

April 11, 2023

Case No. A-533-840  
Total Pages: 24  
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 NK Marine at Pages 4-5

**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 (NK Marine)**

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

---

<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 NK Marine Exports LLP (“NK Marine”) 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 Megaa Moda Private Limited (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

---

<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

Page 3

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*

---

<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:

**On behalf of Apex Frozen Foods Limited and Falcon Marine Exports:**

Robert L. LaFrankie, Esq.  
**CROWELL & MORING LLP**  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004-2595

**On behalf of American Shrimp Processors Association (“ASPA”):**

Roger B. Schagrin, Esq.  
**SCHAGRIN ASSOCIATES**  
900 Seventh Street, NW  
Suite 500  
Washington, DC 20001

**On behalf of Megaa Moda Private Limited:**

Yogesh Gupta  
**MEGAA MODA PVT. LTD.**  
9<sup>th</sup> Floor, Flat A10, CIC Building  
33A Chowringhee Road, Kolkata-700 071  
India  
Email: [megaa@megaa.in](mailto:megaa@megaa.in)

**On behalf of NK Marine Exports LLP:**

Gopal Krishna Nandyala  
**NK MARINE EXPORTS LLP**  
Survey No.750-751, Dosapadu Puntha Road  
Duvva Village 534211, West Godavari District, Andhra Pradesh  
India  
Email: [krishna.g@nkmarine.in](mailto:krishna.g@nkmarine.in)

*/s/ Nathaniel Maandig Rickard*  
\_\_\_\_\_  
Nathaniel Maandig Rickard  
**PICARD KENTZ & ROWE LLP**  
*Counsel to Domestic Producers*

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 (NK MARINE) 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

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
EXECUTIVE SUMMARY .....	v
I. Introduction.....	1
II. Commerce Must Correct the Home Market Net Price in NK Marine’s Margin Program.....	2
III. The Department Should Use Value as the Basis for Calculating the Review- Specific Rate for Companies Not Selected for Review .....	5
IV. Conclusion .....	14

TABLE OF AUTHORITIES

STATUTES

19 U.S.C. § 1673d.....6

ADMINISTRATIVE DECISIONS

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) ..... 9-10

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)..... 11-12

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) ..... 6-7

Certain Frozen Warmwater Shrimp from India, 86 Fed. Reg 33,658 (Dep’t Commerce June 25, 2021) (Preliminary Results of Antidumping Duty Administrative Review; 2019-2020) ..... 3-4

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) ..... 6-7

Certain Frozen Warmwater Shrimp from India, 87 Fed. Reg. 11,413 (Dep’t Commerce March 1, 2022) (Preliminary Results of Antidumping Duty Administrative Review; 2020-2021) ..... 3-4

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)..... 11-12

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) .....9

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) ..... 11-12

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).....10

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)..... 10-11

Finished Carbon Steel Flanges from India, 88 Fed. Reg. 15,668 (Dep’t Commerce Mar. 14, 2023) (Final Results of Antidumping Duty Administrative Review; 2020-2021) ..... 7-8

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).....9

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)..... 7-8

Oil Country Tubular Goods From the Russian Federation, 87 Fed. Reg. 28,804 (Dep’t Commerce May 11, 2022) (Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures) .....9

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)..... 11-12

Raw Honey from Brazil, 87 Fed. Reg. 22,182 (Dep’t Commerce Apr. 14, 2022) (Final Determination of Sales at Less Than Fair Value)..... 10-11

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).....10

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) ..... 10-11

Ripe Olives from Spain, 86 Fed. Reg. 50,052 (Dep’t Commerce Sept. 7, 2021) (Preliminary Results of Antidumping Duty Administrative Review; 2019-2020) ..... 11-12

Softwood Lumber from Canada, 88 Fed. Reg. 5,306 (Dep’t Commerce Jan. 27, 2023) (Preliminary Results of Antidumping Duty Administrative Review) .....10



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)...10

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) .....10

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)..... 10-11

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)..... 10-11

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).....9

EXECUTIVE SUMMARY

- 1) In the Preliminary Results, the Department erred in its margin calculation with regard to the treatment of NK Marine's home market net price. NK Marine reported the company's gross unit prices of its third country sales denominated in U.S. dollars. In prior administrative reviews of this antidumping duty order, the Department has, consistent with the law and agency practice, calculated the home market net price in the margin program in U.S. dollars, for third country sales denominated in the same currency. For the Final Results, the Department should review its margin calculation for consistency with its established practice in this respect and make all necessary revisions.
  
- 2) Correction of any errors in the calculation of NK Marine'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 (NK MARINE) 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 NK Marine Exports LLP (“NK Marine”) and the companies that are included within this administrative review but were not selected for individual review.

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

First, the Department erred in the Preliminary Results with respect to the manner in which home market net price was treated in the margin program, contrary to its established practice. As described more fully below, the Department’s error resulted in a significant understatement of NK Marine’s dumping margin.

---

<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”).

Second, correcting NK Marine’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 many 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. COMMERCE MUST CORRECT THE HOME MARKET NET PRICE IN NK MARINE’S MARGIN PROGRAM**

In this review, NK Marine reported the gross unit price of its third country sales prices in U.S. dollars, explicitly noting under the final column in the public version of Exhibit B-2 that the “currency” for “Gross Unit Price” is “USD.”<sup>2</sup> NK Marine explains that “{t}he commercial

---

<sup>2</sup> See Letter from NK Marine Exports LLP to the U.S. Department of Commerce, Case No. A-533-840 (Sept. 6, 2022) (“NK Marine Section B Response”) at Exhibit B-2 (PV). In contrast, the “currency” reported for “Commissions,” “Inventory Carrying costs,” “Packing Cost,” and “Export Survey Charges” was “INR.” Id.

invoice copy is used to record each sale by its invoice number and date, country of export, quantity and dollar value. The rupee value from the bank documents is recorded in the sales register.”<sup>3</sup> Thus, NK Marine’s reporting indicates that the amount recorded in the company’s sales ledger is documented in dollars and this amount is later converted to Indian rupees upon its realization in NK Marine’s bank.

Part 5-A of the Department’s margin program instructs:

If the comparison market database is reported in more than one currency, the CM net price needs to be recalculated in CM currency using an exchange rate based on the sale date of the matching U.S. sale. CM sales have been weight averaged in the CM Program so the CM net price will be calculated on a model (HMCONNUM) basis.<sup>4</sup>

Consistent with these instructions, the last two previously conducted administrative reviews of this antidumping duty order demonstrate that the Department calculates home market net prices in the margin program in U.S. dollars.<sup>5</sup>

---

<sup>3</sup> See NK Marine Section B Response at 9 (PV).

<sup>4</sup> See <https://access.trade.gov/resources/sas/programs/diffpriceprograms/me-margin-calculation-sas.txt> at Part 5-A.

<sup>5</sup> See, e.g., Memorandum from T.K. Stefanova to The File, Re: “2020-2021 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India; Preliminary Results Margin Calculation for Royal Imports and Exports,” Case No. A-533-840 (Feb. 22, 2022) (PV) at 2 (“Because HMNETPRI was already expressed in U.S. dollars before the calculation of the foreign unit price in dollars (FUPDOL), we modified the calculation of FUPDOL to apply the exchange rate to only the difference-in-merchandise adjustment (DIFMER) . . . .”) and Memorandum from A. Simons to The File, Re: “2020-2021 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India; Preliminary Results Margin Calculation for LNSK,” Case No. A-533-840 (Feb. 22, 2022) (PV) at 2 (same) accompanying Certain Frozen Warmwater Shrimp from India, 87 Fed. Reg. 11,413 (Dep’t Commerce March 1, 2022) (Preliminary Results of Antidumping Duty Administrative Review; 2020-2021). See also Memorandum from A. Menon to The File, Re: “2019-2020 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India; Preliminary Results Margin Calculation of RSA Marines,” Case No. A-533-840 (June 21, 2021) at 2 (PV) (“RSA Marines reported its per-unit indirect selling expenses in both markets as Indian rupee amounts. However, RSA Marines reported both its comparison market and

Because the gross unit price in NK Marine's comparison market was expressed in U.S. dollars, the home market net price should have reflected this fact. [

].

---

U.S. gross unit prices in U.S. dollars and indirect selling expenses are calculated as a percentage of the gross unit price. Therefore, we recalculated per-unit indirect selling expenses to apply the indirect selling expense ratio to the reported gross unit prices using the combined ratio of RSA Marines and Royal Oceans.”) accompanying Certain Frozen Warmwater Shrimp from India, 86 Fed. Reg 33,658 (Dep’t Commerce June 25, 2021) (Preliminary Results of Antidumping Duty Administrative Review; 2019-2020).

Additionally, because the calculation of home market net price in the margin program should be reported in U.S. dollars, the Department must [

]

**III. 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>6</sup> the Department calculated a review-specific average rate for non-examined companies subject to the instant review.<sup>7</sup> The Department set out three different

---

<sup>6</sup> See Preliminary Results at 88 Fed. Reg. at 13,430-31.

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 and antidumping duty margins of Megaa Moda and NK Marine;"<sup>8</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>9</sup> Ultimately, the Department determined to use a rate calculated by weight-averaging the public quantities of NK Marine and Megaa Moda 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>10</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>11</sup>

---

<sup>7</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).

<sup>8</sup> Id. at 1.

<sup>9</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 Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Aug. 29, 2022) 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 Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Sept. 22, 2022) ("Megaa Moda Sect. D Response") at Exhibit A-1 (PV).

<sup>10</sup> 19 U.S.C. § 1673d(c)(1)(B)(i)(II).

<sup>11</sup> 19 U.S.C. § 1673d(c)(5)(A).



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

In this review, and in past administrative reviews of this antidumping duty order,<sup>12</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>13</sup> In another set of Final Results published in the *Federal Register* on the same

---

<sup>12</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>13</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

day regarding an administrative review of the antidumping duty order on Finished Carbon Steel 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>14</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>15</sup> That memorandum, in turn, makes clear that the weight-averaging was done through reference to “U.S. sales value” rather than volume.<sup>16</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>17</sup> Thus, a cursory review of the

---

Mar. 14, 2023) (Final Results of Antidumping Duty Administrative Review; 2020-2021) (emphasis added).

<sup>14</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>15</sup> Id. at 15,669 n.9.

<sup>16</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>17</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).

Department's actions makes clear that the agency has failed to adopt a consistent practice in this 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>18</sup> Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,<sup>19</sup> Certain Steel Nails from Thailand,<sup>20</sup> Oil Country Tubular Goods from the Russian Federation,<sup>21</sup> and Certain Carbon and Alloy Steel Cut-To-Length Plate

---

<sup>18</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>19</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>20</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>21</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)

from Belgium.<sup>22</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>23</sup> Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,<sup>24</sup> Softwood Lumber from Canada,<sup>25</sup> Raw

---

accompanying Oil Country Tubular Goods From the Russian Federation, 87 Fed. Reg. 28,804 (Dep't Commerce May 11, 2022) (Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures).

<sup>22</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>23</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>24</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>25</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>26</sup> Urea Ammonium Nitrate Solutions from the Russian Federation,<sup>27</sup> Steel Racks and Parts Thereof from the People’s Republic of China,<sup>28</sup> and Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules from the People’s Republic of China<sup>29</sup> without identifying any rationale for the different basis employed. In fact, the

---

<sup>26</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>27</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>28</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>29</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>30</sup>

---

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>30</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 NK Marine's and Megaa Moda'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 NK Marine and Megaa Moda.<sup>31</sup>

---

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>31</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 Sect. D Response at Exhibit A-1 (PV)) rather than the erroneous chart relied upon in the Preliminary Results. If the

IV. **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,

/s/ Nathaniel Maandig Rickard

Nathaniel Maandig Rickard

Patrick F. O'Connor, Senior Trade Analyst

**PICARD KENTZ & ROWE LLP**

*Counsel to Domestic Producers*

Dated: April 11, 2023

---

Department does not make this correction, it should, again, provide an explanation of the reasoning behind the decision to use the uncorrected quantity and value figures.