodology. Any comments pertaining to non-market-economy dumping calculation methodology are separately addressed in the July 2, 2004, preliminary determinations in the antidumping duty investigations of certain frozen and canned warmwater shrimp from the People's Republic of China and the Socialist Republic of Vietnam (*see* 69 FR 42654 (July 16, 2004) and 69 FR 42672 (July 16, 2004), respectively).

price or determining cost. The information provided by the parties, which suggests that price may be affected in some cases by species type, does not provide sufficient evidence that species type is more significant than the remaining physical characteristics of the processed shrimp. Therefore, we find an insufficient basis to revise the ranking of the physical characteristics established in the Department's questionnaire for the purpose of product matching.

With respect to differentiating between species types beyond the color classifications identified in the questionnaire, we do not find that such differentiations reflect meaningful differences in the physical characteristics of the merchandise. In particular, we note that whether shrimp is farm-raised or wild-caught is not a physical characteristic of the shrimp, but rather a method of harvesting. Therefore, we have not accepted the additional species classifications proposed by the respondents. Accordingly, in those cases where the respondents reported additional species classifications for their processed shrimp products, we reclassified the products into one of the questionnaire color classifications. We made an exception for the shrimp identified as "scampi" (or *Macrobrachium rosenbergii*) and "red ring" (or *Aristeus alcocki*), where appropriate, because they represent species distinct from those associated by color in the Department's questionnaire. Regarding this exception, we note that while scampi and red ring are sufficiently distinct for product matching purposes, they are not so distinct as to constitute a separate class or kind of merchandise (see Scope Memorandum II). We also made an exception for the shrimp identified as "mixed" (e.g., "salad" shrimp), where appropriate, because there is insufficient information on the record to classify these products according to the questionnaire color classifications.

Regarding the container weight criterion, we have included it as the eleventh criterion in the product characteristic hierarchy because we view the size or weight of the packed unit as an integral part of the final product sold to the customer, rather than a packing size or form associated with the shipment of the product to the customer. Moreover, we find it appropriate, where possible (other factors being equal), to compare products of equivalent container weight (e.g., a one-pound bag of frozen shrimp with another one-pound bag of frozen shrimp, rather than a five-pound bag), as

the container weight may impact the per-unit selling price of the product.

Broken Shrimp

Two of the respondents in this case, HLL and Nekkanti, reported sales of broken shrimp in their third country markets, while the third respondent, Devi, reported such sales in its U.S. market. Because: (1) The matching criteria for this investigation do not currently account for broken shrimp; (2) no interested parties have provided comments on the appropriate methodology to match these sales; and (3) the quantity of such sales does not constitute a significant percentage of the respondents' databases, we have excluded these sales from our analysis for purposes of the preliminary determination. Nonetheless, we are seeking comments from interested parties regarding our treatment of these sales for consideration in the final determination.

Glazing

One of the respondents in this investigation, HLL, reported sales in the comparison market on a glazed-weight basis (i.e., including the weight of frozen water). However, HLL reported sales to the United States on a net-weight basis (i.e., without glazing). Therefore, in order to make comparisons for HLL on the same basis in both markets, we converted the data in the comparison market to a net-weight equivalent basis.

Export Price

Devi

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, and international freight expenses. We also made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act. See *Notice of Preliminary Determination of Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 18165, 18169 (April 15, 2002) (*Steel Wire Rod from Brazil*).

HLL

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance, and port dues, and other miscellaneous shipment charges, including loading charges. Regarding these loading charges, HLL classified these expenses as direct selling expenses; however, we treated them as movement because they relate to the shipment of the merchandise. We also made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act. See *Steel Wire Rod from Brazil*, 67 FR at 18169.

Nekkanti

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, loading charges, container terminal handling charges, other miscellaneous movement expenses, and international freight expenses. We also made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act. See *Steel Wire Rod from Brazil*, 67 FR at 18169.

Nekkanti reported in its U.S. sales listing additional revenue received from one customer. However, we did not make adjustments for this revenue because Nekkanti failed to provide sufficient explanation of the circumstances under which it received it, and it provided inadequate supporting documentation in its supplemental questionnaire responses. We have issued an additional supplemental questionnaire related to this revenue, and we will examine this information at verification.

Duty Drawback

Devi, HLL, and Nekkanti claimed a price adjustment based on their participation in the Indian government's Duty Entitlement Passbook (DEPB) Program. The Department's practice is to consider the Indian DEPB program under section 772(c)(1)(B) of the Act (*i.e.*, the duty drawback provision). See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India*, 68 FR 11058, 11062 (March 7, 2003), unchanged in the final results.⁸ The respondents disagree that this adjustment is like duty drawback, given that Indian exporters simply receive DEPB revenue after making an export sale. Further, they stated that the DEPB program differs from a duty drawback program in that, in order to be eligible to receive DEPB payments, Indian exporters need not: (1) import product; or (2) pay import duties. However, because there is no provision in the Act for general export subsidies, we have continued to analyze this claim under the duty drawback provision.

The Department will grant a respondent's claim for a duty drawback adjustment where the respondent has demonstrated that there is (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. See *Rajinder Pipe Ltd. v. United States (Rajinder Pipes)*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). In *Rajinder Pipes*, the Court of International Trade upheld the Department's decision to deny a respondent's claim for duty drawback adjustments because there was not substantial evidence on the record to establish that part one of the Department's test had been met. See also *Viraj Group, Ltd. v. United States*, Slip Op. 01-104 (CIT August 15, 2001).

In this investigation, Devi, HLL, and Nekkanti have failed to demonstrate that there is a link between the import duty paid and the rebate received, and that imported raw materials are used in the production of the final exported product. Therefore, because they have failed to meet the Department's requirements, we are denying the respondents' requests for an adjustment for DEPB revenue.

⁸ See *Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (August 11, 2003).

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 equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that each respondent's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to the respondent's largest third country market as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. As discussed above, we used Canada for Devi, Spain for HLL, and Japan for Nekkanti.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported third country and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. We analyzed this data and found that each respondent made direct

sales to distributors and/or trading companies in both the U.S. and comparison markets. In addition, Devi made direct sales to retailers in both markets. According to the information in their questionnaire responses, these respondents perform essentially the same selling functions in the United States and the relevant third country market (*i.e.*, inventory maintenance, packing, and freight and delivery arrangements (Devi); sales and marketing support, payment of commissions, packing, and freight and delivery arrangements (HLL); and sales and marketing support, payment of commissions, packing, and freight and delivery arrangements (Nekkanti)). Therefore, we find that, for each respondent, the sales channels in each market are at the same LOT.

Accordingly, all comparisons are at the same LOT for Devi, HLL, and Nekkanti and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

C. Cost of Production Analysis

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that Devi's, HLL's, and Nekkanti's sales of frozen and canned warmwater shrimp in their third country markets were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether the respondents' sales were made at prices below their respective COPs. See the Devi Cost Allegation Memo, the HLL Cost Allegation Memo, and the *Initiation Notice*, 69 FR at 3879-3880, for further discussion.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and third country packing costs. See "Test of Third Country Sales Prices" section below for treatment of third country selling expenses. We relied on the COP data submitted by the respondents except in the following instances:

A. Devi

1. We adjusted the reported G&A expense ratio by including in the calculation "Loss on sale of assets" which was recorded as an "Administrative expense" in the company's audited financial statements; and

2. We adjusted the reported financial expense ratio by including in the calculation the "export packing credit" and "interest on packing credit in foreign currency," which were recorded as interest expense in the company's audited financial statements.

See Memorandum from Ernest Z. Gziryan to Neal M. Halper, Director Office of Accounting entitled: "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Devi Sea Foods Limited," dated July 28, 2004, for further discussion.

B. HLL

1. We recalculated HLL's financial expense ratio based on the December 31, 2003, audited consolidated financial statements of HLL's parent company Unilever PLC. We excluded Unilever PLC's profit from the sale of bonds and derivatives, as well as the claimed offset for credit expense and inventory carrying costs, from the financial expense calculation.

See Memorandum from Laurens Van Houten to Neal Halper, Director Office of Accounting, entitled: "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Hindustan Lever Ltd.," dated July 28, 2004, for further discussion.

C. Nekkanti

1. We adjusted the G&A expense ratio to reflect the use of cost goods sold as a denominator rather than cost of production; and

2. We adjusted the financial expense ratio to use the cost of goods sold, rather than cost of production, as the denominator. We excluded from the financial expense calculation the claimed offset for credit expenses and inventory carrying cost.

See Memorandum from Christopher J. Zimpo to Neal Halper, Director Office of Accounting, entitled: "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Nekkanti Sea Foods Ltd.," dated July 28, 2004, for further discussion.

2. Test of Third Country Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, and direct and indirect selling expenses. In determining whether to disregard third

country market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI 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 in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Devi's, HLL's, and Nekkanti's third country sales during the POI were at prices less than the COP and, in addition, the below-cost 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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where there were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

D. Calculation of Normal Value Based on Comparison Market Prices

1. Devi

For Devi, we calculated NV based on delivered prices to unaffiliated customers. We made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act. See *Steel Wire Rod from Brazil*, 67 FR at 18169. We also made deductions for movement expenses, including foreign inland freight expenses, foreign brokerage and handling expenses, and international freight expenses. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses, direct selling

expenses (including survey charges, Export Inspection Agency fees, and microbiological examination fees), bank charges, and commissions. In its calculation of inventory carrying costs, Devi included an amount for export credit guarantee fees. Because these fees had not been accounted for in the U.S. and Canadian sales listings, we made an additional adjustment for differences in circumstances of sale for these expenses. See Memorandum from Elizabeth Eastwood to the file entitled: "Calculations performed for Devi Sea Foods Limited (Devi) in the Investigation of Certain Frozen and Canned Warmwater Shrimp from India," dated July 28, 2004, for further discussion.

Furthermore, in accordance with 19 CFR 351.410(e), we offset U.S. commissions by the lesser of the commission amount or the amount of third country indirect selling expenses because Devi incurred commissions only in the U.S. market. We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

2. HLL

For HLL, we calculated NV based on delivered prices to unaffiliated customers. We made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act. See *Steel Wire Rod from Brazil*, 67 FR at 18169. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance, port dues, and other miscellaneous shipment charges, including loading charges. Regarding these miscellaneous charges, HLL classified these expenses as direct selling expenses; however, we treated them as movement expenses because they relate to the shipment of the merchandise.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses and commissions.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also

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

3. Nekkanti

For Nekkanti, we calculated NV based on delivered prices to unaffiliated customers. We made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act. *See Steel Wire Rod from Brazil*, 67 FR at 18169. We made further deductions for movement expenses, including foreign inland freight expenses, foreign brokerage and handling expenses, loading charges, container terminal handling charges, other miscellaneous movement expenses, and international freight expenses. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses, bank charges, Export Inspection Agency fees, and commissions.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

Devi, HLL, and Nekkanti reported that they purchased forward exchange contracts which were used to convert certain sales transactions into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency. In this case, however, the respondents failed to adequately link the contracts to specific sales, and they also failed to identify the relevant sales in the U.S. and third country sales listings. Therefore, we made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Nonetheless, we have requested that the respondents remedy the deficiencies in their sales reporting. We will examine this issue at verification and consider any additional data submitted by these parties for the final determination.

Critical Circumstances

On May 19, 2004, the petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of certain frozen and canned warmwater shrimp from India. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue its preliminary critical circumstances determination not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that "unless the imports during a 'relatively short period' have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined: (i) Exporter-specific shipment data requested by the Department; (ii) information presented by the respondents in their June 28, 2004, submission, and (iii) the ITC preliminary injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to imports of certain frozen and canned warmwater shrimp from India, the petitioners make no statement concerning a history of dumping. We are not aware of any antidumping order in the United States or in any country on certain frozen and canned warmwater shrimp from India. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from India pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (October 19, 2001). Each respondent reported only EP sales. The preliminary dumping margin calculated for HLL is greater than 25 percent and less than 25 percent for the remaining respondents. Based on the ITC's preliminary determination of injury, and the preliminary dumping margin for HLL, we find there is a reasonable basis to impute to importers knowledge of dumping and likely injury only for HLL. *See Critical Circumstances Memo at Attachment II.*

In determining whether there are "massive imports" over a "relatively short period," pursuant to section

733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). However, as stated in section 351.206(i) of the Department’s regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the *Critical Circumstances Memo*, we find sufficient bases exist for finding importers, or exporters, or producers knew or should have known an antidumping case was pending on certain frozen and canned shrimp imports from India by August 2003, at the latest. In addition, in accordance with section 341.206(i) of the Department’s regulations, we determined December 2002 through August 2003 should serve as the “base period,” while September 2003 through May 2004 should serve as the “comparison period” in determining whether or not imports have been massive in the comparison period, as these periods represent the most recently available data for analysis.

For HLL, we preliminarily determine, as noted above, that importers knew or should have known that this respondent was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with section 733(e)(1)(A)(ii) of the Act. For HLL, we also found massive imports over a relatively short period. See *Critical Circumstances Memo* at Attachment I.

In examining seasonal trends, under 19 CFR 351.206(h)(1)(ii), we compared the time series data for the two years prior to August 2003 (*i.e.*, 2001 and 2002) and found that there have not been significant surges in imports from India between comparable base and comparison periods in prior years. Therefore, based on the time series data, we conclude that imports of certain

frozen and canned warmwater shrimp from India are not subject to seasonal trends. Consequently, we find imports of certain frozen and canned warmwater shrimp from India for HLL were massive pursuant to section 733(e)(1)(B) of the Act. Because HLL satisfies the imputed knowledge of injurious dumping criterion under section 733(e)(1)(A)(ii) of the Act and the massive imports in accordance with section 733(e)(1)(B) of the Act, we preliminarily find that critical circumstances exist for HLL. Because Devi and Nekkanti do not satisfy the imputed knowledge of injurious dumping criterion under section 733(e)(1)(A)(ii) of the Act, we preliminarily find that critical circumstances do not exist for Devi and Nekkanti.

Regarding the companies subject to the “all others” rate, it is the Department’s normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (March 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the “all others” rate. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the “all others” rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the “all others” category for the antidumping investigation of frozen and canned warmwater shrimp from India.

The dumping margin for the “all others” category in the instant case, 14.20 percent, does not exceed the 25 percent threshold necessary to impute knowledge of dumping. Therefore we do not find that importers knew or should have known that there would be material injury from the dumped merchandise.

In summary, we find that there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury

with respect to certain frozen and canned warmwater shrimp from India for HLL. We also find that there have been massive imports of certain frozen and canned warmwater shrimp over a relatively short period from respondent HLL. However, for Devi, Nekkanti, and the companies subject to the “all others” rate, we find that there is no reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to certain frozen and canned warmwater shrimp from India. Given the analysis summarized above, and described in more detail in the *Critical Circumstances Memo*, we preliminarily determine that critical circumstances exist with regard to imports of certain frozen and canned warmwater shrimp from India only for respondent HLL.

We will make a final determination concerning critical circumstances for all producers/exporters of subject merchandise from India when we make our final dumping determinations in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for imports by HLL. For HLL, in accordance with section 733(e)(2) of the Act, we are directing CBP to suspend liquidation of imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average Margin percentage	Critical circumstances
Devi Sea Foods Ltd.	3.56	No

Exporter/Manufacturer	Weighted-average Margin percentage	Critical circumstances
Hindustan Lever Limited	27.49	Yes
Nekkanti Seafoods Limited	9.16	No
All others	14.20	No

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 28, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

[FR Doc. 04-17817 Filed 8-3-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration
[C-423-809]

Stainless Steel Plate in Coils from Belgium; Extension of Final Results of Expedited Sunset Review of Countervailing Duty Order

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

ACTION: Notice of Extension of Time Limit for Final Results of Expedited Sunset Review: Stainless Steel Plate in Coils from Belgium.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset review of the countervailing duty order on stainless steel plate in coils ("SSPC") from Belgium. Based on adequate responses from the domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting an expedited sunset review to determine whether revocation of the CVD order would lead to the continuation or recurrence of a countervailable subsidy. As a result of this extension, the Department intends to issue final results of this sunset review on or about August 30, 2004.

EFFECTIVE DATE: August 4, 2004.

FOR FURTHER INFORMATION CONTACT:

Hilary E. Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

Extension of Final Results: In accordance with section 751(c)(5)(C)(ii)

of the Tariff Act of 1930, as amended ("the Act"), the Department may treat sunset reviews as extraordinarily complicated if the issues are complex. As discussed below, the Department has determined that these issues are extraordinarily complicated. On April 1, 2004, the Department initiated a sunset review of the countervailing duty order on SSPC from Belgium. *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 17129 (April 1, 2004). The Department, in this proceeding, determined that it would conduct an expedited sunset review of this order based on responses from the domestic and respondent interested parties to the notice of initiation. The Department's final results of this review were scheduled for July 30, 2004. However, several issues have arisen regarding the revised net subsidy rate of the order with respect to U & A Belgium and its effect on this sunset review. *See Final Results of Redetermination pursuant to Court Remand: ALZ v. United States*, Slip Op. 03-81, Court No. 01-00834 (CIT July 1, 2003) and *ALZ N.V. v. United States*, Slip Op. 04-38, Court No. 01-00834 (CIT April 22, 2004) and *SSPC from Belgium: Notice of Decision of the Court of International Trade*, 69 FR 26075 (May 11, 2004).

Because of the complex issues in this proceeding, the Department will extend the deadline for issuance of the final results. Thus, the Department intends to issue the final results on or about August 30, 2004 in accordance with section 751(c)(5)(B).

Dated: July 29, 2004.

Jeffrey A. May,
Acting Assistant Secretary for Import Administration.

[FR Doc. 04-17819 Filed 8-3-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072904E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.