

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-533-840

Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination

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

SUMMARY: On March 6, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. The period of review (POR) is February 1, 2010, through January 31, 2011.

Based on our analysis of the comments received, we have made certain changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled “Final Results of Review.”

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3874 or (202) 482-0049, respectively.

## SUPPLEMENTARY INFORMATION:

Background

This review covers 184 producers/exporters. The respondents which the Department selected for individual examination are Apex Exports (Apex) and Falcon Marine Exports Limited (Falcon). The respondents which were not selected for individual examination are listed in the “Final Results of Review” section of this notice.

On March 6, 2012, the Department published in the Federal Register the preliminary results of administrative review of the antidumping duty order on shrimp from India.<sup>1</sup>

Also in March 2012, the Department verified the sales and cost data reported by Falcon, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).

In April 2012, in response to a request from the Department, Kay Kay Exports (Kay Kay), a respondent not selected for individual examination, clarified its statement of no shipments. For further discussion, see the “Determination of No Shipments” section of this notice.

We invited parties to comment on the Preliminary Results of review. In May 2012, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (the processors), and Apex, Falcon, and Kay Kay (collectively, “the respondents”).

The Department has conducted this administrative review in accordance with section 751 of the Act.

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<sup>1</sup> See Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination, 77 FR 13275 (Mar. 6, 2012) (Preliminary Results).

### Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>2</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

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

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that

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<sup>2</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain battered shrimp. Battered shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

### Period of Review

The POR is February 1, 2010, through January 31, 2011.

### Determination of No Shipments

As noted in the Preliminary Results, we received no-shipment claims from 13 companies. See Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews, 76 FR 18157 (Apr. 1, 2011) (Initiation Notice). We were unable to confirm the statements from two of these companies, Veejay Impex (Veejay) and Kay Kay, with U.S. Customs and Border Protection (CBP). See Memorandum to the File, from Henry Almond, Analyst, Office 2, AD/CVD Operations, entitled, “2010-2011 Administrative Review of Certain Frozen Warmwater Shrimp from India: Entry Documents from U.S. Customs and Border Protection (CBP),” dated March 29, 2012, and Kay Kay’s submission dated April 16, 2012. Thus, we have continued to assign both companies final dumping margins based on the margin calculated for Apex (because it is the only mandatory respondent for which we calculated an above de minimis margin). For further discussion regarding Kay Kay, see the Issues and Decision Memorandum (Decision Memo) accompanying this notice, at Comment 1. For further discussion regarding Veejay, see Preliminary Results, 77 FR at 13277.

Regarding the 11 remaining companies, we confirmed the claims from these companies with CBP. Therefore, because we find that the record indicates that the 11 companies listed below did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR. These companies are:

- 1) Accelerated Freeze Drying Company Ltd.<sup>3</sup>
- 2) Amulya Sea Foods
- 3) Baby Marine International

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<sup>3</sup>This company was listed in the Initiation Notice as “Accelerated Freeze-Drying C.”

- 4) Baby Marine Sarass
- 5) BMR Exports
- 6) Castlerock Fisheries Ltd.
- 7) Esmario Export Enterprises
- 8) Koluthara Exports Ltd.
- 9) Penver Products (P) Ltd.
- 10) Sharat Industries Ltd.
- 11) Uniroyal Marine Exports Ltd.

As we stated in the Preliminary Results, our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP. See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27393 (May 19, 1997); see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review, 75 FR 76700, 76701 (Dec. 9, 2010). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the “automatic assessment” regulation, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

As noted in the Preliminary Results, because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the above listed companies and exported by other parties at the all-others rate. In addition, we

continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the 11 companies listed above and issue appropriate instructions to CBP based on the final results of this administrative review. See the “Assessment Rates” section of this notice below.

#### Cost of Production

As discussed in the Preliminary Results, we conducted an investigation to determine whether Apex and Falcon made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. See Preliminary Results, 76 FR at 12029-12030. For these final results, we performed the cost test following the same methodology as in the Preliminary Results. Id. at 12030.

We found 20 percent or more of Apex’s and Falcon’s sales of a given product during the reporting period were made at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in “substantial quantities” within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Id.; and sections 773(b)(1)-(2) of the Act.

Therefore, for purposes of these final results, we continue to find that, for certain products, Apex and Falcon made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and have used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act. Additionally, for those U.S. sales of subject merchandise for which there were no third country sales in the ordinary course of trade, we continued to compare export prices to constructed value in accordance with section 773(a)(4) of the Act.

### Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file electronically via IA ACCESS in the Central Records Unit, room 7046, of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memo are identical in content.

### Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

### Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2010, through January 31, 2011:

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Apex Exports	2.51
Falcon Marine Exports Limited	0.13 ( <u>de minimis</u> )

Review-Specific Average Rate Applicable to the Following Companies:<sup>4</sup>

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Abad Fisheries Pvt. Ltd.	2.51
Accelerated Freeze-Drying Co.	*

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<sup>4</sup> This rate is based on the margin calculated for Apex because it is the only above de minimis margin calculated in this administrative review.



Adilakshmi Enterprises	2.51
Allana Frozen Foods Pvt. Ltd.	2.51
Allansons Ltd.	2.51
AMI Enterprises	2.51
Amulya Sea Foods	*
Ananda Aqua Applications / Ananda Aqua Exports (P) Limited / Ananda Foods	2.51
Anand Aqua Exports	2.51
Andaman Seafoods Pvt. Ltd.	2.51
Angelique Intl	2.51
Anjaneya Seafoods	2.51
Arvi Import & Export	2.51
Asvini Exports	2.51
Asvini Fisheries Private Limited	2.51
Avanti Feeds Limited	2.51
Ayshwarya Seafood Private Limited	2.51
Baby Marine Exports	2.51
Baby Marine International	*
Baby Marine Sarass	*
Bhatsons Aquatic Products	2.51
Bhavani Seafoods	2.51
Bijaya Marine Products	2.51
Blue Water Foods & Exports P. Ltd.	2.51
Bluefin Enterprises	2.51
Bluepark Seafoods Pvt. Ltd.	2.51
BMR Exports	*
Britto Exports	2.51
C P Aquaculture (India) Ltd.	2.51
Calcutta Seafoods Pvt. Ltd.	2.51
Capithan Exporting Co.	2.51
Castlerock Fisheries Pvt. Ltd.	*
Chemmeens (Regd)	2.51
Cherukattu Industries (Marine Div.)	2.51
Choice Canning Company	2.51
Choice Trading Corporation Private Limited	2.51
Coastal Corporation Ltd.	2.51
Cochin Frozen Food Exports Pvt. Ltd.	2.51
Coreline Exports	2.51
Corlim Marine Exports Pvt. Ltd.	2.51
Damco India Private	2.51
Devi Fisheries Limited	2.51
Devi Marine Food Exports Private Ltd. / Kader Exports Private Limited / Kader Investment and Trading Company Private Limited / Liberty Frozen Foods Pvt. Ltd. / Liberty Oil Mills Ltd. /	2.51

Premier Marine Products / Universal Cold Storage Private Limited	
Diamond Seafoods Exports / Edhayam Frozen Foods Pvt. Ltd. / Kadalkanny Frozen Foods / Theva & Company	2.51
Digha Seafood Exports	2.51
Esmario Export Enterprises	*
Exporter Coreline Exports	2.51
Five Star Marine Exports Private Limited	2.51
Forstar Frozen Foods Pvt. Ltd.	2.51
Frontline Exports Pvt. Ltd.	2.51
G A Randerian Limited	2.51
Gadre Marine Exports	2.51
Galaxy Maritech Exports P. Ltd.	2.51
Gayatri Seafoods	2.51
Geo Aquatic Products (P) Ltd.	2.51
Geo Seafoods	2.51
Goodwill Enterprises	2.51
Grandtrust Overseas (P) Ltd.	2.51
GVR Exports Pvt. Ltd.	2.51
Haripriya Marine Export Pvt. Ltd.	2.51
Harmony Spices Pvt. Ltd.	2.51
HIC ABF Special Foods Pvt. Ltd.	2.51
Hindustan Lever, Ltd.	2.51
Hiravata Ice & Cold Storage	2.51
Hiravati Exports Pvt. Ltd.	2.51
Hiravati International Pvt. Ltd. (located at APM – Mafco Yard, Sector – 18, Vashi, Navi, Mumbai – 400 705, India)	2.51
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	2.51
IFB Agro Industries Ltd.	2.51
Indian Aquatic Products	2.51
Indo Aquatics	2.51
Innovative Foods Limited	2.51
International Freezefish Exports	2.51
Interseas	2.51
ITC Ltd.	2.51
ITC Limited, International Business	2.51
Jagadeesh Marine Exports	2.51
Jaya Satya Marine Exports	2.51
Jaya Satya Marine Exports Pvt. Ltd.	2.51
Jayalakshmi Sea Foods Private Limited	2.51
Jinny Marine Traders	2.51
Jiya Packagings	2.51
K R M Marine Exports Ltd.	2.51

Kalyanee Marine	2.51
Kanch Ghar	2.51
Kay Kay Exports	2.51
Kings Marine Products	2.51
Koluthara Exports Ltd.	*
Konark Aquatics & Exports Pvt. Ltd.	2.51
Landauer Ltd.	2.51
Libran Cold Storages (P) Ltd.	2.51
Magnum Estates Limited	2.51
Magnum Export	2.51
Magnum Sea Foods Limited	2.51
Malabar Arabian Fisheries	2.51
Malnad Exports Pvt. Ltd.	2.51
Mangala Marine Exim India Pvt. Ltd.	2.51
Mangala Sea Products	2.51
Meenaxi Fisheries Pvt. Ltd.	2.51
MSC Marine Exporters	2.51
MSRDR Exports	2.51
MTR Foods	2.51
N.C. John & Sons (P) Ltd	2.51
Naga Hanuman Fish Packers	2.51
Naik Frozen Foods	2.51
Naik Frozen Foods Pvt., Ltd.	2.51
Naik Seafoods Ltd.	2.51
Navayuga Exports Ltd.	2.51
Nekkanti Sea Foods Limited	2.51
NGR Aqua International	2.51
Nila Sea Foods Pvt. Ltd.	2.51
Nine Up Frozen Foods	2.51
Overseas Marine Export	2.51
Paragon Sea Foods Pvt. Ltd.	2.51
Penver Products (P) Ltd.	*
Pijikay International Exports P Ltd.	2.51
Pisces Seafood International	2.51
Premier Exports International	2.51
Premier Marine Foods	2.51
Premier Seafoods Exim (P) Ltd.	2.51
R V R Marine Products Private Limited	2.51
Raa Systems Pvt. Ltd.	2.51
Raju Exports	2.51
Ram's Assorted Cold Storage Ltd.	2.51
Raunaq Ice & Cold Storage	2.51
Raysons Aquatics Pvt. Ltd.	2.51
Razban Seafoods Ltd.	2.51
RBT Exports	2.51

RDR Exports	2.51
Riviera Exports Pvt. Ltd.	2.51
Rohi Marine Private Ltd.	2.51
S & S Seafoods	2.51
S. A. Exports	2.51
S Chanchala Combines	2.51
Safa Enterprises	2.51
Sagar Foods	2.51
Sagar Grandhi Exports Pvt. Ltd.	2.51
Sagar Samrat Seafoods	2.51
Sagarvihar Fisheries Pvt. Ltd.	2.51
SAI Marine Exports Pvt. Ltd.	2.51
SAI Sea Foods	2.51
Sandhya Aqua Exports	2.51
Sandhya Aqua Exports Pvt. Ltd.	2.51
Sandhya Marines Limited	2.51
Santhi Fisheries & Exports Ltd.	2.51
Satya Seafoods Private Limited	2.51
Sawant Food Products	2.51
Seagold Overseas Pvt. Ltd.	2.51
Selvam Exports Private Limited	2.51
Sharat Industries Ltd.	*
Shimpo Exports	2.51
Shippers Exports	2.51
Shroff Processed Food & Cold Storage P Ltd.	2.51
Silver Seafood	2.51
Sita Marine Exports	2.51
Sowmya Agri Marine Exports	2.51
Sprint Exports Pvt. Ltd.	2.51
Sri Chandrakantha Marine Exports	2.51
Sri Sakkthi Cold Storage	2.51
Sri Sakthi Marine Products P Ltd.	2.51
Sri Satya Marine Exports	2.51
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.	2.51
Srikanth International	2.51
SSF Ltd.	2.51
Star Agro Marine Exports Private Limited	2.51
Sun Bio-Technology Ltd.	2.51
Suryamitra Exim (P) Ltd.	2.51
Suvarna Rekha Exports Private Limited	2.51
Suvarna Rekha Marines P Ltd.	2.51
TBR Exports Pvt Ltd.	2.51
Teekay Marine P. Ltd.	2.51
Tejaswani Enterprises	2.51
The Waterbase Ltd.	2.51

Triveni Fisheries P Ltd.	2.51
Uniroyal Marine Exports Ltd.	*
Usha Seafoods	2.51
V.S Exim Pvt Ltd.	2.51
Veejay Impex	2.51
Victoria Marine & Agro Exports Ltd.	2.51
Vinner Marine	2.51
Vishal Exports	2.51
Wellcome Fisheries Limited	2.51
West Coast Frozen Foods Private Limited	2.51

\\*\ No shipments or sales subject to this review.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Apex reported the entered value for all, and Falcon for most, of their U.S. sales, we have calculated importer-specific ad valorem duty assessment rates for these sales based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. To determine whether the duty assessment rates are de minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific ad valorem ratios based on the entered value. Regarding Falcon's sales to Puerto Rico, we have based the assessment rate for these sales on the cash deposit rate calculated for Falcon.

For the companies which were not selected for individual examination, we have used as the assessment rate the cash deposit assigned to these exporters, in accordance with our practice. See, e.g., Shrimp from India, 76 FR at 41206.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis (i.e., less than 0.50

percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See Assessment Policy Notice. This clarification applies to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

#### Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, de minimis within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the “Determination of No Shipments” section, above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate

established in the LTFV investigation. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147, 5148 (Feb. 1, 2005). These deposit requirements shall remain in effect until further notice.

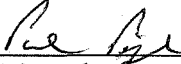
#### Notification to Importers

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

#### Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections  
751(a)(1) and 777(i)(1) of the Act.

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

5 July 2012  
(Date)



## Appendix – Issues in Decision Memorandum

### General Issues

1. Application of AFA to Kay Kay Exports
2. Offsetting of Negative Margins
3. Falcon's Unreported POR U.S. Sales
4. Application of AFA to Falcon's Pre-Processing Labor Costs
5. Treatment of Assessed Antidumping Duties
6. Treatment of Income Earned on Antidumping Duty Deposits