

April 11, 2023

Case No. A-533-840

Total Pages: 36

Administrative Review Period: 02/01/21-1/31/22

Seventeenth Administrative Review

**PUBLIC VERSION**

Business Proprietary Information Released Under the APO  
Contained in Brackets ([ ]) DELETED for Megaa Moda at Pages 6-17

**BY ELECTRONIC SUBMISSION**

The Honorable Gina M. Raimondo  
Secretary of Commerce  
Attn: Enforcement and Compliance  
APO/Dockets Unit, Room 18022  
U.S. Department of Commerce  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

**Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India (2021-2022): Case Brief (Megaa Moda)**

Dear Secretary Raimondo:

On behalf of Domestic Producers,<sup>1</sup> domestic interested parties in the above-captioned administrative review, we hereby submit a Case Brief regarding the U.S. Department of Commerce's (the "Department") announcement of the Preliminary Results, published in the

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<sup>1</sup> Ad Hoc Shrimp Trade Action Committee ("AHSTAC" or "Domestic Producers"). AHSTAC is an interested party to this proceeding under 19 U.S.C. § 1677(9)(F) (2006) and the Petitioner in the underlying investigation. The members of AHSTAC are: Nancy Edens; Trico Shrimp Company, Inc.; Tarvin Seafood Inc.; Bosarge Boats, Inc.; Anchored Shrimp Company; Big Grapes, Inc.; Versaggi Shrimp Co.; Craig Wallis; and the Southern Shrimp Alliance.

*Federal Register* on March 3, 2023,<sup>2</sup> with respect to Megaa Moda Private Limited (“Megaa Moda”) and the companies that are included within this administrative review but were not selected for individual review. Domestic Producers are submitting, under separate cover, a Case Brief with regard to the Preliminary Results with respect to NK Marine Exports LLP (and the companies that are included within this administrative review but were not selected for individual review). Pursuant to the Department’s revised briefing schedule, this Case Brief is timely filed.<sup>3</sup>

Proprietary information released to Domestic Producers’ counsel under the Administrative Protective Order (“APO”) is contained within single brackets in this submission. The Department’s regulations instruct that “{a} submitter should not create a public summary of business proprietary information of another person.”<sup>4</sup> Accordingly, Domestic Producers have not provided public summaries of the business proprietary information contained within single brackets in the “Public Version” of this submission, as this information is the proprietary information of another person released to Domestic Producers’ counsel under the APO in this proceeding.

Domestic Producers are filing both the business proprietary and public version of this submission today. Due to the COVID-19 pandemic, the Department announced that it would

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<sup>2</sup> See Certain Frozen Warmwater Shrimp from India, 88 Fed. Reg. 13,430 (Dep’t Commerce March 3, 2023) (Preliminary Results of Antidumping Duty Administrative Review; 2021-2022) (“Preliminary Results”).

<sup>3</sup> Memorandum from E. Eastwood to All Interested Parties, “2021 - 2022 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India,” Case No. A-533-840 (Mar. 23, 2023) (“{T}he deadline for all interested parties to submit case briefs is now no later than 5:00 p.m. Eastern Time (ET) on Tuesday, April 11, 2023.”).

<sup>4</sup> 19 C.F.R. § 351.304(c)(1).

Hon. Gina Raimondo

April 11, 2023

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temporarily deem service of submissions containing business proprietary information (“BPI”) to be effectuated when the BPI submissions are filed by parties in ACCESS “until further notice.”<sup>5</sup>

Additionally, a copy of the public version of this submission will be served on all parties included in the Department’s public service list in accordance with 19 C.F.R. § 351.303(f).

Consistent with the Department’s clarification of its certification requirements, no other certifications are appended to this submission.<sup>6</sup> Please do not hesitate to contact the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,

/s/ Nathaniel Maandig Rickard

Nathaniel Maandig Rickard

Patrick F. O’Connor, Senior Trade Analyst

**PICARD KENTZ & ROWE LLP**

*Counsel to Domestic Producers*

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<sup>5</sup> Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19, 85 Fed. Reg. 17,006 (Dep’t Commerce Mar. 26, 2020). See also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period, 85 Fed. Reg. 41,363 (Dep’t Commerce July 10, 2020) (“Through this extension, Commerce extends the duration of these temporary modifications until further notice.”).

<sup>6</sup> See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings, 78 Fed. Reg. 42,678, 42,690 (Dep’t Commerce July 17, 2013) (“We will not require certification for case and rebuttal briefs . . .”).

**PUBLIC CERTIFICATE OF SERVICE  
ANTIDUMPING DUTY SEVENTEENTH ADMINISTRATIVE REVIEW  
FROZEN WARMWATER SHRIMP FROM INDIA  
CASE NO. A-533-840**

I, Nathaniel Maandig Rickard, hereby certify that a copy of the foregoing submission was served on this 11<sup>th</sup> day of April, 2023, by electronic mail on the following parties:

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*/s/ Nathaniel Maandig Rickard*  
\_\_\_\_\_  
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BEFORE THE  
UNITED STATES DEPARTMENT OF COMMERCE  
INTERNATIONAL TRADE ADMINISTRATION  
ENFORCEMENT AND COMPLIANCE

In the Matter of:

CERTAIN FROZEN WARMWATER  
SHRIMP FROM INDIA

CASE BRIEF (MEGAA MODA) ON BEHALF OF THE  
AD HOC SHRIMP TRADE ACTION COMMITTEE

Nathaniel Maandig Rickard  
Patrick F. O'Connor, Senior Trade Analyst

**PICARD KENTZ & ROWE LLP**  
*Counsel to Domestic Producers*

April 11, 2023

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EXECUTIVE SUMMARY

- 1) In this administrative review, Domestic Producers have raised concerns regarding Megaa Moda's characterization of certain sales as being for consumption in the home market and presenting these sales as an appropriate basis for the calculation of normal value. A review of the evidentiary record makes clear that these sales were not, in fact, made for consumption in the home market and were, instead, intended for export. Accordingly, in the Final Results, the Department should exclude these sales from the calculation of normal value in Megaa Moda's comparison market program.
- 2) Further, because Megaa Moda's mischaracterizations of these purported home market sales has left the Department with no information on the evidentiary record as to how they should be treated, in the Final Results, the Department should use facts otherwise available to include them in the company's U.S. sales dataset. Moreover, because Megaa Moda has failed to act to the "best of its ability" in responding to the Department's requests for clarification regarding these sales, the agency should make an adverse inference and apply the highest transaction-specific margin to these sales when calculating Megaa Moda's dumping margin.
- 3) Correction of any errors in the calculation of Megaa Moda's dumping margin also necessitates a re-calculation of the dumping margin applied to companies that were not selected for individual review. However, regardless of any other changes that might need to be made, in the Preliminary Results, the Department calculated a weighted-average margin for companies that were not selected for individual review based on the publicly reported range of sales *volumes* of the companies that were selected for individual review. The Department provided no explanation for why the agency relied upon the publicly reported volumes rather than the sales *values* from the individually reviewed companies. Department practice with regard to the methodology used for weight-averaging dumping margins is, as currently administered, entirely arbitrary. In the Final Results, the Department should adopt a standard practice of weight-averaging dumping margins through reference to sales values rather than volumes, while utilizing sales volumes only where the particular facts of the proceeding indicate that doing so would be appropriate.

BEFORE THE  
UNITED STATES DEPARTMENT OF COMMERCE  
INTERNATIONAL TRADE ADMINISTRATION  
ENFORCEMENT AND COMPLIANCE

\_\_\_\_\_  
In the Matter of: )  
)  
)

CERTAIN FROZEN WARMWATER )  
SHRIMP FROM INDIA )  
\_\_\_\_\_ )

CASE BRIEF (MEGAA MODA) ON BEHALF OF THE  
AD HOC SHRIMP TRADE ACTION COMMITTEE

I. INTRODUCTION

On behalf of Domestic Producers in the seventeenth (17<sup>th</sup>) administrative review of the antidumping duty order on certain frozen warmwater shrimp from India (the “Order”), we hereby submit a Case Brief regarding the U.S. Department of Commerce’s (the “Department”) announcement of the Preliminary Results, published in the *Federal Register* on March 3, 2023<sup>1</sup> with respect to Megaa Moda Private Limited (“Megaa Moda”) and the companies that are included within this administrative review but were not selected for individual review.

This Case Brief discusses three issues that must be corrected in the Department’s Final Results.

First, Megaa Moda has falsely characterized certain sales as being made in the home market for consumption. As explained in detail below, the record in this administrative review conclusively establishes that these sales were not intended to be for consumption in India and, as

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<sup>1</sup> See Certain Frozen Warmwater Shrimp from India, 88 Fed. Reg. 13,430 (Dep’t Commerce March 3, 2023) (Preliminary Results of Antidumping Duty Administrative Review; 2021-2022) (“Preliminary Results”).

such, the Department should exclude these sales from the calculation of normal value in the Final Results.

Second, because Megaa Moda mischaracterized the nature of these sales and there is no information on the record as to how the Department should treat these sales in its dumping calculation, the Department should, as facts otherwise available, include these sales in the company's U.S. sales dataset. Furthermore, because Megaa Moda has clearly failed to act to the "best of its ability" in this administrative review by presenting inaccurate and incomplete claims, the Department should make an adverse inference and apply Megaa Moda's highest transaction-specific margin to these sales for the purposes of calculating the respondent's overall dumping margin.

Third, correcting Megaa Moda's dumping margin in the Final Results will also require a re-calculation of the dumping margin applied to companies that are included within this administrative review but were not selected for individual review. Domestic Producers observe that the Department has developed an inconsistent practice as to the basis used for weight-averaging the dumping margins of individually investigated entities to calculate a review-specific average rate for companies not selected for individual review. In the Preliminary Results, the Department weight-averaged these dumping margins through reference to the publicly-disclosed ranged volume of the U.S. sales made by the two individually investigated entities. However, in the majority of other proceedings, the Department establishes the review-specific average for companies not selected for individual review by weight-averaging calculated dumping margins through reference to the value of the U.S. sales made by the individually investigated entities. The Department should revise its calculation of the review-specific average rate for companies not selected for individual review in the Final Results to be based on value

rather than volume, or, at a minimum, provide an explanation as to why the determination as to whether to use volume or value as a basis for this weight-averaging is not arbitrary and capricious.

**II. THE DEPARTMENT SHOULD EXCLUDE CERTAIN SALES THAT WERE NOT CONSUMED IN INDIA FROM MEGAA MODA’S COMPARISON PROGRAM**

Section 773 of the Tariff Act of 1930, as amended (“the Act”), explains that in determining normal value through the prices of home market sales, such sales must be “for consumption” in the home market.<sup>2</sup> Specifically, the statute instructs:

(1) DETERMINATION OF NORMAL VALUE.—

(A) IN GENERAL.—The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 1677a(a) or (b) of this title.

(B) PRICE.—The price referred to in subparagraph (A) is—

(i) the price at which the foreign like product is first sold . . . for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price . . . .

In previous administrative reviews of this antidumping duty order, Domestic Producers have challenged efforts made by Indian shrimp exporters to establish normal value through reference to the price of sales of shrimp that were not made “for consumption” in the market to which the shrimp was sold.<sup>3</sup> In response, the Department has held that Domestic Producers failed to identify substantial evidence to support a determination that such sales were not made “for consumption,” recently asserting that:

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<sup>2</sup> See 19 U.S.C. § 1677b(a)(1)(B)(i).

<sup>3</sup> See, e.g., Z.A. Sea Foods Pvt. Ltd. v. United States, 606 F. Supp. 3d 1335 (Ct. Int’l Trade 2022).

We agree that the evidence on the record shows that ZA Sea Foods sold shrimp to certain Vietnamese customers that were exporters or resellers. However, there is no evidence on the record to support AHSTAC's assertion that, simply because these companies were exporters, ZA Sea Foods' sales were not for consumption in Vietnam. Thus, we find that the record lacks sufficient evidence to support a finding that ZA Sea Foods' third country sales were not for consumption in Vietnam. Absent affirmative evidence that the shrimp was not consumed in Vietnam, or that the sales were otherwise not representative, we do not have substantial evidence to support a finding that these sales may not be used to calculate normal value.

Furthermore, while ZA Sea Foods' Vietnamese customers may have been exporters, we similarly find that there is no evidence on the record that ZA Sea Foods' POR sales to Vietnam were otherwise unrepresentative, other than the U.S. Customs and Border Protection Enforce and Protect Act determination and trade patterns of ZA Sea Foods' customers that were rejected by the Court in the *Remand Order* as a basis for Commerce's finding in its *Final Results*. We note that, while AHSTAC claims that it has provided substantial evidence to show such sales were not for consumption in the third country, AHSTAC has not pointed to any additional record evidence that would allow Commerce to overcome the Court's ruling that the fact that ZA Sea Foods' customers were processor or traders (*i.e.*, resellers) is insufficient to demonstrate such sales were not consumed in Vietnam and thus are not representative. Without affirmative record evidence that ZA Sea Foods' POR shrimp sales to Vietnam were not for consumption in Vietnam, were resold to the United States, were not sold in sufficient quantities, or some other affirmative evidence that these sales are not representative for the purposes of the calculation NV, we cannot support a finding that the sales were unrepresentative. While AHSTAC also asserts that we cannot compare NV based on sales to exporters to U.S. prices based on sales to non-exporters, they similarly fail to point to any evidence why such sales cannot be compared or any affirmative evidence that ZA Sea Foods' U.S. customers were not exporters as well.<sup>4</sup>

The U.S. Court of International Trade affirmed the Department's remand redetermination, holding that Domestic Producers had failed "to provide {} adequate argument" by "not discuss {ing} the relevant case law or Commerce practice interpreting the phrase 'for consumption' in the specific context of third country determinations and Commerce's ability to

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<sup>4</sup> Final Results of Remand Redetermination Pursuant to Court Remand, Z.A. Sea Foods Private Limited et al v. United States, Consol Court No. 21-00031, Slip Op. 22-36 (CIT April 19, 2022), Certain Frozen Warmwater Shrimp from India (July 18, 2022) at 16-17 (footnotes omitted) ("Z.A. Seafoods Remand Redetermination").

make presumptions in market viability analysis.”<sup>5</sup> Nevertheless, the Court appeared to also recognize that the Department had not construed the term “for consumption” in terms of the requirement imposed upon the agency by Congress through the use of these words and noted that the following issues remained unresolved:

Today’s decision does not resolve whether third market consumption is among “the category of issues that the Department need not, and should not, routinely consider” in market viability analysis. Preamble, 62 Fed. Reg. at 27,357. It is unclear whether third market consumption should be analyzed independently, as Domestic Shrimp now argues, or whether the consumption issue is a subcategory or precondition of the “representativeness” test as stated in the pre-remand Final Results, to which Domestic Shrimp originally agreed. See IDM at 19; Def.-Inter.’s Resp. to Pls.’ Mot. for J. at 16, Sept. 2, 2021, ECF No. 30 (quoting IDM at 19). Also unresolved is the meaning of “for consumption,” which is undefined in the statute, and whether Commerce’s interpretation of the term merits deference under Chevron U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).<sup>6</sup>

The Department’s administration of the antidumping duty laws, to date, provides no guidance as to the issues characterized by the Court as being unresolved. The agency has not explained how it construes the statutory requirement that sales be made “for consumption” in order to provide the basis for normal value, consistent with the express language of 19 U.S.C. § 1677b(a)(1). At best, the Department has indicated that any concerns raised as to whether sales to be used in the calculation of normal value were made “for consumption” gives rise to a review of evidence on the administrative record and that the record in the earlier administrative review proceeding was insufficient to establish that ZA Sea Foods’ sales to shrimp exporters in Vietnam were not made for consumption in that country.<sup>7</sup>

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<sup>5</sup> Z.A. Sea Foods Pvt. Ltd., 606 F. Supp. 3d at 1343.

<sup>6</sup> Id. at 1344 n.5.

<sup>7</sup> See Z.A. Seafoods Remand Redetermination.

The evidentiary record in this administrative review, however, leaves no doubt that certain sales of shrimp made by Megaa Moda in the home market were not “for consumption” in India. Specifically, substantial evidence demonstrates that [ ] sales observations of merchandise in Megaa Moda’s home market sales file, *i.e.*, home market sequences (“SEQH”) [ ], were not “for consumption” in that market. Because these sales were not made “for consumption” in India, the Department should exclude them from the comparison market calculation in the Final Results.

The public version of Megaa Moda’s initially submitted quantity and value chart reported that the company had a ranged volume of sales in its home market of 57,000 kilograms of frozen warmwater shrimp (compared to 730,000 kilograms of frozen warmwater shrimp exported to the United States) worth US\$430,000 (compared to the US\$7,300,000 in value attributed to its export sales to the United States).<sup>8</sup> The public summary [

].<sup>9</sup> Shortly thereafter, Megaa Moda subsequently revised the company’s quantity and value chart in its response to Section D of the Department’s questionnaire, decreasing the ranged volume of sales in its home market to 49,966 kilograms of frozen warmwater shrimp (compared to 667,215 kilograms of frozen warmwater shrimp exported to the United States) worth US\$435,379 (compared to the US\$7,491,179 in value

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<sup>8</sup> See Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Aug. 29, 2022) (“Megaa Moda Section A Response”) at Exhibit A-1 (PV).

<sup>9</sup> See id. (APO).



attributed to its export sales to the United States).<sup>10</sup> This time the public summary [

].<sup>11</sup>

In total, Megaa Moda's home market sales reporting identifies [ ] different sales observations in the Indian market comprising a total of [ ] kgs of frozen warmwater shrimp. [ ] in Megaa Moda's home market sales file, *i.e.*, SEQHs [ ], account for [

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Megaa Moda reports that the [

].<sup>13</sup> The [

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<sup>10</sup> See Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Sept. 22, 2022) ("Megaa Moda Section D Response") at Revised Exhibit A-1 (PV).

<sup>11</sup> See id. (APO).

<sup>12</sup> See Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Sept. 21, 2022) ("Megaa Moda Sections B & C Response") at Megaa Moda home market sales file (APO).

<sup>13</sup> See id. (APO).

[ ]

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In response to the Department’s supplemental questionnaire, Megaa Moda provided sales documentation for SEQH 76,<sup>14</sup> and asserted that “the goods were packed in Unbranded pouches and cartons which under any situation may not be suitable for US market {sic}.”<sup>15</sup> Megaa Moda claims that it had no indication, knowledge, or documentation to suggest that the merchandise was destined for an export market and “safely” concludes that “the goods were sold domestically in India.”<sup>16</sup> However, the records submitted by Megaa Moda do not support this claim.

The sales documentation provided for this sale includes email correspondence between Megaa Moda and [

].<sup>17</sup> As an initial matter, [

].<sup>18</sup> Moreover, [

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<sup>14</sup> See Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Feb. 3, 2023) (“Megaa Moda Suppl. Sections A-C Response”) at 14 (“Megaa is submitting sample documentation for SEQU 76 . . . .”) and Exhibit S1-8 (PV).

<sup>15</sup> See Megaa Moda Suppl. Sections A-C Response at 14 (PV).

<sup>16</sup> Id.

<sup>17</sup> See id. at Exhibit S1-8 (APO).

<sup>18</sup> Id.

More importantly, however, Megaa Moda submitted a tax invoice for SEQH 76<sup>19</sup> that [ ]<sup>20</sup> The public version of the tax invoice includes column headings for “Taxable Amount(Rs)” and “Tax Rate (GST + CESS | State Cess + Cess Non.Advol).”<sup>21</sup> Under the latter column, for [ ] the tax invoice reports that [ ]<sup>22</sup>

On this administrative record, Megaa Moda provided a number of documents relating to both sales and purchases of goods and services in the Indian market. The documents submitted by Megaa Moda as support for sales and purchases [ ]

[ ]<sup>23</sup> The differences in treatment

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<sup>19</sup> See id. at Exhibit S1-8, p.3 (unnumbered) (stating, in Section 2, that the “Document Type” is a “Tax Invoice”) (PV).

<sup>20</sup> See id. at Exhibit S1-8, p. 3 (unnumbered) (APO).

<sup>21</sup> See id. at Exhibit S1-8, p.3 (unnumbered) (PV).

<sup>22</sup> See id. at Exhibit S1-8, p. 3 (unnumbered) (APO).

<sup>23</sup> See, e.g., Megaa Moda Sections B & C Response at Exhibits B-5.b ([ ]), B.6.f ([ ]), and B.6.h ([ ])

([ ] (APO); Megaa

Moda Suppl. Sections A-C Response at Exhibits S1-2 ([ ]), S1-6 ([ ]), and S1-7 ([ ])

([ ] (APO); Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Feb. 13, 2023) (“Megaa Moda Suppl. Section D Response”) at Exhibits SD-1-1(a) ([ ] and SD-1-3(a) ([ ])

([ ] (APO).

between Megaa Moda’s home market sales and SEQH 76 are [

] a comparison of equivalent documents. For example, Megaa Moda’s Exhibit A-8 includes a document similar to the one included as part of Exhibit S1-8, also described as a “tax invoice” and including the same column headings.<sup>24</sup> In this document, under the column heading titled “Tax Rate (GST + CESS | State Cess + Cess Non.Advol),” [

].<sup>25</sup>

Similarly, Megaa Moda’s Exhibits B.6.b, B.6.d, and B.7.b also include the same document, again described as a “tax invoice” and including the same column headings.<sup>26</sup> In these documents, under the column heading titled “Tax Rate (GST + CESS | State Cess + Cess Non.Advol),” [

].<sup>27</sup> Thus, the record overwhelmingly demonstrates that for sales of shrimp for consumption in the Indian market, [

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<sup>24</sup> See Megaa Moda Section A Response at Exhibit A-8, p.4 (unnumbered) (PV).

<sup>25</sup> See Megaa Moda Section A Response at Exhibit A-8, p.4 (unnumbered) (emphasis added) (APO).

<sup>26</sup> See Megaa Moda Sections B & C Response at Exhibits B.6.b, p. 2 (unnumbered), B.6.d, p. 2 (unnumbered), and B.7.b, p. 4 (unnumbered) (PV).

<sup>27</sup> See Megaa Moda Sections B & C Response at Exhibits B.6.b, p. 2 (unnumbered), B.6.d, p. 2 (unnumbered), and B.7.b, p. 4 (unnumbered) (emphases added) (APO).

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Megaa Moda also provided additional documentation related to its sales in the U.S. market. In contrast to goods and services [ ], the documents for Megaa Moda’s U.S. sales [ ].<sup>28</sup> Additionally, the documents accompanying Megaa Moda’s

U.S. sales [

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<sup>28</sup> See, e.g., Megaa Moda Section A Response at Exhibit A-7 ([ ] (APO), Megaa Moda Sections B & C Response at Exhibits C.5.b ([ ], C.6.b ([ ], C.6.d ([ ], C.7.b ([ ], C.8.b ([ ], C.9.b ([ ], C.10.b ([ ], C.11.b ([ ], C.12.b ([ ], C.13.b ([ ], C.14.b ([ ], C.14.d ([ ], C.16.b ([ ], C.16.d ([ ], C.16.f ([ ], C.16.h ([ ], C.16.j ([ ], and C.16.l ([ ] (APO); Megaa Moda Suppl. Sections A-C Response at Exhibit S1-10.b ([ ] (APO); and Megaa Moda Suppl. Section D Response at Exhibit SD1-4(b) ([ ] (APO).

].<sup>29</sup> Moreover, Megaa Moda’s Exhibit A-7 includes a document similar to the one included as part of Exhibit S1-8, also described as a “tax invoice” and including the same column headings.<sup>30</sup> In this document, under the column heading titled “Tax Rate (GST + CESS | State Cess + Cess Non.Advol),” [

].<sup>31</sup> Thus, the sales documentation submitted by Megaa Moda makes clear that [

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In sum, Megaa Moda’s sales documentation for SEQH 76 submitted as Exhibit S1-8 demonstrate that [

].<sup>32</sup> This sale was made to a customer that [

]. Thus, the evidence on the administrative record establishes that Megaa Moda’s home market sales to [ ], *i.e.*, SEQHs [ ] were not for consumption in India. The record further demonstrates that, despite Megaa Moda’s claims to the contrary, the company was aware at the time of sale that this shrimp was not going to be consumed in India and [

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<sup>29</sup> See Megaa Moda Section A Response at Exhibit A-7, pp.7-9 (unnumbered) (APO).

<sup>30</sup> See id. at Exhibit A-7, p.10 (unnumbered) (PV).

<sup>31</sup> See id. at Exhibit A-7, p.10 (unnumbered) (emphasis added) (APO).

<sup>32</sup> See Megaa Moda Suppl. Sections A-C Response at Exhibit S1-8 (APO).

]. Accordingly, in the Final Results, at an absolute minimum, the Department should address Megaa Moda's false representations by revising the calculation of the company's dumping margin to exclude these sales from the home market program. This can be achieved through the insertion of the following SAS language in line [ ] of Megaa Moda's comparison program:

[ ]

**III. THE DEPARTMENT SHOULD TREAT CERTAIN MEGAA MODA SALES AS SALES TO THE U.S. MARKET**

As explained above, Megaa Moda has falsely presented SEQHs [ ] within the company's home market sales file as being sold for consumption in the Indian market. Megaa Moda's willful inaccurate representations regarding the nature of these home market sales has significantly impacted this proceeding and has, in particular, prevented the Department from developing a meaningful understanding of these sales.

Section 776 of the Act requires the Department to apply facts available when "necessary information is not available on the record" or if an interested party: (A) withholds information requested by the Department; (B) fails to provide such information by the deadlines for submission of the information; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified.<sup>33</sup> Further, if the Department determines "that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."<sup>34</sup> The purpose of the statute's "AFA" provision is to ensure "that the party does not obtain a more favorable result by failing to

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<sup>33</sup> 19 U.S.C. § 1677e(a)(2).

<sup>34</sup> 19 U.S.C. § 1677e(b)(1).



cooperate than if it had cooperated fully.”<sup>35</sup> Applying this provision, the agency has explained that “{e}ven though the Department does not require perfection in questionnaire responses and recognizes that mistakes sometimes occur, the Department does not condone submission of incomplete and misleading responses, which are replete with errors and discrepancies.”<sup>36</sup>

Here, based on the misrepresentations made by Megaa Moda regarding certain sales claimed to be for consumption in the home market, the administrative record does not contain relevant information as to how these sales should be treated in this administrative review. Because “necessary information is not available on the record,” the statute authorizes the Department to “rely on facts otherwise available . . . .”<sup>37</sup> For the reasons discussed in more detail below, because necessary information regarding the nature of these sales is not available on the record, Domestic Producers request that the Department find, as partial neutral facts available, that Megaa Moda’s sales to [ ] were sales for consumption in the United States and should be included in the company’s U.S. sales dataset. Moreover, the Department should further find that Megaa Moda failed to cooperate to the best of its ability by failing to provide a forthcoming explanation in response to the agency’s request for clarification regarding the nature of these purported home market sales.<sup>38</sup> By continuing to insist that these sales were for consumption in the home market, despite clear objective evidence to the contrary, Megaa

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<sup>35</sup> See Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, at 870 (1994) (“SAA”).

<sup>36</sup> Issues and Decision Memorandum (at Cmt. 11, p.84) accompanying Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium, 82 Fed. Reg. 16,378 (Dep’t Commerce Apr. 4, 2017) (Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part).

<sup>37</sup> Xi’an Metals & Minerals Import & Export Co. v. United States, 50 F.4th 98, 108 (Fed. Cir. 2022) (quoting 19 U.S.C. § 1677e).

<sup>38</sup> See ABB Inc. v. United States, 437 F. Supp. 3d 1289, 1300-01 (Ct. Int’l Trade 2020).

Moda's "behavior cannot be considered maximum effort to provide Commerce with full and complete answers."<sup>39</sup> Accordingly, for the Final Results, the Department should make an adverse inference and apply Megaa Moda's highest transaction-specific dumping rate to these sales in calculating the overall dumping rate.

Megaa Moda's SEQHs [ ] sales [ ], demonstrating that these sales were likely destined for consumption in the United States, despite the company's claims to the contrary. For example, these sales were the [ ] reported by Megaa Moda as made in the home market, [ ]

[ ]. In addition, SEQHs [ ]

[ ]. Further, Megaa Moda's SEQHs [ ]

[ ]. Finally, the [ ]

[ ]. Thus, while the administrative record contains [ ]

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<sup>39</sup> Maverick Tube Corp. v. United States, 857 F.3d 1353, 1361 (Fed. Cir. 2017) (citation and internal quotation marks omitted).

].

Because the circumstances of this proceeding support the Department utilizing facts otherwise available to find that Megaa Moda’s sales to [ ] were ultimately destined for the United States, these sales should be treated as U.S. sales for the purposes of calculating Megaa Moda’s dumping margin and cash deposit rate. Further, because Megaa Moda failed to “put forth its maximum effort to provide {the Department} with full and complete answers to all inquiries in an investigation,”<sup>40</sup> the Department should, as an adverse inference, multiply Megaa Moda’s highest transaction-specific dumping margin calculated in this review, (*i.e.*, [ ] percent),<sup>41</sup> by the value of these sales in U.S. dollars to calculate the additional amount of dumping. The Department should then include this additional amount of dumping figure in Megaa Moda’s overall margin.

**IV. THE DEPARTMENT SHOULD USE VALUE AS THE BASIS FOR CALCULATING THE REVIEW-SPECIFIC RATE FOR COMPANIES NOT SELECTED FOR REVIEW**

In the Preliminary Results,<sup>42</sup> the Department calculated a review-specific average rate for non-examined companies subject to the instant review.<sup>43</sup> The Department set out three different potential methodologies that could be used to calculate the non-examined companies’ cash deposit rate: 1) a calculation of a weighted-average margin using “the actual U.S. sales quantities

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<sup>40</sup> Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

<sup>41</sup> See [ ] workbook generated by Megaa Moda’s margin program.

<sup>42</sup> See Preliminary Results, 88 Fed. Reg. at 13,430-31.

<sup>43</sup> See Memorandum from A. Simons to The File, Re: “2021-2022 Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from India; Calculation of the Review-Specific Average Rate for the Preliminary Results,” Case No. A-533-840 (Feb. 27, 2023) (PV).

and antidumping duty margins of Megaa Moda and NK Marine;”<sup>44</sup> 2) a calculation of a simple average of Megaa Moda’s and NK Marine’s margins; and 3) a calculation of a weighted-average margin “using the publicly-ranged U.S. quantities reported by Megaa Moda and NK Marine.”<sup>45</sup> Ultimately, the Department determined to use a rate calculated by weight-averaging the public quantities of Megaa Moda and NK Marine to the non-examined respondents.

Section 735(c)(1)(B)(i)(II) of the Tariff Act of 1930, as amended (“the Act”), instructs the Department to “determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated.”<sup>46</sup> Section 735(c)(5)(A) of the Act further clarifies that:

For purposes of this subsection and section 733(d), the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776.<sup>47</sup>

The Act does not explicitly state how the Department is to arrive at an “estimated weighted average dumping margin.”

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<sup>44</sup> Id. at 1.

<sup>45</sup> Id. at 2. The Department, without explanation, elected to use the numbers reported in the quantity and value chart submitted by Megaa Moda with the company’s initial response to Section A of the agency’s questionnaire. See Megaa Moda Section A Response at Exhibit A-1 (PV). However, Megaa Moda subsequently significantly revised its reporting of quantity and value and submitted a revised quantity and value chart along with the company’s initial response to Section D of the agency’s questionnaire. See Megaa Moda Section D Response at Revised Exhibit A-1 (PV).

<sup>46</sup> 19 U.S.C. § 1673d(c)(1)(B)(i)(II).

<sup>47</sup> 19 U.S.C. § 1673d(c)(5)(A).

In this review, and in past administrative reviews of this antidumping duty order,<sup>48</sup> the Department has elected to weight-average dumping margins through reference to sales quantities. But this is clearly not the consistent, established practice of the agency, as in other proceedings related to antidumping duty orders applying Section 735(c)(1)(B)(i)(II), the Department expressly weight-averages dumping margins through reference to sales *values* rather than *volumes*. For example, in the recently issued Final Results of an administrative review of the antidumping duty order on Light-Walled Rectangular Pipe and Tube from Mexico, the Department explained that it used a simple average to calculate a dumping margin for companies that had not been individually investigated because “a simple average, rather than a weighted average based on *publicly ranged sale values* of the mandatory respondents, is more representative of the weighted average based on the BPI sale values of the mandatory respondents.”<sup>49</sup> In another set of Final Results published in the *Federal Register* on the same day regarding an administrative review of the antidumping duty order on Finished Carbon Steel

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<sup>48</sup> See, e.g., Memorandum from D. Crespo to The File, “Calculation of the Review-Specific Average Rate in the 2012-2013 Administrative Review of Certain Frozen Warmwater Shrimp from India,” Case No. A-533-840 (Mar. 18, 2014) (PV) (calculating a weighted-average through U.S. sales quantity) accompanying Certain Frozen Warmwater Shrimp from India, 79 Fed. Reg. 16,285 (Dep’t Commerce Mar. 25, 2014) (Preliminary Results of Antidumping Duty Administrative Review; 2012-2013); and Memorandum from A. Simons to The File, “2019-2020 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India; Calculation of the Review-Specific Average Rate for the Final Results,” Case No. A-533-840 (Nov. 22, 2021) (PV) (referencing use of “actual sales quantities” to calculate a weighted-average as risking disclosure of “proprietary sales volume” of the individually examined companies) accompanying Certain Frozen Warmwater Shrimp from India, 86 Fed. Reg. 67,440 (Dep’t Commerce Nov. 26, 2021) (Final Results of Antidumping Duty Administrative Review; 2019-2020).

<sup>49</sup> See Issues and Decision Memorandum (at Cmt. 18, p. 43 n.263) accompanying Light-Walled Rectangular Pipe and Tube from Mexico, 88 Fed. Reg. 15,665 (Dep’t Commerce Mar. 14, 2023) (Final Results of Antidumping Duty Administrative Review; 2020-2021) (emphasis added).

Flanges from India, the Department reported that it was “assigning to the companies not individually examined, listed in Appendix II, a margin of 0.84 percent, which is the weighted-average of RNG’s margin and Norma Group’s margin based on publicly ranged data.”<sup>50</sup> The Department cited to the agency calculation memorandum titled “Calculation of Margin for Respondents Not Selected for Individual Examination” for further details on this calculation.<sup>51</sup> That memorandum, in turn, makes clear that the weight-averaging was done through reference to “U.S. sales value” rather than volume.<sup>52</sup>

However, Domestic Producers note that if the analogous calculation memorandum is reviewed with respect to Light-Walled Rectangular Pipe and Tube from Mexico, it indicates that the Department – despite claiming to weight-average a dumping margin through reference to sales value in the Issues and Decision memorandum – actually weight-averaged dumping margins based on “U.S. sales quantities” not values.<sup>53</sup> Thus, a cursory review of the Department’s actions makes clear that the agency has failed to adopt a consistent practice in this

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<sup>50</sup> Finished Carbon Steel Flanges from India, 88 Fed. Reg. 15,668, 15,669 (Dep’t Commerce Mar. 14, 2023) (Final Results of Antidumping Duty Administrative Review; 2020-2021).

<sup>51</sup> Id. at 15,669 n.9.

<sup>52</sup> Memorandum from F. Baker to The File, “Antidumping Duty Order on Finished Carbon Steel Flanges from India; Administrative Review; 2020-2021: Calculation of Margin for Respondents Not Selected for Individual Examination,” Case No. A-533-871 (Mar. 7, 2023) (PV) accompanying Finished Carbon Steel Flanges from India, 88 Fed. Reg. 15,668, 15,669 (Dep’t Commerce Mar. 14, 2023) (Final Results of Antidumping Duty Administrative Review; 2020-2021).

<sup>53</sup> See Memorandum from J. Conniff to The File, “Final Results of the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico: Calculation of the Rate for Non-Selected Respondents,” Case No. A-201-836 (Mar. 7, 2023) (PV) accompanying Light-Walled Rectangular Pipe and Tube from Mexico, 88 Fed. Reg. 15,665 (Dep’t Commerce Mar. 14, 2023) (Final Results of Antidumping Duty Administrative Review; 2020-2021).

regard and is arbitrarily choosing to weight-average margins either through reference to U.S. sales values or U.S. sales quantities in a haphazard manner.

A more in-depth survey of the Department’s practice affords no insight as to the circumstances in which the agency elects to weight-average through volume versus through value. The Department has used volume as the basis for weight-averaging dumping margins in Welded Line Pipe from the Republic of Korea,<sup>54</sup> Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,<sup>55</sup> Certain Steel Nails from Thailand,<sup>56</sup> Oil Country Tubular Goods from the Russian Federation,<sup>57</sup> and Certain Carbon and Alloy Steel Cut-To-Length Plate

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<sup>54</sup> See Memorandum from A. Simons to The File, “2020-2021 Antidumping Duty Administrative Review of Welded Line Pipe from the Republic of Korea; Calculation of the Review-Specific Average Rate for the Preliminary Results,” Case No. A-580-876 (Dec. 22, 2022) (PV) accompanying Welded Line Pipe from the Republic of Korea, 87 Fed. Reg. 80,156 (Dep’t Commerce Dec. 29, 2022) (Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020-2021).

<sup>55</sup> See Memorandum from D. Crespo to The File, “Preliminary Results of the Antidumping Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; Calculation of the Cash Deposit Rate for Non-Reviewed Companies,” Case No. A-201-847 (Nov. 6, 2019) (PV) (explaining that “{w}e are unable to calculate a weighted average of these two margins using the actual sales quantities because doing so would reveal . . . proprietary sales volumes . . .”) accompanying Heavy Walled Rectangular Welded Steel Carbon Pipes and Tubes from Mexico, 84 Fed. Reg. 63,610 (Dep’t Commerce Nov. 18, 2019) (Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018).

<sup>56</sup> See Memorandum from L. LaCivita to The File, “Certain Steel Nails from Thailand: Calculation of All-Others’ Rate in the Final Determination,” Case No. A-549-844 (Dec. 19, 2022) (PV) (all-others rate calculated by “using the ranged sales quantity . . .”) accompanying Certain Steel Nails from Thailand, 87 Fed. Reg. 78,929 (Dep’t Commerce Dec. 23, 2022) (Final Affirmative Determination of Sales at Less Than Fair Value).

<sup>57</sup> See Memorandum from G. McMahon *et al.* to The File, “Less-Than-Fair-Value Investigation of Oil Country Tubular {Goods} from the Russian Federation; Preliminary Determination Calculation for All-Others,” Case No. A-821-833 (May 4, 2022) (PV) (calculating margin through “publicly ranged U.S. quantities” specified as metric tons) accompanying Oil Country Tubular Goods From the Russian Federation, 87 Fed. Reg. 28,804 (Dep’t Commerce May 11, 2022) (Preliminary Affirmative

from Belgium.<sup>58</sup> But, at the same time, the Department has used value as the basis for weight-averaging dumping margins in Steel Concrete Reinforcing Bar from Mexico,<sup>59</sup> Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,<sup>60</sup> Softwood Lumber from Canada,<sup>61</sup> Raw

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Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures).

<sup>58</sup> See Memorandum from A. Wood to The File, “Final Results of the 2019-2020 Antidumping Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium; Calculation of the Cash Deposit Rate for Non-Reviewed Companies,” Case No. A-423-812 (Feb. 2, 2022) (PV) (explaining that “{w}e are unable to calculate a weighted average of these two margins using the actual sales quantities because doing so would reveal . . . proprietary sales volumes . . .”) accompanying Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium, 87 Fed. Reg. 7,116 (Dep’t Commerce Feb. 8, 2022) (Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020).

<sup>59</sup> See Decision Memorandum (at 6) accompanying Steel Concrete Reinforcing Bar from Mexico, 87 Fed. Reg. 75,032 (Dep’t Commerce Dec. 7, 2022 (Preliminary Results of Antidumping Duty Administrative Review; 2020-2021) (explaining that the Department calculated a margin “using each company’s publicly-ranged U.S. sales value for the merchandise under consideration.”). See also Memorandum from J. Rivera to The File, “Final Results of the Antidumping Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; Calculation of the Cash Deposit Rate for Non-Selected Companies,” Case No. A-489-829 (Feb. 1, 2023) (calculating margin based on “ranged sales values . . .”) accompanying Steel Concrete Reinforcing Bar from the Republic of Turkey, 88 Fed. Reg. 7,941 (Dep’t Commerce Feb. 7, 2023) (Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020-2021).

<sup>60</sup> See Decision Memorandum (at 4) accompanying Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 86 Fed. Reg. 69,225 (Dep’t Commerce Dec. 7, 2021) (Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019-2020) (explaining that margin was calculated by “publicly ranged U.S. sales values.”).

<sup>61</sup> See Memorandum from M. Cryor to The File, “Preliminary Results of the Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada: Calculation of the Rate for Non-Examined Companies,” Case No. A-122-857 (Jan. 23, 2023) (calculating margin based on “ranged public sales values . . .”) accompanying Softwood Lumber from Canada, 88 Fed. Reg. 5,306 (Dep’t Commerce Jan. 27, 2023) (Preliminary Results of Antidumping Duty Administrative Review).



Honey from India,<sup>62</sup> Urea Ammonium Nitrate Solutions from the Russian Federation,<sup>63</sup> Steel Racks and Parts Thereof from the People’s Republic of China,<sup>64</sup> and Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China<sup>65</sup> without identifying any rationale for the different basis employed. In fact, the

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<sup>62</sup> See Memorandum from B. Ballesteros to The File, “Less-Than-Fair Value Investigation of Raw Honey from India: Calculation of All-Others Rate,” Case No. A-533-903 (Apr. 7, 2022) (PV) (calculating margin through “publicly-ranged U.S. sales values . . .”) accompanying Raw Honey from India, 87 Fed. Reg. 22,188 (Dep’t Commerce Apr. 14, 2022) (Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances). See also Memorandum from G. Coen to The File, “Less-Than-Fair Value Investigation of Raw Honey from Brazil: Calculation of All-Others Rate,” Case No. A-351-857 (Nov. 17, 2021) (PV) (calculating margin through “publicly-ranged U.S. sales values . . .”) accompanying Raw Honey from Brazil, 87 Fed. Reg. 22,182 (Dep’t Commerce Apr. 14, 2022) (Final Determination of Sales at Less Than Fair Value); and Memorandum from P.A. Ordaz to The File, “Final Determination in Less-Than-Fair Value Investigation of Raw Honey from the Socialist Republic of Vietnam: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination,” Case No. A-552-833 (Apr. 7, 2022) (PV) (calculating margin through “ranged public sales values . . .”) accompanying Raw Honey from the Socialist Republic of Vietnam, 87 Fed. Reg. 22,184 (Dep’t Commerce Apr. 14, 2022) (Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances).

<sup>63</sup> See Memorandum from K. Hill to The File, “Preliminary Determination Calculation for the All-Others,” Case No. A-821-831 (Jan. 26, 2022) (PV) (calculating margin through “publicly ranged sales values . . .”) accompanying Urea Ammonium Nitrate Solutions from the Russian Federation, 87 Fed. Reg. 5,785 (Dep’t Commerce Feb. 2, 2022) (Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures).

<sup>64</sup> See Memorandum from J. Hill to The File, “Antidumping Administrative Review of Steel Racks and Parts Thereof from the People’s Republic of China: Calculation of Dumping Margin for Respondents Not Selected for Individual Review,” Case No. A-570-088 (Sept. 30, 2021) (PV) (calculating margin through “ranged public sales values . . .”) accompanying Steel Racks and Parts Thereof from the People’s Republic of China, 86 Fed. Reg. 55,575 (Dep’t Commerce Oct. 6, 2021) (Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019-2020).

<sup>65</sup> See Memorandum from J. Pedersen to The File, “2019-2020 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination,” Case No.

Department’s practice appears to be so arbitrary that the narrative of a calculation memorandum will frequently report that a dumping margin was being calculated through reference to “sales quantities” – thus appearing to refer to volume – but include a table immediately following this narrative declaration clearly demonstrating that the weight-averaging was done through reference to sales values.<sup>66</sup>

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A-570-979 (June 21, 2022) (calculating margin through “publicly ranged sales values . . .”) accompanying Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China, 87 Fed. Reg. 38,379 (Dep’t Commerce June 28, 2022) (Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020).

<sup>66</sup> See, e.g., Memorandum from E. Kim to The File, “Less-Than-Fair Value Investigation of Raw Honey from Argentina: Final Determination Calculation for the All-Others,” Case No. A-357-823 (Apr. 7, 2022) (PV) (stating that margin was calculated through “publicly-ranged U.S. quantities . . .” but including table of calculation based on “Value in US\$”) accompanying Raw Honey from Argentina, 87 Fed. Reg. 22,179 (Dep’t Commerce Apr. 14, 2022) (Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances); Memorandum from K. Sliney to The File, “2019-2020 Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Calculation of All-Others’ Rate in Final Results,” Case No. A-583-856 (Feb. 2, 2022) (PV) (stating that margin was calculated through “ranged sales quantity . . .” but including table of calculation based on “Total Sales in USD”) accompanying Certain Corrosion-Resistant Steel Products from Taiwan, 87 Fed. Reg. 7,106 (Dep’t Commerce Feb. 8, 2022) (Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020); Memorandum from T. Schauer to The File, “Preliminary Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Calculation of the {M}argin for Non-Examined Companies,” Case No. A-580-883 (Oct. 26, 2021) (PV) (stating that margin was calculated through “ranged quantities” and specifying that these quantities were value as “U.S. Sales Value.”) accompanying Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 86 Fed. Reg. 59,985 (Dep’t Commerce Oct. 29, 2021) (Preliminary Results of Antidumping Duty Administrative Review; 2019-2020); Memorandum from D. Hom to The File, “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Draft Remand Results Calculation for Respondents Not Selected for Individual Examination,” Case No. A-580-809 (Oct. 8, 2021) (PV) (stating that margin was calculated through “ranged sales quantities . . .” but including table of calculation based on “U.S. Sales Value”) accompanying Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 86 Fed. Reg. 59,695 (Dep’t Commerce Oct. 28, 2021) (Notice of Court Decision Not in Harmony With Final Results of Administrative Review of the Antidumping Duty Order and Notice of Amended Final Results of Review); and Memorandum from J. Keller to

The Department should adopt a consistent practice with respect to weight-averaging to calculate a dumping margin for non-selected companies or, at a minimum, provide the reasoning behind the agency's decision to utilize volume or value. Domestic Producers believe that value is the more appropriate basis for weight-averaging the dumping margins of individually reviewed respondents and should be the default methodology employed absent specific circumstances that demonstrate that volume would be more appropriate. Although a company's sales quantities are relevant to the Department's dumping calculation, a respondent's calculated dumping margin is a measurement of the percentage below normal value that the company has sold subject merchandise during a specific review period. This is a pricing-based analysis. Therefore, any margin assigned to non-examined respondents should be calculated using a weighting that is on the same basis (*i.e.*, value).

Accordingly, for the Final Results, the Department should calculate the margin assigned to non-examined respondents relying on a weighting based on Megaa Moda's and NK Marine's sales values, rather than sales volumes. Should the Department decline to make this revision to the Preliminary Results, the agency should provide an explanation of the reasoning behind the use of sales volumes rather than sales values for the purposes of weight-averaging the dumping margins of Megaa Moda and NK Marine.<sup>67</sup>

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The File, "Ripe Olives from Spain: Calculation of the Preliminary Margin for Respondents Not Selected for Individual Examination," Case No. A-469-817 (Aug. 31, 2021) (PV) (stating that margin was calculated through "ranged sales quantities . . ." but including table of calculation based on "U.S. Sales Value") accompanying Ripe Olives from Spain, 86 Fed. Reg. 50,052 (Dep't Commerce Sept. 7, 2021) (Preliminary Results of Antidumping Duty Administrative Review; 2019-2020).

<sup>67</sup> Further, regardless of how the Department chooses to address Domestic Producers' argument, the agency should use the updated and revised amounts reported in Megaa Moda's revised quantity and value chart (see Megaa Moda Section D Response at Revised Exhibit A-1 (PV)) rather than the erroneous chart relied upon in the Preliminary Results. If the Department does not make this correction, it should, again, provide an

V. **CONCLUSION**

For the reasons given above, Domestic Producers respectfully request that the Department make the revisions, amendments, and corrections identified above in the Final Results of this review.

Respectfully submitted,

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Dated: April 11, 2023

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explanation of the reasoning behind the decision to use the uncorrected quantity and value figures.