

PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: February 28, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-840]

#### Certain Frozen Warmwater Shrimp from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from India with respect to 70 companies.<sup>1</sup> The respondents which the Department selected for individual review are Devi Marine Food Exports Private Limited (DMF), Kader Investment and Trading Company Private Limited, Premier Marine Products, Kader Exports Private Limited (KEPL), Universal Cold Storage Private Limited (UCS), and Liberty Frozen Foods Private Limited (collectively, "the Liberty Group"), Falcon Marine Exports Limited (Falcon), and Hindustan Lever Limited (HLL).

<sup>1</sup> This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.

The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The period of review (POR) is August 4, 2004, through January 31, 2006.

We preliminarily determine that sales made by Falcon, HLL, and the Liberty Group have been made below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

**EFFECTIVE DATE:** March 9, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Eastwood or Jill Pollack, AD/CVD Operations, Office 2, Import Administration—Room B099, 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.

#### SUPPLEMENTARY INFORMATION:

##### Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain warmwater shrimp from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*). Subsequently, on February 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from India for the period August 4, 2004, through January 31, 2006. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (Feb. 1, 2006). Between February 23 and 28, 2006, the Department received timely requests under 19 CFR 351.213(b)(2) to conduct

an administrative review of the sales of certain frozen warmwater shrimp from the following producers/exporters of subject merchandise: Amalgam Foods & Beverages Limited, Ananda Aqua Exports Private Limited, Asvini Exports, Asvini Fisheries Limited, Avanti Feeds Limited, Devi Fisheries Limited, Devi Seafoods Limited, Falcon, Five Star Marine Exports Private Limited, GVR Exports Pvt. Ltd., HLL, Jaya Lakshmi Sea Foods Pvt. Ltd., Jayalakshmi Sea Foods Private Limited, K.R.M. Marine Exports, the Liberty Group, Magnum Estate Private Limited, Nekkanti Sea Foods Limited, Sagar Grandhi Exports Pvt. Ltd., Sai Marine Exports Pvt. Ltd., Sandhya Marines Limited, Satya Seafoods Private Limited, Selvam Exports Private Limited, Star Agro Marine Exports Private Limited, Suvarna Rekha Exports Private Limited, Veejay Impex, Vinner Marine, and Wellcome Fisheries Limited. Also on February 28, 2006, the petitioner<sup>2</sup> submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1).

On April 7, 2006, the Department published a notice of initiation of administrative review for 347 companies and requested that each provide data on the quantity and value (Q&V) of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 71 FR 17819 (Apr. 7, 2006) (*Notice of Initiation*).

During the period April 24 through June 12, 2006, we received responses to the Department's Q&V questionnaire from 59 companies. We were unable to locate 29 companies, and we did not receive responses to this questionnaire from the remaining companies.<sup>3</sup> For further discussion, see the "Application of Facts Available" section of this notice.

One of the companies that responded to our Q&V questionnaire, Coastal

<sup>2</sup> The petitioner is the Ad Hoc Shrimp Trade Action Committee.

<sup>3</sup> As discussed below, for certain of these companies, the petitioner subsequently withdrew its request for review.

Trawlers Ltd. (Coastal Trawlers), notified us that it had changed its name during the POR, and is now doing business under the name Coastal Corporation Ltd. (Coastal Corp.). As a result, we solicited information on this change from Coastal Corp., which the company supplied in June 2006. After analyzing this information, we preliminarily find that Coastal Corp. is the successor-in-interest to Coastal Trawlers. For further discussion, see the "Successor-in-Interest" section of this notice, below.

Based upon our consideration of the responses received to the Q&V questionnaire and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on July 11, 2006, we selected the three largest producers/exporters of certain frozen warmwater shrimp from India during the POR (*i.e.*, Falcon, HLL, and the Liberty Group) as the mandatory respondents in this proceeding. See the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Irene Darzenta Tzafolias, Acting Director, Office 2, AD/CVD Operations, entitled, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents," dated July 11, 2006. On this same date, we issued the antidumping questionnaire to Falcon, HLL, and the Liberty Group.

On July 21, 2006, we published a notice rescinding the administrative review with respect to 268 companies for which the requests for an administrative review were withdrawn in a timely manner, in accordance with 19 CFR 351.213(d)(1). See *Certain Frozen Warmwater Shrimp from India; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41419 (July 21, 2006) (*Notice of Rescission*). See also the Memorandum to the file from Elizabeth Eastwood entitled, "Intent to Rescind in Part the Antidumping Duty Administrative Review on Frozen Warmwater Shrimp from India," dated June 22, 2006.

On August 8, 2006, we received responses to section A of the questionnaire from Falcon, HLL, and the Liberty Group.

On August 11, 2006, the petitioner submitted comments regarding third country market selection and the possible existence of a "particular market situation" with respect to both Falcon and HLL.

On August 25, 2006, the Department postponed the preliminary results in

this review until no later than February 28, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New Shipper Reviews*, 71 FR 50387 (Aug. 25, 2006).

We issued supplemental section A questionnaires to HLL, Falcon, and the Liberty Group on August 31, 2006.

We received responses to sections B and C of the questionnaire from Falcon and HLL on September 6, 2006, and from the Liberty Group on September 7, 2006. Also on September 7, 2006, HLL submitted a response to section D of the questionnaire.

On September 14, 2006, we published a notice amending the partial rescission of the administrative review to correct a typographical error. See *Certain Frozen Warmwater Shrimp from India; Corrected Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 54268 (Sept. 14, 2006).

The petitioner requested that the Department initiate a sales-below-cost investigation of the Liberty Group on September 20, 2006, and of HLL on September 21, 2006.

Also on September 21, 2006, we issued a supplemental questionnaire covering sections A through C to the Liberty Group and we received a response to the supplemental section A questionnaire from HLL.

We received responses to the supplemental section A questionnaires from Falcon on September 22, 2006, and from the Liberty Group on September 25, 2006. Also on September 25, 2006, we issued a supplemental questionnaire covering sections B and C to Falcon.

On September 27, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Falcon, and the petitioner submitted comments on the selection of the appropriate third country comparison markets for Falcon and HLL.

On October 4, 2006, we initiated a sales-below-cost investigation of the Liberty Group. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Petitioners' Allegation of Sales Below the Cost of Production for the Liberty Group Frozen Foods," dated October 4, 2006 (Sales-Below-Cost-Memo for the Liberty Group).

On October 5, 2006, we determined that Japan constitutes the appropriate third country comparison market for both Falcon and the Liberty Group, and that France constitutes the appropriate

third country comparison market for HLL. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India - Selection of the Appropriate Third Country Markets," dated October 5, 2006 (Selection of Third Country Markets Memo). See also the "Home Market Viability and Selection of Comparison Markets" section of this notice, below, for further discussion. Accordingly, on October 5, 2006, we requested that Falcon and HLL resubmit their responses to section B of the Department's questionnaire to report sales to Japan and France, respectively. Additionally, on October 5, 2006, we issued a supplemental section C questionnaire to HLL.

On October 17, 2006, Falcon submitted its supplemental questionnaire response covering sections A through C. On October 20, 2006, Falcon submitted a revised section B questionnaire response reporting sales to Japan. Also on October 20, 2006, Liberty submitted its supplemental questionnaire response covering sections A through C. On October 25, 2006, HLL submitted both a revised section B questionnaire response reporting sales to France and a response to the supplemental section C questionnaire.

On November 3, 2006, we determined that the Department's finding in the less-than-fair-value (LTFV) investigation, that HLL made comparison market sales below the cost of production and that such sales were disregarded, provides sufficient grounds to automatically initiate a sales-below-cost investigation for HLL in this segment of the proceeding. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "2004-2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India - Cost Allegation for Hindustan Lever Limited," dated November 3, 2006 (Sales-Below-Cost Memo for HLL).

On November 7, 2006, the Liberty Group submitted a response to section D of the questionnaire. Also on November 7, 2006, we issued a supplemental section D questionnaire to HLL.

On November 13, 2006, we initiated a sales-below-cost investigation for Falcon. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Petitioners' Allegation of Sales Below the Cost of Production for Falcon Marine Exports Limited," dated

November 13, 2006 (Sales-Below-Cost-Memo for Falcon).

On November 29, 2006, we issued a supplemental section D questionnaire to the Liberty Group.

On December 5, 2006, we received HLL's response to the supplemental section D questionnaire.

On December 12 and 20, 2006, respectively, Falcon and the Liberty Group responded to section D of the questionnaire. On December 22, 26, and 28, 2006, respectively, we issued supplemental section D questionnaires to Falcon, the Liberty Group, and HLL. We received responses to these questionnaires from Falcon and the Liberty Group on January 11, 2007, and from HLL on January 22, 2007.

On January 23, 2007, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007).

We issued an additional section D supplemental questionnaire to HLL on February 2, 2007, and to the Liberty Group on February 8, 2007. We received responses to these questionnaires on February 9 and 15, 2007, respectively.

Sales and cost verifications were conducted at Falcon and the Liberty Group in January and February 2007. The sales verification reports for Falcon and the Liberty Group were issued in February 2007.

On February 8, 2007, we issued an additional supplemental questionnaire to the Liberty Group regarding its relationship with Liberty Oil Mills Limited (LOML).

On February 12, 2007, Falcon submitted a revised cost database which incorporated certain minor corrections to its data discovered at verification.

On February 15, 2007, we received the Liberty Group's response to the February 8, 2007, supplemental questionnaire.

On February 23 and 26, 2007, respectively, the Liberty Group and Falcon submitted revised sales databases which incorporated certain minor corrections to these companies' data discovered at verification.

### Scope of the Order

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

shell-on or peeled, tail-on or tail-off,<sup>4</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the

entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified 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, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

### Successor-in-Interest

As noted above, in April 2006, Coastal Trawlers informed the Department that it is now doing business under the name Coastal Corp. As a result, on June 1, 2006, we requested that Coastal Corp. address the following four factors with respect to this change in name in order to determine whether Coastal Corp. is the successor-in-interest to Coastal Trawlers: management, production facilities for the subject merchandise, supplier relationships, and customer base.

On June 15, 2006, Coastal Corp. responded to the Department's request. In this submission, Coastal Corp. stated that, in February 2005, Coastal Trawlers changed its name to Coastal Corp., and that the name change had no effect on the core activity of the company. According to Coastal Corp., there were no changes to Coastal Trawlers' management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. Specifically, Coastal Corp. maintains that the only change in production was that the company ceased its deep sea fishing/trawler activities.

Based on our analysis of Coastal Corp.'s June 15, 2006, submission, we preliminarily find that Coastal Trawlers' organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged.

<sup>4</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

Further, we preliminarily find that Coastal Corp. operates as the same business entity as Coastal Trawlers with respect to the production and sale of shrimp. Thus, we preliminarily find that Coastal Corp. is the successor-in-interest to Coastal Trawlers, and, as a consequence, its exports of shrimp are subject to this proceeding. We note that we intend to solicit further supporting documentation from Coastal Corp. regarding its assertions, and we will make a final finding regarding this successor-in-interest determination no later than the date of the final results. For further discussion, see the Memorandum to James Maeder, Office Director, from Nichole Zink, Analyst, entitled, "Successor-In-Interest Determination for Coastal Trawlers Ltd. and Coastal Corporation Ltd. in the 2004-2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2007.

#### Partial Rescission of Review

Eight of the companies that responded to the Department's Q&V questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. However, based on information obtained from CBP, it appeared that these eight companies did, in fact, have shipments or entries of subject merchandise entered into the United States during the POR. See the Memorandum to The File from Jill Pollack entitled, "2004-2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Entry Documents from U.S. Customs and Border Protection (CBP)," dated July 28, 2006. Based on the CBP information, we requested that each of these eight companies explain the entries in question. In response to the Department's solicitation, only four of the eight companies, Balaji Seafoods Exports (India) Ltd., Innovative Foods Limited, Sharat Industries Limited, and Triveni Fisheries Pvt. Ltd., demonstrated that the entries at issue were not reportable transactions because they were either: 1) a non-paid sample; or 2) reported by another company in its Q&V response. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Balaji Seafoods Exports (India) Ltd., Innovative Foods Limited, Sharat Industries Limited, and Triveni Fisheries Pvt. Ltd. See, e.g., *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative*

*Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

Three of the remaining four exporter/producers, Baby Marine (Eastern) Exports, Baby Marine Exports, and Baby Marine Products (collectively, "the Baby Marine Group"), failed to respond to the Department's request for additional information. The remaining company, LOML, is an affiliate of the Liberty Group. Therefore, we are not rescinding the administrative review with respect to these companies. For further information, see the "Application of Facts Available" and "Collapsing the Liberty Group and LOML" sections of this notice.

#### Collapsing the Liberty Group and LOML

The Liberty Group has an affiliate, LOML, which exported some of the shrimp produced by the Liberty Group during the POR. In its August 9, 2006, section A response, as well as its February 15, 2007, response and at verification, the Liberty Group provided information regarding the relationship between these entities during the POR. After an analysis of this information, we preliminarily determine that, in accordance with 19 CFR 351.401(f), it is appropriate to collapse these entities for purposes of this review because: 1) certain of the directors of LOML are also directors of Liberty Group companies, and the family which owns the Liberty Group owns a majority of the shares in LOML; 2) LOML exported shrimp produced by the Liberty Group to the United States during the POR; and 3) the operations of LOML and the Liberty Group are intertwined. Thus, there is significant potential for manipulation of price if LOML does not receive the same antidumping duty rate as the Liberty Group. For further discussion, see the Memorandum from Elizabeth Eastwood, Senior Analyst, Office 2, to James Maeder, Director, Office 2, entitled, "Whether to Collapse Liberty Oil Mills Limited with the Liberty Group in the 2004-2006 Administrative Review on Certain Frozen Warmwater Shrimp from India," dated February 28, 2007.

#### Application of Facts Available

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of

section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

As discussed in the "Background" section above, in April 2006, the Department requested that all companies subject to review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 28, 2006. Of the 347 companies initially subject to review, 213 companies did not respond to the Department's initial requests for information. Subsequently, in May 2006, the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V questionnaire. However, after rescinding this administrative review for 268 companies in July 2006, there were still several companies which failed to respond to the Department's second request for Q&V data.<sup>5</sup> On February 6, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each of these companies. See the Memorandum to the File from Elizabeth Eastwood entitled, "Placing Delivery Information on the Record of the 2004-2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India," dated February 6, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is warranted.

Furthermore, three additional companies, all within the Baby Marine Group, claimed that they made no shipments of subject merchandise to the United States during the POR. However, because we were unable to confirm the accuracy of the Baby Marine Group's claim with CBP, we requested further information/clarification from these exporters. However, the Baby Marine Group failed to provide the requested information. Finally, an additional exporter, Kadalkanny Frozen Foods, failed to properly file its Q&V response with the Department because it did not

<sup>5</sup> These companies are: Amison Foods Ltd., Amison Seafoods Ltd., Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F Exports, and Vaibhav Sea Foods.

submit a company official certification for its Q&V information. Although the Department afforded this exporter an opportunity to correct the procedural deficiencies in its response, it failed to do so. By failing to respond to the Department's requests, these companies withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of total facts available for the Baby Marine Group and Kadalkanny Frozen Foods is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that Amison Foods Ltd., Amison Seafoods Ltd., the Baby Marine Group, Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Kadalkanny Frozen Foods, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav Sea Foods did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they could have responded to the Department's requests for information, but failed to do so. Therefore, an adverse inference is

warranted in selecting from the facts otherwise available with respect to these companies. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record.

The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 82.3 percent, which is the lowest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation). *See Notice of 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, 3880 (Jan. 27, 2004) (*LTFV Notice of Initiation*). The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

Information from the petition constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d); *see also SAA* at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the margins in the petition, we compared them to the transaction-specific rates calculated for each respondent in this review. We note that we are unable to corroborate the

highest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation) using the data of other respondents, as it is significantly higher than the highest non-aberrational transaction-specific rate calculated for any respondent in this review. However, we find that the lowest rate alleged in the petition (as adjusted at the initiation of the LTFV investigation), 82.30 percent, is reliable and relevant because it is similar to several individual transaction margins calculated for the mandatory respondents. *See Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006). Therefore, we have determined that the 82.3 percent margin is appropriate as AFA and are assigning it to the uncooperative companies listed above.

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. We were unable to find any information that would discredit the selected AFA rate.

Because we did not find evidence indicating that the selected margin is not appropriate and because this margin is similar to the range of transactions-specific margins for the mandatory respondents, we have preliminarily determined that the 82.3 percent margin, as alleged in the petition and adjusted at the initiation of the LTFV investigation, is appropriate as AFA. We are assigning this rate to Amison Foods Ltd., Amison Seafoods Ltd., the Baby Marine Group, Cherukattu Industries (Marine Div), Global Sea Foods & Hotels Ltd, HA & R Enterprises, InterSea Exports Corporation, Kadalkanny Frozen Foods, Lotus Sea Farms, National Steel, National Steel & Agro Ind, Nsil Exports, Premier Marine Foods, R F. Exports, and Vaibhav Sea Foods. For company-specific information used to corroborate this

rate, see the Memorandum to the File from Elizabeth Eastwood, Senior Analyst, Office 2, AD/CVD Operations, entitled "Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated February 28, 2007.

### Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp by Falcon, HLL, and the Liberty Group to the United States were made at less than NV, we compared EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Falcon, HLL, and the Liberty Group covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of non-broken shrimp to sales of non-broken shrimp made in Japan (for Falcon and the Liberty Group) and France (for HLL) within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no non-broken sales of identical merchandise in the comparison market 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. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Falcon, HLL, and the Liberty Group in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

### Export Price

For all U.S. sales made by Falcon, HLL, and the Liberty Group, we used EP methodology, in accordance with

section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

#### A. Falcon

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for cold storage expenses, inland freight expenses, wharfage charges, loading expenses, inspection fees, other miscellaneous shipment charges, foreign brokerage and handling expenses, international freight expenses, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes in accordance with section 772(c)(2)(B) of the Act.

#### B. HLL

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for inland freight expenses, port dues, terminal handling charges, other shipment expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes in accordance with section 772(c)(2)(B) of the Act.

#### C. The Liberty Group

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions from the starting price for cold storage charges, inland freight expenses, other shipment and movement expenses, foreign brokerage and handling expenses, shipment related expenses, international freight expenses, terminal handling charges, U.S. customs duties, and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also made deductions for export taxes, in accordance with section 772(c)(2)(B) of the Act.

### Normal Value

#### A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis

for calculating NV, we compared the 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.

We determined that aggregate volume of home market sales of the foreign like product for Falcon, HLL, and the Liberty Group was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, with respect to Falcon and the Liberty Group, we used sales to Japan, and, with respect to HLL, we used sales to France as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404 because, among other things, sales of foreign like product in these third country markets were the most similar to the subject merchandise. See the Selection of Third Country Markets Memo for further discussion.

#### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>6</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron*

<sup>6</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

*Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

#### 1. Falcon

Falcon reported that it made EP sales in the U.S. market to trading companies and distributors. Because Falcon reported no difference in the selling activities it performed for these two customer categories, we find that there is only one channel of distribution for Falcon's EP sales. We examined the selling activities performed for this channel and found that Falcon performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and, 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made

through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Falcon reported that it made sales to trading companies. We examined the selling activities performed for third country sales, and found that Falcon performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. Accordingly, based on the core selling functions, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for third country sales. Because all third country sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the third country market for Falcon.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determined that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

#### 2. HLL

HLL reported that it made EP sales in the U.S. market to distributors. We examined the selling activities performed for this channel and found that HLL performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) production scheduling; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) quality assurance related activities; 7) arranging for a refrigerated container; and 8) payment receipt. Accordingly, based on the core selling functions noted above, we find that HLL performed sales and marketing and freight and delivery services for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, HLL reported that it also made sales only to distributors. We examined the selling activities performed for third country sales and found that HLL performed the following selling functions: 1) customer contact; 2) price

negotiation; 3) order processing; 4) production scheduling; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) quality assurance related activities; 7) arranging for a refrigerated container; and 8) payment receipt. Accordingly, based on the core selling functions, we find that HLL performed sales and marketing and freight and delivery services for third country sales. Because all third country sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the third country market for HLL.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determined that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

#### 3. The Liberty Group

The Liberty Group reported that it made EP sales in the U.S. market to trading companies. We examined the selling activities performed for this channel and found that the Liberty Group performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. Accordingly, based on the core selling functions noted above, we find that the Liberty Group performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, the Liberty Group reported that it made sales to trading companies. We examined the selling activities performed for third country sales, and found that the Liberty Group performed the following selling functions: 1) customer contact; 2) price negotiation; 3) order processing; 4) invoice issuance; 5) arranging for freight and the provision of customs clearance/brokerage services; 6) cold storage and inventory maintenance; 7) quality assurance related activities; 8) commission payments; 9) payment receipt; and 10) packaging services. Accordingly, based on the core selling

functions, we find that the Liberty Group performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for third country sales. Because all third country sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the third country market for the Liberty Group.

Finally, we compared the EP LOT to the third country market LOT and found that the core selling functions performed for U.S. and third country market customers do not differ. Therefore, we determined that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

### C. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Falcon and the Liberty Group's sales of frozen warmwater shrimp in the third country comparison markets were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Falcon's and the Liberty Group's sales were made at prices below their respective COPs. See the Sales-Below-Cost Memo for the Liberty Group and the Sales-Below-Cost Memo for Falcon.

Regarding HLL, we found that HLL had made sales below the COP in the LTFV investigation, the most recently completed segment of this proceeding as of the date the questionnaire was issued in this review, and such sales were disregarded. See *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*, 69 FR 47111, 47116-17 (Aug. 4, 2004) (*LTFV Preliminary Determination*); unchanged in the *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) (*LTFV Final Determination*). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that HLL made sales in the third country market at prices below the cost of producing the merchandise in the current review period.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except for the following instances:

##### a. Falcon

1. Falcon did not provide the Department with cost data for a small number of products sold in the comparison market during the window periods. Thus, as neutral facts available, we assigned these products the cost of the most similar product reported in the cost database.
2. Falcon adjusted its standard cost of raw shrimp purchased for each count size to the actual cost of raw shrimp by applying a variance (*i.e.*, the difference between the total standard costs and total actual costs). In calculating the variance, Falcon multiplied its standard raw material cost for each count size by the corresponding production quantity, including glaze, and compared the resulting total sum to the raw material costs in its financial records. We recalculated the variance using production quantities that were glaze-exclusive and applied the resulting adjusted variance to the standard cost of raw shrimp purchased for each count size.
3. We revised Falcon's raw shrimp cost by reallocating the costs from Falcon's shrimp farms only to those species and count sizes that could have been raised on the farms.
4. We revised the costs for packaging, labor, variable overhead, and fixed overhead (FOH) to base them on production quantities that were glaze-exclusive. We also revised FOH to allocate depreciation expenses to block frozen, individually quick frozen, and cooked products.
5. We revised the reported G&A expense ratio by reclassifying certain expenses from the cost of goods sold to G&A expenses.
6. We revised the net financial expense ratio by excluding the

deduction for the profit on the sale of securities, and only including a deduction for interest income from short-term sources.

For further discussion of these adjustments, see the Memorandum from Michael P. Harrison, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results - Falcon Marine Exports," dated February 28, 2007.

##### b. HLL

1. HLL did not provide the Department with cost data for a small number of products sold in the comparison market during the window periods. Thus, as neutral facts available, we assigned these products the cost of the most similar product reported in the cost database.
2. We adjusted HLL's reported raw shrimp consumption cost to account for an understatement.
3. We revised HLL's reported G&A expense ratio to include in the numerator certain items related to research and development, supply support and chain management, and restructuring costs. Moreover, we included the surplus of fixed assets sold and miscellaneous income as offsets to the G&A expenses. In addition, we excluded from the cost of sales, used as the denominator in calculating the G&A expense ratio, excise duties and packing material costs, and included the 2005 fiscal year increase in finished goods inventory.
4. We revised the net financial expenses to include pension costs and similar obligations.

For further discussion of these adjustments, see the Memorandum from Sheikh Hannan, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results - Hindustan Lever Limited," dated February 28, 2007.

##### c. The Liberty Group

1. We revised the cost data reported for all Liberty Group companies to account for minor corrections found during the cost verification.
2. We revised DMF's shrimp direct material costs to exclude certain by-product revenues.
3. We revised DMF's inner packing costs to exclude the revenue related to the sale of outer packing materials.



4. We revised KEPL's variable overhead costs to exclude premiums paid on duty export passbook benefits.
5. We revised the application of the G&A expense ratio from a single weighted-average rate applied to all Liberty Group companies to applying each Liberty Group entity's specific G&A expense ratio to its specific cost of manufacture. We continued to allocate certain G&A expenses to all Liberty Group companies. We revised each Liberty Group company's costs of sales, used as the denominator in calculating the G&A expense ratio, to include the change in finished goods inventory. We reclassified certain expenses for DMF from production to G&A. Finally, we included certain expenses related to the loss on a sale of a fixed asset in the calculation of PMP's G&A expenses.
6. The Liberty Group does not prepare consolidated financial statements in the normal course of business. Therefore, we revised the application of the financial expense ratio by applying each Liberty Group company's specific financial expense ratio to its specific cost of manufacture. We also revised each Liberty Group company's costs of sales, used as the denominator in calculating the financial expense ratio, to include the change in finished goods inventory. Finally, we included certain bank charges in each entity's financial expenses.

For further discussion of these adjustments, see the Memorandum from Mark Todd, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Liberty," dated February 28, 2007.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales prices 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. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, direct and indirect selling expenses and packing expenses, revised where appropriate, as

discussed below under the "Price-to-Price Comparisons" section.

### 3. Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) or the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Falcon's, HLL's, and the Liberty Group's third country sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable third country sales in the ordinary course of trade, we compared EPs to the CV in accordance with section 773(a)(4) of the Act. See "Calculation of Normal Value Based on Constructed Value" section below.

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

#### 1. Falcon

We based NV for Falcon on delivered prices to unaffiliated customers in the third country market. We made deductions from the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We also made deductions, where appropriate,

from the starting price for inland freight expenses from the plant to the port, other shipment and movement expenses, clearing and forwarding agency charges, cold storage charges, international freight expenses, and terminal handling charges, under section 773(a)(6)(B)(ii) of the Act.

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. 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 commissions, credit expenses, bank fees, export inspection agency (EIA) expenses, export credit guarantee corporation premiums, and outside inspection/lab expenses. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

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

We based NV for HLL on cost and freight, delivered, and free on board prices to unaffiliated customers in the third country market. We made adjustments, where appropriate, to the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We also made deductions, where appropriate, from the starting price for inland freight expenses from the plant to the port, other shipment and movement expenses, shipment-related expenses, international freight expenses, and terminal handling charges, under section 773(a)(6)(B)(ii) of the Act.

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. 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 commissions, credit expenses, bank fees, EIA inspection fees, and outside inspection/lab expenses. Specifically, where

commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

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. The Liberty Group

We based NV for the Liberty Group on delivered prices to unaffiliated customers in the third country market. We made deductions from the starting price for export taxes, in accordance with section 773(a)(6)(B)(iii) of the Act. We also made deductions, where appropriate, from the starting price for inland freight expenses from the plant to the port, other shipment and movement expenses, clearing and forwarding agency charges, shipment-related expenses, cold storage charges, international freight expenses, and terminal handling charges, under section 773(a)(6)(B)(ii) of the Act.

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. 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 commissions, credit expenses, bank fees, EIA inspection fees, and outside inspection/lab expenses. Specifically, where commissions were granted in the U.S. market but not in the comparison

market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

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

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale in

accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV.

Currency Conversion

We made currency conversions into U.S. dollars for HLL and the Liberty Group in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Regarding Falcon, this respondent reported that it purchased forward exchange contracts which were used to convert the currency in which certain sales transactions were made 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. See *LTFV Preliminary Determination*, 69 FR at 47118 and *LTFV Final Determination*, and accompanying Issues and Decision Memorandum at Comment 6. Therefore, for Falcon we used the reported forward exchange rates, where applicable, and the Federal Reserve rates for those sales without reported forward exchange contracts, for all currency conversions.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period August 4, 2004, through January 31, 2006, as follows:

Manufacturer/Exporter	Percent Margin
Falcon Marine Exports Limited .....	11.09
Hindustan Lever Limited .....	24.52
The Liberty Group (Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Premier Marine Products, Kader Exports Private Limited, Universal Cold Storage Private Limited, Liberty Frozen Foods Private Limited) and Liberty Oil Mills Limited .....	4.03

Review-Specific Average Rate  
Applicable to the Following  
Companies:<sup>7</sup>

Manufacturer/Exporter	Percent Margin
Allanasons Ltd. ....	10.54
Amalgam Foods & Beverages Limited .....	10.54

<sup>7</sup> This rate is based on the weighted average of the margins calculation for those companies selected

for individual review, excluding *de minimis* margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin
Amulya Seafoods .....	10.54
Ayshwarya Seafood Private Limited .....	10.54
Baby Marine International .....	10.54
Baraka Overseas Traders .....	10.54
Bhatsons Aquatic Products .....	10.54
Calcutta Seafoods .....	10.54
Castlerock Fisheries Ltd. ....	10.54
Coastal Corporation Ltd. ....	10.54
Coastal Trawlers Ltd. ....	10.54
Cochin Frozen Food Exports Pvt. Ltd. ....	10.54
Coreline Exports .....	10.54
Gajula Exim P Ltd. ....	10.54
Haripriya Marine Food Exports .....	10.54
IFB Agro Industries Ltd. (Aquatic & Marine Products Div.) .....	10.54
ITC Ltd. ....	10.54
K R M Marine Exports Ltd. ....	10.54
Kalyanee Marine .....	10.54
Kings Marine Products .....	10.54
Konark Aquatics & Exports Pvt. Ltd. ....	10.54
MSC Marine Exporters .....	10.54
Magnum Estate Private Limited .....	10.54
Magnum Exports .....	10.54
Magnum Seafoods Pvt. Ltd. ....	10.54
Mangala Marine Exim India Pvt. Ltd. ....	10.54
Mangala Sea Products .....	10.54
N.G.R Aqua International .....	10.54
Navayuga Exports Ltd. ....	10.54
Nila Seafoods Pvt. Ltd. ....	10.54
Penver Products (P) Ltd. ....	10.54
Raa Systems Pvt. Ltd. ....	10.54
Raju Exports .....	10.54
Ram's Assorted Cold Storage Ltd. ....	10.54
Saanthi Seafoods Ltd. ....	10.54
Seagold Overseas Pvt. Ltd. ....	10.54
Sri Chandrakantha Marine Exports, Ltd. ....	10.54
Sri Sakthi Marine Products P Ltd. ....	10.54
Sun-Bio Techonology Limited .....	10.54
Suvarna Rekha Exports Private Limited .....	10.54
Survarna Rekha Marines P Ltd. ....	10.54
Uniroyal Marine Exports Ltd. ....	10.54
Veejay Impex .....	10.54
Victoria Marine & Agro Exports Ltd. ....	10.54

AFA Rate Applicable to the Following Companies:

Manufacturer/Exporter	Percent Margin
Amison Foods Ltd. ....	82.30
Amison Seafoods Ltd. ....	82.30
Baby Marine (Eastern) Exports .....	82.30
Baby Marine Exports .....	82.30
Baby Marine Products .....	82.30
Cherukattu Industries (Marine Div) .....	82.30
Global Sea Foods & Hotels Ltd .....	82.30
HA & R Enterprises .....	82.30
InterSea ExportsCorporation .....	82.30
Kadalkanny Frozen Foods .....	82.30
Lotus Sea Farms .....	82.30
National Steel .....	82.30
National Steel & Agro Ind .....	82.30
Nsil Exports .....	82.30
Premier Marine Foods .....	82.30
R F. Exports .....	82.30
Vaibhav Sea Foods .....	82.30

**Disclosure and Public Hearing**

The Department will disclose to parties the calculations performed in

connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR

351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the

date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), 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, Room B-099, within 30 days of the date of 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 issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Falcon, HLL, and the Liberty Group, because these companies reported the entered value for some of their U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales which entered value was reported. For Falcon, HLL, and the Liberty Group's U.S. sales reported without entered values, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the "All Others" rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent

period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the "All Others" rate made effective by the LTFV investigation. See *Shrimp Order*, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-822]

#### Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand with respect to 27 companies.<sup>1</sup> The respondents which the Department selected for individual review are Good

<sup>1</sup> This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.