

MEMORANDUM TO: Louis Apple
Director
AD/CVD Operations, Office 2

THROUGH: Shawn Thompson
Program Manager
AD/CVD Operations, Office 2

FROM: Elizabeth Eastwood
Nichole Zink
AD/CVD Operations, Office 2

RE: Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigation on Certain Frozen Warmwater Shrimp from India

I. Summary

On December 23, 2004, we received an allegation from the petitioners (*i.e.*, the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company) that the Department of Commerce (the Department) made a ministerial error in its definition of the scope of this investigation. On December 28, 2004 we received a letter from Eastern Fish Company, Inc. (Eastern Fish) and Long John Silver's, Inc. (LJS) in opposition to the petitioners' December 23, 2004 allegations. In addition, on December 30, 2004, we received allegations from the petitioners and from two of the three respondents (*i.e.*, Devi Sea Foods Ltd. (Devi) and Hindustan Lever Ltd. (HLL)) that the Department also made ministerial errors in the final margin calculations. On January 5, 2005, and January 6, 2005, respectively, we received rebuttal comments from HLL and the petitioners.

II. Definition of Ministerial Error

A “ministerial error” is defined under 19 CFR 351.224(f) as:

an error in addition, subtraction, or other arithmetical function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

See also section 735(e) of the Tariff Act of 1930, as amended.

III. General Allegation

Exclusion of Dusted Shrimp from the Scope of Investigation

The petitioners contend that the Department made a ministerial error in the exclusion of dusted shrimp from the scope of this investigation. The petitioners note that the Department excluded dusted shrimp from the scope of this investigation in spite of the petitioners’ opposition. The petitioners point to the fact that the Department cited significantly the declarations of Dr. Otwell and Mr. Thompson submitted by Eastern Fish and LJS in support of excluding dusted shrimp. The petitioners contend that the Department based much of its decision to exclude dusted shrimp from the scope of this investigation on these affidavits. The petitioners specifically note that the Department referenced both declarations eight times regarding an adequate definition to separate dusted shrimp from subject merchandise and at least four times regarding the fact that the benefits of removing the dusting layer from the shrimp did not outweigh the costs.

The petitioners contend that they provided a declaration that directly rebutted many of the claims by Eastern Fish and LJS. According to the petitioners, their declaration stated that frozen dusted shrimp can have its dusting layer removed. Additionally, the practice of thawing and rinsing undusted frozen shrimp is common industry practice, thus the same can be done for dusted shrimp. Furthermore, the barriers to removing the dusting layer are economic, not physical. The declaration provided by the petitioners further noted that the cost of removing the dusting layer could be more economically sensible than paying the dumping duty. The declaration also notes that the technology to remove the dusting layer is available. See the petitioners’ December 7, 2004, scope submission at page 11.

According to the petitioners, the Department did not address these statements, which directly contested Eastern Fish’s and LJS’s claims, in its decision. See the November 29, 2004, memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, from Edward C. Yang, Vietnam/NME Unit Coordinator, entitled, “Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the People’s Republic of

China: Scope Clarification on Dusted Shrimp and Battered Shrimp” (Dusted/Battered Scope Memo). Furthermore, the petitioners assert that the Department did not acknowledge that the petitioners’ declaration even existed. The petitioners therefore conclude that the Department completely overlooked the petitioners’ declaration, and thus made an unintentional error that must be corrected by including dusted shrimp in the scope of this investigation.

Eastern Fish and LJS respond to these allegations by stating that, in excluding certain dusted shrimp from the scope of these investigations, the Department thoroughly identified and analyzed all of the evidence and arguments submitted by all parties. Eastern Fish and LJS also state that, to be a ministerial error, in accordance with 19 CFR 351.224(c)(1), the alleged error must pertain to calculations used by the Department to determine antidumping duty margins. As such, the Department’s alleged error of failing to consider a declaration does not in any manner relate or pertain to any exporter’s disclosed dumping margin calculation. Lastly, Eastern Fish and LJS point out that, to qualify as a correctable ministerial error, an alleged error must meet at least one of three definitions listed in 19 CFR 351.225(f). Eastern Fish and LJS argue that the petitioners do not identify which of the three definitions fits the alleged error. Furthermore, Eastern Fish and LJS state that the alleged error does not fit any of the three definitions because it was deliberate and cannot be considered ministerial in any way.

Analysis and Recommendation

We disagree with the petitioners that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in its decision to exclude dusted shrimp from the scope of this investigation. The Department notes that it did not reference the petitioners’ affiant by name, but did reference the provided affidavit and statements made by the affiant. See Dusted/Battered Scope Memo at pages 15 and 16. The Department carefully reviewed and considered all evidence submitted by all parties prior to making its determination to exclude dusted shrimp from the scope of this investigation, as well as the concurrent warmwater shrimp investigations. See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 70997 (Dec. 8, 2004). The Department’s decision to exclude dusted shrimp from the scope of this investigation was an intentional decision, not a ministerial error.

Agree ____

Disagree ____

Let’s Discuss _____

IV. Company-Specific Allegations

A. Devi

1. Conversion of Packing Expenses to a Per-Pound Basis

For the final determination, the Department calculated net U.S. prices and normal values per pound. Devi asserts that the Department included per-kilogram packing expense amounts in these calculations without expressing them on a per-pound basis. See page 3 of the October 6, 2004, memorandum to Louis Apple from Shawn Thompson and Nichole Zink entitled, “Verification of the Sales Responses of Devi Seafoods Limited in the Antidumping Duty Investigation of Frozen and Canned Warmwater Shrimp from India.” According to Devi, these revised amounts were clearly reported in kilograms and should have been converted into pounds in the Department’s calculations for the final determination.

Analysis and Recommendation

After reviewing the information on the record, we agree that we erred by not converting Devi’s packing expense amounts to a per-pound basis. Consequently, we recommend correcting this error because it was unintentional, within the meaning of 19 CFR 351.224(f).

Agree ____ Disagree ____ Let’s Discuss _____

2. Revised Packaging Costs

Devi states that the Department failed to include the revised packaging costs provided in Exhibits SuppD4-1 and SuppD4-2 of the August 4, 2004, submission in the calculations performed for the final determination. According to Devi, these packaging costs were verified, as shown on page 11 of the October 5, 2004, memorandum to Neal Halper from Ernest Gziryan entitled, “Verification Report on the Cost of Production and Constructed Value Data Submitted by Devi Sea Foods Limited” and also shown in Cost Verification Exhibit 15.

Analysis and Recommendation

After reviewing the information on the record, we agree that we erred by not using Devi's revised packaging costs. Consequently, we recommend correcting this error because it was unintentional, within the meaning of 19 CFR 351.224(f).

Agree ____ Disagree ____ Let's Discuss _____

B. HLL1. Treatment of Marine Insurance Revenue

HLL states that the Department incorrectly treated U.S. marine insurance revenue as an expense, rather than an offset to marine insurance expenses, in the calculation of movement expenses.

Analysis and Recommendation

After reviewing the information on the record, we agree that we erred by treating HLL's U.S. marine insurance revenue as a movement expense, instead of as an offset to movement expenses. Consequently, we recommend correcting this error because it was unintentional, within the meaning of 19 CFR 351.224(f).

Agree ____ Disagree ____ Let's Discuss _____

2. Adjusting HLL's Costs for Spanish Sales to Account for Preservative Use As a Part of the Glazing Adjustment

During the period of investigation (POI), all frozen shrimp produced by HLL included glazing¹, including those products shipped to Spain and the United States. HLL sold shrimp to Spain on a glazed-weight basis (i.e., including the weight of the frozen water), while it sold shrimp to the United States on a net-weight basis (i.e., unglazed). For the final determination, we re-stated both HLL's prices and costs for products sold to Spain on an unglazed basis in order to make apples-to-apples price comparisons. As a part of our cost adjustment for glazing, we also included an adjustment for the weight of preservatives because this adjustment was reflected in the document reviewed at the cost verification. See the October 1, 2004, memorandum to

¹ Glazing is a frozen coating of water added to prevent dehydration while the product is stored.

Neal Halper, Director, Office of Accounting, from Laurens van Houten, Senior Accountant, entitled “Verification Report on the Cost of Production and Constructed Value Data Submitted by Hindustan Lever Ltd” (HLL Cost Verification Report) at cost verification exhibit 8.

The petitioners assert that the Department made a ministerial error in the final determination because it included an unnecessary adjustment factor associated with the use of preservatives when restating HLL’s Spanish costs on a net-weight basis. According to the petitioners, the Department did not include a similar adjustment for preservatives to the gross unit prices in the Spanish sales listing. The petitioners allege that the Department should not have included the preservative adjustment for HLL’s Spanish costs because its production yields, and therefore, the per-unit costs, already account for the use of preservatives. The petitioners also note that HLL had previously explained to the Department that it accounted for cost differences related to the use of preservatives through the production yield. See page 9 of HLL’s July 12, 2004, submission.

According to the petitioners, there is no valid reason for the Department to adjust HLL’s Spanish costs for the use of preservatives without concurrently adjusting the Spanish sales prices to arrive at an accurate net weight. As support for their assertion that HLL reported its Spanish sales and costs on the same glazed-weight basis, the petitioners cite HLL’s October 18, 2004, case brief at page 18. Further, the petitioners maintain that, unlike glazing, preservatives were a component of the costs of both HLL’s Spanish and U.S. sales. Therefore, the petitioners contend that, should the Department continue to adjust HLL’s Spanish costs to account for the use of preservatives, it must make the same adjustment to U.S. costs.

HLL disagrees with the petitioners that the Department made an error by adjusting HLL’s Spanish costs to account for preservatives as part of the glazing adjustment. HLL argues that the petitioners’ allegation is not ministerial in nature, but rather a methodological issue. HLL maintains that the Department had a clear intent to adjust HLL’s costs to account for the use of preservatives. See the October 17, 2004, memorandum to the file from Nichole Zink entitled, “Calculation Adjustments for Hindustan Lever Limited” at page 2. Further, HLL points out that the Department adjusted only the costs of Spanish products for the use of preservatives because it believed that HLL based its prices on the glazing level shown in the specification sheets, which already accounted for the use of preservatives. Therefore, HLL maintains that the Department’s adjustment to its Spanish costs to account for preservatives was appropriate; thus, no adjustment to the margin calculation for HLL is warranted.

Analysis and Recommendation

We disagree that the Department made a ministerial error with respect to glazing. As we stated in Notice of Final Determination of Sales at Less than Fair Value and Negative Final

Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (Dec. 23, 2004), and accompanying Issues and Decision memorandum at Comment 13 (Final Determination) issued in this case:

At verification, we examined HLL's methodology for reporting its production costs for products sold in Spain and the United States. We found that HLL did, in fact, report its costs on a glazed-weight basis for products sold to Spain and on a net-weight basis for products sold to the United States. See the HLL Cost Verification Report at verification exhibit 8. Therefore, in performing product comparisons for the final determination, we adjusted HLL's third country costs to account for glazing.

First, we determined the weighted average of the glazing percentages, by control number, reported in the Spanish sales listing. We then added an amount to account for preservatives (as shown in the HLL Cost Verification Report at verification exhibit 8) and increased the reported costs by this average percentage. We also added the additional amount for preservatives to the reported glazing figures before adjusting the prices in the third country sales listing to their net-weight equivalent amounts.²

Because we intended to make the adjustment in question, the issue described by the petitioners is methodological in nature and thus does not fit the definition of a ministerial error, as defined under 19 CFR 351.224(f) of the Department's regulations. Therefore, we recommend making no changes to the final determination for the weight of preservatives.

Agree _____ Disagree _____ Let's Discuss _____

3. Overvalued Total Cost of Manufacturing (TOTCOM)

HLL contends that in the final determination the Department failed to adjust its manufacturing costs to eliminate an overstatement related to the value of its work-in-progress (WIP) inventory. HLL states that in its July 22, 2004, supplemental questionnaire response, it provided the amount by which TOTCOM had been overvalued. Additionally, HLL claims that the Department verified the over-reported amounts of its TOTCOM. See page 2 of the HLL Cost Verification Report and cost verification exhibit 10. According to HLL, while the Department acknowledged that HLL overvalued its TOTCOM in the final determination, the Department failed to correct the problem in its calculations. Therefore, HLL argues that the Department should have reduced all shrimp costs by the appropriate WIP percentage.

² This amount is clearly part of the glazed- to net-weight adjustment reflected in cost verification exhibit 8 and was not included in the costs or prices reported for U.S. products (i.e., the sales quantities were reported net of the weight of glazing and preservatives).

The petitioners argue that the Department did not make a ministerial error, as defined by 19 CFR 351.224(f), by using HLL's reported TOTCOM. The petitioners claim that the alleged error is attributable to HLL's reported cost data and not the result of an error in arithmetic in the margin calculations. Additionally, the petitioners state that HLL's correction to its own data is new factual information and is therefore untimely filed because it was submitted in the context of a ministerial error allegation. The petitioners state that, according to the preamble of the Department's regulations, the submission of new factual information must occur before the deadline for submission of such information, which in this case would have been prior to the preliminary determination. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27349 (May 19, 1997) (Preamble). Therefore, according to the petitioners, the Department should not make the requested adjustment to HLL's TOTCOM.

In any event, the petitioners contend that HLL's requested adjustment to TOTCOM is not documented on the record. The petitioners assert that HLL's July 22, 2004, submission does not reference the over-reported TOTCOM that HLL claims to have brought to the Department's attention. The petitioners also state that HLL never notified the Department of its improper subtraction of WIP from TOTCOM. However, the petitioners note that in its rebuttal brief HLL did ask the Department to reduce its overhead costs by the reported WIP. According to the petitioners, the Department explained in the decision memorandum that for the final determination it was reducing HLL's variable overhead costs by the portion of WIP attributable to variable overhead. Consequently, the petitioners assert that no further adjustment is necessary.

Analysis and Recommendation

We disagree with HLL that the Department made a ministerial error by not reducing TOTCOM by the raw material costs included in WIP³. At verification, HLL presented its reconciliation of raw material costs in the financial accounting system to the reported costs separately from its reconciliation of conversion costs. See page 2 of the HLL Cost Verification Report and cost verification exhibits 10 and 5. HLL used the specific identification method for sales quantities to calculate the reported raw material costs. This method accounted for the raw material costs that were in WIP. Therefore, no adjustment for raw material WIP was necessary for the final determination.

HLL did not use this same method for its reported conversion costs. HLL reported conversion costs based on costs incurred during the POI. This method does not account for the

³ The WIP costs in question were comprised of costs relating to raw materials and variable overhead. As noted by the petitioners, we adjusted HLL's reported TOTCOM in the final determination to account for the portion of WIP related to overhead. Therefore, this issue is limited to the raw material component of WIP.

conversion costs which were in WIP. Therefore, we adjusted the conversion costs to include the change in WIP. As we stated in the Final Determination at Comment 19:

While a difference was found in reconciling HLL's total manufacturing costs during the POI to the reported costs, this difference was the result of the increase in WIP. See the HLL Cost Verification Report at verification exhibit 5. The worksheet showing the calculation of the total cost of manufacture during the POI included all expenses except those associated with the increase in WIP. See the HLL Cost Verification Report at verification exhibit 8. The total pool of costs if netted with the increase in WIP would result in a smaller pool of costs. The starting point the Department used in recalculating HLL's reconciliation was the total costs incurred during the POI, a portion of which should have been classified as WIP. By not including the increase in WIP, the respondent actually slightly over-reported its costs. Accordingly, we reduced variable overhead costs by the portion of WIP attributable to variable overhead costs for purposes of the final determination.

For further discussion, see the explanation of raw material in WIP provided by HLL in cost verification exhibit 10, the Final Determination at Comment 19, and the December 17, 2004, memorandum to Neal Halper, Director, Office of Accounting, from Laurens van Houten, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Hindustan Lever Ltd" at page 1. Therefore, we recommend finding that this issue is methodological in nature. As a consequence, we recommend finding that it does not constitute a ministerial error within the meaning of CFR 351.224(f).

Finally, we note that the petitioners' allegation that the data provided in HLL's ministerial error allegation is new factual information, is incorrect. Specifically, we note that this issue is discussed on page 2 of the HLL Cost Verification Report and all figures provided in HLL's ministerial error allegation are shown in cost verification exhibit 10.

Agree ____ Disagree ____ Let's Discuss _____

4. Excluding Direct Labor Costs from the Calculation of Variable Cost of Manufacturing (VCOM)

The petitioners assert that the Department incorrectly omitted HLL's direct labor costs from the calculation of VCOM. The petitioners maintain that the Department should correct this error by adding direct labor costs to the calculation of VCOM.

Analysis and Recommendation

After reviewing the information on the record, we agree that we erred by excluding HLL’s direct labor costs from the calculation of VCOM. Consequently, we recommend correcting this error because it was unintentional, within the meaning of 19 CFR 351.224(f).

V. Amended Margins

If the team recommendations are accepted, the final margins become:

Manufacturer/Exporter	Final Determination Weighted-average margin	Amended Weighted-average

Devi Sea Foods Ltd.....	5.02.....	4.94
Hindustan Lever Ltd.....	13.42.....	15.36
Nekkanti Seafoods Ltd.....	9.71.....	9.71
All Others.....	9.45.....	10.17

VI. Recommendation

We recommend correcting each of the errors noted above and calculating revised dumping margins for Devi and HLL. In addition, we recommend recalculating the “all others” rate, given that this rate is based on the dumping margins found for the three participating respondents.

Agree ____ Disagree ____ Let’s Discuss _____

 Louis Apple
 Director
 AD/CVD Operations, Office 2

 (Date)