DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–802]

Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa

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

SUMMARY: On July 8, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa. The review covers shipments of this merchandise to the United States during the period December 16, 1994, through May 31, 1996, the period of review.

Based on our analysis of the comments received, and the correction of certain ministerial errors, we have changed the preliminary results. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0186 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreement Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the provisions codified at 19 CFR part 353, as of April 1, 1996. Where we cite to the Department's new regulations (19 CFR part 351, 62 FR 27926 (May 19, 1997) (''New Regulations'') as an indication of current Department practice, we have so stated.

Background

This review covers one manufacturer/exporter to the United States of the subject merchandise, Illovo Sugar Limited (''ISL''). On July 8, 1997, the Department published in the **Federal Register** the *Preliminary Results of Administrative Review of the Antidumping Duty Order on Furfuryl Alcohol from the Republic of South Africa,* 62 FR 36488 (''the preliminary results''). We received case and rebuttal briefs from QO Chemicals, Inc (''the petitioner'') and ISL on August 7, 1997, and August 26, 1997, respectively. A public hearing was held on August 28, 1997.

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

Scope of the Review

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Constructed Export Price (''CEP'')

For sales to the United States, we calculated CEP based on the same methodology used in the preliminary results, with the following exceptions:

1. We excluded certain sales made of furfuryl alcohol which entered the United States prior to the suspension of liquidation. *See* Comment 6.

2. We based the calculation of the CEP profit rate on information contained in ISL's audited financial statements regarding profits made on ''by-products'' rather than on the total profit figure in the company's financial statements. *See* Comment 8.

3. We have treated the quality testing expense that ISL incurs upon furfuryl alcohol's arrival in the United States as a movement expense and not as an indirect selling expense. *See* Comment 9.

4. We limited the deduction of indirect expenses incurred in the home market on behalf of U.S. sales to the expenses of ISL personnel incurred for travel to the United States. *See* Comment 10.

5. Tank car rental credits gained for transporting furfuryl alcohol in the United States are no longer added to CEP because the reported tank car rental expense is net of such credits. *See* Comment 11.

6. Certain U.S. inventory carrying costs have been converted from Rand to U.S. dollars. *See* Comment 12.

Normal Value (''NV'')

We used the same methodology to calculate NV as that described in the preliminary results.

Analysis of Comments Received

In accordance with 19 CFR 353.38, we gave interested parties an opportunity to comment on the preliminary results. We received a case brief from the petitioner and a rebuttal brief from ISL (*e.g.,* ''Petitioner Case Brief'', ''ISL Rebuttal Brief'').

Comment 1: Fictitious Home Market: The petitioner argues that the Department erred in the preliminary results by not determining that a fictitious market exists in South Africa rendering HM sales of furfuryl alcohol inappropriate as a basis for NV. The petitioner contends that the Department unlawfully restricted the applicability of the fictitious market provision (section 773(a)(2) of the Act) to situations where there is evidence of different movements in prices at which different forms of the foreign like product are sold or offered for sale.

Specifically, the petitioner argues that the Department's restriction of this provision to situations involving price movements of different forms of the foreign like product is incorrect for the following reasons. First, the legislative history of the 1988 amendment to the fictitious market provision (which provides that the Department may consider ''different movements in prices at which different forms of the foreign like product are sold or offered for sale'' as evidence of a fictitious market) clearly indicates that this evidence is simply an illustrative example of a fictitious market and does not prevent the Department from finding a fictitious market based on other evidence. In this regard, the petitioner cites the Senate Report accompanying this amendment: ''The purpose of this provision is to *highlight one particular example* of a fictitious market.'' S.Rep. No. 71, 100th Congress., 1st Sess. at 126 (1987) (*Senate Report*) (emphasis petitioner's). Second, the petitioner contends that the Department's interpretation conflicts with *PQ Corp* v. *United States,* 652 F. Supp. 724, 729 (CIT 1987) (''*PQ Corp.*''), which, although it predated the 1988 amendment, continues to offer the proper reading of the general purpose of the fictitious market provision as concerned with preventing ''parties from manipulating dumping margins by * * * offering merchandise at a price that does not reflect its actual market

price.'' Third, the petitioner claims that the Department's reasoning renders the provision a nullity in all cases where there is only one form of the foreign like product, as in this review. The petitioner concludes that the Department's overly restrictive reading of the fictitious market provision has allowed ISL to manipulate the results of this review by establishing a fictitious market through severe home market price reductions even though the world price for furfuryl alcohol increased during the period of review (''POR'').

ISL responds that the petitioner's reading of the fictitious market provision is overly broad and contends that the Department should sustain its position in the preliminary results that a fictitious market does not exist in the home market. Citing *Tubeless Steel Disc Wheels from Brazil,* 56 FR 14083 (April 5, 1991) (*Disc Wheels*), *Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 32095 (June 8, 1993) (*Porcelain Cookware*), and the Department's *June 30, 1997, Memorandum,* ISL contends that: (a) The Department has always required evidence of price movements of different forms of the foreign like product before pursuing a fictitious market allegation; (b) furfuryl alcohol is a single, unitary product and there is no possibility that the prices of different forms of the foreign like product could be manipulated to distort the dumping margin; and (c) contrary to the petitioner's interpretation of *PQ Corp.,* this case stands for the proposition that there is no reason to invoke the fictitious market provision absent evidence that a sale is anything less than a *bona fide* transaction; in this case, the viability and reality of the transactions is not in dispute. ISL adds that the petitioner's concern with reduced home market prices is more appropriate to a below-cost allegation, which the petitioner chose not to file, and concludes that a respondent is within its discretion to eliminate price discrimination by either raising U.S. price, lowering home market price, or doing a combination of the two, citing Final Results of Redetermination to Court Remand, *The Timken Company* v. *United States,* CIT Case No. 94–01–00008 (December 17, 1996)) (*Timken Remand*).

DOC Position: We agree with ISL that the record evidence regarding its South African sales does not warrant a finding that ISL has established a fictitious home market. Our general practice in determining whether a fictitious market exists is to require evidence that the decrease in the price of home market sales of the foreign like product was accompanied by an increase in the price of sales of ''different forms of the foreign like product.'' *See Disc Wheels,* 56 FR at 14085 (''[B]efore pursuing a [fictitious market] allegation, the Department must have sufficient evidence to believe that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market'') and *Porcelain Cookware,* 58 FR at 32096 (''In order for price differences to serve as a basis for initiating a fictitious sales inquiry . . . the Department must have sufficient evidence to believe or suspect that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market and that such movements appear to reduce the amount by which foreign market value (FMV) exceeds the U.S. price of the merchandise''). As we explained in the *June 30, 1997, Memorandum,* the facts that the petitioner presents in support of its claim, centering around a single supplier selling at low prices in the home market, do not justify an expansion of our practice.

Although our position regarding the petitioner's claim was stated clearly in that memorandum, we make the following additional points regarding the petitioner's comments as contained in its case brief. First, given the language in the Senate Report to the 1988 amendment to the fictitious market provision that price movements within a foreign like product are ''one example of a fictitious market,'' it is possible that we may determine in the future that a fact pattern other than price movements within a foreign like product constitutes a fictitious market. However, the fact pattern before us, involving a single respondent that lowered its home market prices during the POR, is insufficient to make such a determination and, in fact, would conflict with a basic tenet of the dumping law were we to do so. As noted in the *Timken Remand,* a respondent may reduce or eliminate dumping either by raising its U.S. prices or by lowering its home market prices of merchandise subject to the order. A finding that ISL has created a fictitious market based solely on ISL's lowering of its home market furfuryl alcohol prices would contradict this basic proposition.

Second, regarding the petitioner's argument that CIT's decision in *PQ Corp.* requires a different result, we agree with the petitioner that the court indicated that a fictitious market could exist when the price of merchandise ''does not reflect its actual price.'' However, we disagree that the information on the record indicates that ISL's home market sales fail to meet this standard. Rather, ISL's home market sales were *bona fide* transactions involving a significant number of customers made during the course of the POR. These customers ordered, received, and paid for the merchandise in the normal course of business based on prices contained in ISL's price lists. Further, the total quantity of ISL's home market sales was far in excess of the viability threshold and in our view those South African sales must be considered one of the company's primary markets.

Finally, based on the above facts concerning ISL's home market sales, we disagree with the petitioner's assertion that the Department is rendering the fictitious market provision a nullity where, as here, there was no other form of the foreign like product to which a price comparison can be made. Rather, given the facts surrounding ISL's home market sales, we have determined that the harm that this provision seeks to prevent (artificial pricing leading to the elimination of a finding of dumping) is not present in this case. As a result, there is no reason in this proceeding to go beyond our normal practice of determining the existence of a fictitious market based on a comparison of prices of different forms of the foreign like product.

Comment 2: Home Market Customer Affiliation: The petitioner argues that ISL is affiliated with its home market customers due to its self-described status as the only established producer and seller of furfuryl alcohol in South Africa. Citing the SAA's discussion (at 838) of possible affiliation in the absence of an equity relationship (in elaborating on section 771(33)(G) of the Act), the petitioner states that affiliation can result from the ability of one company ''to exercise restraint or direction'' over another company through a ''close supplier relationships in which the supplier or buyer becomes reliant upon the other.''

In addition, the petitioner commented on the following specific aspects of the Department's *June 30, 1997, Memorandum,* which provided an analysis of this issue for the preliminary results. In this memorandum, the Department noted that: (a) ISL's home market customers appear to be free to purchase furfuryl alcohol from any source willing to offer it; (b) a 10 percent tariff rate appeared to be the only barrier to trade facing furfuryl alcohol; and (c) that it appears that furfuryl alcohol based resins compete with phenolic resins.

The petitioner counters these points by arguing that: (a) as stated in the *Final Results of Antidumping Duty*

Administrative Review: Certain Welded Stainless Steel Pipe from Taiwan, 62 FR 37543, 37550 (July 14, 1997), the Department focuses on actual supplier relationships, not putative statements regarding freedom to purchase from other suppliers; (b) the 10 percent tariff is significant given the absence of furfuryl alcohol imports to South Africa during the POR; (c) there is evidence of barriers to trade such as insignificant purchasing power, immense transportation distances from foreign suppliers, insufficient storage for foreign bulk shipments, and the possibility of ISL's customers' damaging their relationship with ISL, the sole domestic supplier; and (d) there are in fact no substitutes for furfuryl alcohol in its primary uses.

These facts, the petitioner concludes, demonstrate affiliation between ISL and its home market customers, warranting the rejection of ISL's home market sales unless they are determined to have been made at arm's length.

ISL responds that the Department was correct in determining, in its *June 30, 1997, Memorandum* at 8, that the petitioner's allegation that ISL is affiliated with its home market customers is ''an overly broad interpretation of the affiliation via control provision in section 771(33)(G).'' According to ISL, the fact that it is the sole domestic producer of furfuryl alcohol in South Africa is not sufficient to support a finding of affiliation with its home market customers. Specifically, ISL argues that: (a) None of the home market customers is related to ISL by ownership; (b) sales are freely negotiated with home market customers using the company's price lists; (c) there are no long-term sales or agency agreements with home market customers; (d) all home market customers are free to purchase from abroad; (e) there are no import barriers on furfuryl alcohol—the tariff rate on this product entering South Africa before December 1996 was 10 percent and zero thereafter; and (f) the International Trade Commission's (ITC) report notes that while there are no precise substitutes for furfuryl alcohol itself, phenolic resins compete in the foundry industry with furfuryl alcohol's primary downstream products, furan resins. Accordingly, ISL contends, there are no indicia of control.

Finally, ISL notes that the Department has recently considered this issue in a number of cases and did not find affiliation between domestic producers of the foreign like product and home market customers because the requisite control did not exist, citing *inter alia, Final Determination of Sales at Less than Fair Value: Open-End Spun Rayon Singles Yarn from Austria,* 62 FR 43701 (August 15, 1997). ISL states that in each case involving this issue, the petitioner argued that affiliation existed because of a close supplier relationship between the producer and its customer or supplier, and the Department declined to find the parties affiliated because the requisite control relationship did not exist.

DOC Position: We disagree with the petitioner's contention that ISL is affiliated with all of its home market customers. The basis for petitioner's claim, the fact that ISL is the only manufacturer of furfuryl alcohol in South Africa, is insufficient for a finding of affiliation. Further, the petitioner failed to provide any evidence that ISL controls its home market customers. As we stated in the *June 30, 1997, Memorandum* at 8, ''ISL's dominant position in the home market is not sufficient, in and of itself, to find affiliation between ISL and its customers.'' We also noted in that memorandum that the other primary evidence that the petitioner provided to support its affiliation claim, ISL's POR pricing in the home market, ''does not suggest that the company is in a position to exercise restraint or control over its customers, since customers will generally seek the lowest price possible from their suppliers.'' *Id.*

We also do not accept the petitioner's allegation that ISL controls its home market customers due to significant barriers to trade, an absence of imports during the POR of the subject merchandise, and no substitutes for furfuryl alcohol in its primary uses. First, the factors proposed by the petitioner would be more relevant to an assertion that ISL is controlling its customers through high pricing, not low pricing. Second, while we agree with the petitioner that there was an absence of imports during the POR, the petitioner's other arguments are speculative (*e.g.,* whether a 10 percent tariff is a ''significant'' barrier to trade). Further, if we were to consider the absence of imports as determinative of affiliation, we would in effect find affiliation in any sole supplier situation. In sum, these factors, whether true or not, do not indicate that ISL controls its customers.

Comment 3: Particular Market Situation in the Home Market: The petitioner disagrees with the Department preliminary determination (as detailed in its *June 30, 1997, Memorandum*) that a ''particular market situation'' did not exist in South Africa. Citing this Memorandum, the petitioner first notes that this finding was based in part on the inapplicability of any of the three illustrative examples of particular market situations in the SAA and the absence of any model matching complications. Moreover, the petitioner states that the Department based its finding on the position that the facts of the case be analyzed more appropriately under the below-cost and fictitious market provisions of the Act.

The petitioner disagrees with this finding based on its contention that a particular market situation does exist in South Africa due to the absence of competitive pricing. It maintains that the SAA makes clear that competitive pricing is an important consideration in assessing the existence of a particular market situation, citing the ''government control over pricing'' example of a possible particular market situation listed in the SAA (at 822) (*i.e.,* ''where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set''). Acknowledging that the instant proceeding does not involve government control, the petitioner argues that the key element of this example of a particular market situation is whether prices are competitively set, not whether there is government control of prices. In support of its argument, the petitioner cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 62 FR 18404 (April 15, 1997), where the Department considered whether pricing practices in an oligopolistic market constituted a particular market situation but ultimately found competitive pricing, and no particular market situation, in that case. Contrary to the Korean oligopoly in question, the petitioner asserts that ISL is a monopolist and as such, allowed for no price competition of any type in this case.

Regarding the Department's position that the facts of the case are more appropriately analyzed under the fictitious market provision, the petitioner argues that both the fictitious market and particular market situation provisions are applicable because both are intended to preserve the integrity of the Department's analysis by eliminating inappropriate sales from consideration. The petitioner affirms its claim that, given a correct understanding of the facts of this case and of the particular market situation provision, the Department should disregard ISL's home market sales and require ISL to submit third country sales data.

ISL responds that the Department should sustain its position in the preliminary results that a particular market situation does not exist in the

home market. In its rebuttal brief (at 8) ISL interprets *Certain Cold-Rolled and Corrosion-Resistant Steel Flat Product from Korea* to mean that ''[t]he fact that there are very few, or even one, producer in a market is not evidence, *per se*, that prices are not competitively set.'' ISL reiterates its claim, first made in Comment 3, above, that there are no import barriers to furfuryl alcohol entering South Africa and, therefore, foreign producers are free to compete, just as non-furfuryl alcohol products compete in the foundry industry with furfuryl alcohol's primary downstream products.

ISL further argues that none of the circumstances of particular market situations outlined in the SAA are present in this case. Thus, ISL concludes, the petitioner is actually arguing for the creation of a new form of particular market situation based on the sole criterion that a foreign producer has lowered it home market prices. Accordingly, ISL, urges the Department to reject the petitioner's expansive reading of the Act.

DOC Position: Although we agree with the petitioner that the list of examples in the SAA regarding what may constitute a particular market situation is not exhaustive, we disagree that such a finding is warranted under the facts of this case. First, we do not agree with the petitioner that the facts of this case are analogous to the ''government control over pricing'' example in the SAA. In this regard, we agree with ISL's interpretation of *Cold-Rolled Steel.* In that case, although we considered whether oligopolistic pricing practices might constitute a particular market situation, we ultimately determined that prices were competitively set. In fact, we explicitly found that even though different pricing patterns may occur in an oligopolistic market, such patterns are not evidence, per se, sufficient to establish that prices are not competitively set. We conceded that there was substantial Korean government involvement in the industry, but did not find ''convincing evidence'' of control (*Cold-Rolled Steel*, 62 FR at 18412). The Department found that there was price competition based on discounts, credit adjustments, and freight equalization. Similarly, the fact pattern in the instant proceeding, involving a large volume of low-priced sales of furfuryl alcohol sold to a significant number of home market customers from price lists, does not indicate an absence of competitive pricing.

As we stated in the *June 30, 1997, Memorandum*, the facts as presented by the petitioner, focusing on a single supplier that has lowered its home market prices, are more appropriately analyzed in the context of the below-cost and fictitious market provisions of the statute. In this regard, the petitioner did not make a below-cost allegation in this segment of the proceeding and, as discussed above, our analysis of the petitioner's claim in the context of a fictitious market allegation indicates that the facts presented by petitioner do not warrant such a finding.

Comment 4: Whether the Antidumping Duty Reimbursement Regulation Applies to ISL: ISL argues that the Department's doubling of the assessment rate in the preliminary results, which was based on the Department's finding that ISL reimbursed its affiliated U.S. importer Harborchem, is impermissible because: (1) The reimbursement regulation should not apply to affiliated importers; (2) the reimbursement provision's focus on raising U.S. prices is improper, since the Act itself is not concerned with the absolute level of the price at which subject merchandise is sold in the United States; and (3) even if the reimbursement provision is valid and can legally be applied to affiliated parties, there was no reimbursement of actual duties assessed in this case.

The petitioner disagrees with ISL, stating that: (1) The Department can apply the reimbursement regulation to affiliated parties; and (2) there is clear evidence in this case that ISL reimbursed its U.S. affiliate for AD duties during the POR, citing the Department's proprietary preliminary analysis memorandum (*Analysis Memorandum to the File*, June 30, 1997, at 2).

DOC Position: Since the assessment rate for this review is zero, there are no duties to be assessed. Hence, this issue is moot.

Comment 5: Affiliation of ISL and Harborchem: The petitioner argues that ISL and its U.S. importer, Harborchem, are not affiliated parties and, accordingly, the Department should base U.S. price on export price rather than CEP in the final results. The petitioner maintains that the Department's finding in the original investigation that these parties are affiliated, on which the Department subsequently relied in stating that the facts had not changed in this review, was incorrect. The petitioner contends that the record demonstrates that Harborchem is not ISL's agent under the law of agency or the four-part test originally relied on by the Department.

The petitioner states that since the Act does not define the term ''agent,'' the term must give its common law meaning, *i.e.*, ''that an agent is to act on behalf of and for the benefit of the principal.'' Petitioner Brief at 16. Citing, *inter alia, Waterhout* v. *Associated Dry Goods, Inc.*, 835 F.2d 718 (8th Cir. 1987), the petitioner adds that a second tenet of the law of agency is that a determination as to the existence of an agency relationship is to be based on the factual circumstances at hand and not on a party's characterization of itself as an agent.

The petitioner submits that, in this case, there is no record evidence indicating an agency relationship between ISL and Harborchem, since ISL merely characterizes Harborchem as its an agent; instead, the evidence shows two distinct commercial transactions: one in which Harborchem purchases furfuryl alcohol from ISL and another in which Harborchem resells the merchandise to a third party. Specifically, the petitioner states that:

(a) ISL negotiates price and quantity with Harborchem;

(b) ISL sells to Harborchem;

(c) ISL invoices and receives payment Harborchem; and

(d) Harborchem then separately stores, markets, ships, and receives payment for the merchandise.

Thus, the petitioner asserts, Harborchem acts on its own behalf, and ISL and Harborchem each seek to maximize profits. Moreover, the petitioner asserts that mere coordination of certain activities for their mutual benefit is not critical in determining an agency relationship.

ISL responds that it is in fact affiliated with Harborchem. First, ISL argues that the question of relationship was examined thoroughly in the investigation and at on-site verifications of both ISL and Harborchem. Second, ISL agrees with the Department's preliminary finding that the facts considered by the Department in its original determination are the same as those in the current review, namely:

(a) ISL participated directly with Harborchem in the marketing of furfuryl alcohol to ultimate U.S. customers;

(b) ISL participated directly in pricing and sales negotiations with ultimate U.S. customers;

(c) ISL interacted directly, as well as through Harborchem, with ultimate U.S. customers on product testing and quality control;

(d) ISL and Harborchem communicated on a daily basis on matters related to marketing and sales to the ultimate customers;

(e) ISL exerted a substantial degree of control over Harborchem marketing and pricing of furfuryl alcohol to the ultimate U.S. customers; and

(f) the two parties viewed their relationship as one of principal and agent.

As support for its contention that these facts apply to the POR as well as the period of investigation (POI), ISL cites to evidence on the record of this review regarding the correspondence between Harborchem and ISL on the setting of U.S. prices, the approval by ISL of any significant sales and marketing efforts, and the granting of permission by ISL on other business decisions.

Regarding the petitioner's arguments concerning the nature of an ''agency'' relationship, ISL submits that although the URAA replaced the definition of ''related party'' with the definition of ''affiliation'' based on a ''control'' concept, Congress did not intend to narrow the criteria it uses for determining affiliation, and the Department has in fact continued to use the same criteria for assessing ''control'' as was used under the pre-URAA law related party ''agency'' provision. In this respect, ISL cites the post-URAA cases *Melamine from Indonesia* and *Rayon Singles Yarn from Austria,* where the Department examined:

(a) Whether one party controlled pricing of the subject merchandise;

(b) Whether a long-term sales agreement existed;

(c) Whether there were any restrictions on purchasing from or selling to other sources; and

(d) Whether there were other indicia of affiliation, such as a joint venture arrangement.

ISL asserts that the facts surrounding its relationship with Harborchem meet this standard.

Finally, ISL cites the preamble to the New Regulations as proving that, because section 771(33) of the statute refers to a person being in a position to exercise restraint or direction, the Department is required to examine the ability to control, not the actual exercise of control (62 FR 27298). ISL concludes that, based on the facts as stated above, the record shows that ISL is in a position to exercises restraint over Harborchem.

DOC Position: We disagree with the petitioner. As both parties note, in the less-than-fair-value (LTFV) investigation, we examined this issue in depth at verification (*see Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa,* 60 FR 22550 (May 8, 1995) (*Final Determination of Sales at LTFV*)). Our examination was based on the criteria for determining an agency relationship as established in *Final Determination of Sales at Not Less Than Fair Value: Certain Forged Steel Crankshafts from Japan,* 52 FR 36984, 36985 (October 2, 1987). Contrary to the petitioner's assertions, the information on the record in this review again indicates that a finding of affiliation between ISL and Harborchem is appropriate.

As noted in our preliminary results, the facts that led to our finding in the LTFV investigation have not changed. The petitioner provides no evidence that the facts have changed. ISL, on the other hand, submitted evidence (at Exhibit A–4 of its September 19, 1996 response) in response to our questionnaire that indicates that the agency relationship between ISL and Harborchem still exists. For example, this evidence indicates that ISL and Harborchem routinely coordinate marketing and sales activity, including pricing, for sales to U.S. customers.

Rather than provide evidence that the facts have changed during this review period, the petitioners are suggesting that these facts are not sufficient for a finding of affiliation. We agree with the petitioner that although the Act does not define agency, the existence of an agency relationship is based on the factual circumstances. The four-pronged test relied upon in the LTFV investigation explores the factual circumstances of the relationship between ISL and Harborchem. At verification, based on correspondence files, we determined that ISL: (1) participates directly with Harborchem in marketing furfuryl alcohol to U.S. customers; (2) participates directly in pricing and sales negotiations with U.S. customers; (3) interacts directly, as well as through Harborchem, with U.S. customers on product testing and quality control matters; and (4) interacts with U.S. customers directly (*Final Determination of Sales at LTFV,* 60 FR at 22552–53). In the current review, ISL provided additional documentary evidence of this relationship consistent with our finding in the LTFV investigation. Proprietary correspondence documents were submitted by ISL in its September 1996 response (Exhibit A–4a and b) that demonstrated that: ISL and Harborchem have an exclusive distributor agreement; frequently discuss pricing to U.S. customers; and participate in joint marketing efforts. Documents submitted also show that ISL maintains direct contact with U.S. end-user customers and exerts control over U.S. marketing efforts. In addition, documentation concerning the arrangement and sharing of profits between the two parties were included in Exhibit A–22 of the April 10, 1997, response and documentation showing Harborchem seeking and obtaining ISL's approval of a purchase of furfuryl alcohol from alternative source, were submitted in Exhibit A–23 of the same response. Therefore, we continue to find that, based on our four-prong test, ISL and Harborchem maintain an agency relationship and are affiliated within the meaning of section 771(33) of the Act. Consequently, we have used CEP for sales to the United States.

Comment 6: Exclusion of Certain U.S. Sales: ISL requests that the Department exclude from its analysis U.S. sales of subject merchandise that entered prior to suspension of liquidation, which ISL identified using a first-in, first-out (''FIFO'') inventory accounting methodology. ISL further asserts that certain of these sales merit exclusion regardless of the validity of its FIFO analysis, based on the fact that they were shipped prior to the first post-suspension entry of merchandise.

In the preliminary results, the Department rejected ISL's request, citing *Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Italy,* 57 FR 8295 (March 9, 1992) (*''Industrial Belts''*), wherein the Department had similarly rejected an exclusion request based on a FIFO inventory analysis. ISL states that the preliminary results did not sufficiently explain the Department's reasons for denying the request. ISL contemplates two possible reasons for this rejection: (a) that the Department finds a FIFO matching methodology to be inherently unacceptable; or (b) that the Department requires a further explanation regarding ISL's FIFO analysis.

In arguing against the first reason, ISL states that Harborchem's normal inventory accounting records use the FIFO methodology employed in its exclusion request. ISL also notes that Harborchem uses FIFO to match specific entries and sales as part of its internal cost control and reporting systems to ensure proper accounting treatment. ISL contends that since furfuryl alcohol is a fungible liquid, this is the only methodology available for matching pre-suspension entries to specific POR sales. ISL notes that the Department verified Harborchem's inventory accounting records during the less than fair value investigation. Citing *Industrial Quimica del Nalon* v. *United States,* 15 CIT 240, 243–44 (1991), ISL contends that the Department's rejection of the only methodology available to link entries to sales would constitute an abuse of the Department's discretion and, in the

words of the ruling, ''fly in the face of established business practice.''

Regarding the second possible reason, ISL provides in its brief a further explanation of the methodology employed in the company's responses to ensure that the analysis is clear to the Department. In so doing, ISL points to worksheets, inventory records, and entry and sales data that provide sufficient information to allow the Department to tie the sales in question to pre-suspension entries.

Finally, ISL asserts that even if the Department chooses to reject again ISL's FIFO methodology, the company is still entitled to the exclusion of certain sales from the antidumping analysis. ISL notes that the record shows that the first shipment of furfuryl alcohol to enter the United States during the POR, *i.e.*, after suspension, entered the United States after sales by Harborchem to U.S. customers had already been made and delivered during the POR. ISL states that it is therefore physically impossible for those sales to have been made using furfuryl alcohol entered during the POR.

The petitioner responds that the Department should continue to reject ISL's exclusion request. It argues that ISL did not sufficiently link POR sales to specific pre-suspension entries because the company's receipt and inventory records are inconsistent and unreliable, as demonstrated by certain discrepancies on the record. Specifically, the petitioner notes that ISL, in its April 10, 1997, supplemental response, conceded that it made two mistakes in reporting its inventory in its initial response. The petitioner asserts that this unreliability, together with ''the Department's justifiable reluctance to use hypothetical constructions to link U.S. sales to specific pre-suspension entries,'' necessitates the Department's continued rejection of the request.

DOC Position: We agree with ISL, in part. As discussed below, all but one of the POR sales that ISL requested be excluded are not appropriately part of our analysis because they involve merchandise that entered the United States prior to the suspension of liquidation. *See Certain Stainless Steel Wire Rod from France*, 61 FR 47874, 47875 (September 11, 1996). Accordingly, we have not included these sales in our calculation of ISL's antidumping duty rate for this POR. However, we have included one such sale in our analysis because it cannot be tied to pre-suspension merchandise.

We note that the petitioner is correct in pointing out the Department's reluctance to use hypothetical constructions to link U.S. sales to specific pre-suspension entries. This was demonstrated in *Industrial Belts*, wherein the Department rejected an exclusion request based on a FIFO inventory analysis. However, we excluded a majority of the sales at issue based not on a FIFO analysis but on the fact that these sales were shipped before the first post-suspension entry of subject merchandise. *See Memorandum from Michelle Frederick and Scott Oudkirk to Richard W. Moreland* (November 5, 1997) (''*November 5, 1997, Memorandum*''). We have excluded these sales from our analysis because it would not be possible for those sales to have been shipped using merchandise that entered during the POR.

We excluded a second group of sales based on a FIFO analysis that involves a single POR entry made prior to these sales. For these sales, the data contained in ISL's response indicates that the company's storage of inventory involved the co-mingling of only one POR entry of furfuryl alcohol with a pre-existing inventory of pre-suspension furfuryl alcohol. As detailed in the *November 5, 1997, Memorandum*, ISL's inventory, sales, and entry data contained in its responses establishes that it had sufficient pre-suspension inventory, prior to the one POR entry of subject merchandise at issue, to cover all but one of the second group of sales for which ISL requested the exclusion. To the extent that we attribute the merchandise involved in such sales to this pre-suspension inventory, rather than to the single POR entry that occurred prior to these sales, this analysis is based on a FIFO methodology. However, given that the fact pattern involves only a single POR entry occurring prior to these sales, along with the fact that this is a unitary liquid product, it is appropriate under these circumstances to determine that these sales involved pre-suspension merchandise. We note that, in the unique circumstances of this case, the respondent was able to provide supporting documentation regarding entry and sales data not only for the claimed exclusions, but also for the remainder of the South African-sourced POR sales.

Finally, we have not excluded one sale (the final chronological sale in the second group) because the inventory of pre-suspension furfuryl alcohol was insufficient to cover this sale.

Regarding the petitioner's contention that ISL's inventory records are inconsistent and unreliable, we found that an examination of the evidence on the record demonstrates that any inconsistencies are relatively minor and that the mistakes reported by ISL were corrected in supplemental responses (see the memorandum referenced above). Therefore, the record as a whole allowed us to sufficiently link entries to sales and to exclude sales when appropriate.

Finally, we note that the petitioner claimed at the public hearing, with respect to ISL's counsel's discussion of this issue, that certain information presented by ISL was not included in its hearing briefs. We have determined that ISL's counsel did not reveal new information during the hearing and that it was responding to a question raised by the Department regarding this issue. The information that ISL's counsel referenced was already on the record in the form of entry dates, sale dates, inventory records and location of inventory.

Comment 7: Level of Trade and CEP Offset: ISL asserts that the Department's preliminary determination that the level of trade (LOT) at which ISL sold furfuryl alcohol in the home market level is not more advanced than the LOT of the CEP sales is incorrect because it ignores significant selling functions performed in the home market. In particular, ISL states that there is a ''significant difference in the level of selling function provided at each LOT.''

ISL argues that the Department ignored the level or degree of selling activities that ISL performed with respect to home market versus U.S. sales, as well as the corresponding greater amounts of time and energy spent performing these activities in conducting home market sales. Further, ISL stated that, whereas ISL itself undertook all of these activities in conducting home market sales, it merely supported Harborchem, which was principally responsible for marketing and selling activities in the United States. For this reason, ISL claims that the degree of the selling functions it provides to home market customers is greater than that of those provided for Harborchem such that the home market LOT is more advanced than the LOT of the CEP. In support of this claim, ISL compared the number of customers, the number of shipments, and the individual shipment sizes in the home market to shipments to Harborchem, noting that ''[t]he average size of a shipment to Harborchem was over 30 times as large as a shipment in the home market.'' Therefore, ISL claims it is entitled to a CEP offset.

The petitioner responds that the Department did not ignore specific selling functions in the home market but, rather, determined that the selling functions performed by ISL for sales in the home market did not differ substantially from those performed by

ISL for sales to Harborchem. The petitioner adds that ISL exaggerates the differences between the number of customers and shipments in the home market compared with those to Harborchem. Finally, the petitioner notes that ISL's contention in its case brief that the company plays a supporting, non-principal role for U.S. sales is at variance with earlier statements made in support of ISL's claim of affiliation with Harborchem, i.e., that ISL plays a joint role with Harborchem in the U.S. market.

DOC Position: We disagree with ISL. We have continued to find that a CEP offset is inappropriate because the record evidence indicates that ISL's home market sales are not made at a more advanced LOT than that of the CEP.

Section 773(a)(7) of the Act provides that one requirement for granting a CEP offset is that the home market sale must be made at a more advanced stage of distribution than the LOT of the CEP. In order to determine whether home market sales were at the same, or a different, LOT than U.S. sales, we examined whether home market sales had been made at a different stage in the marketing process. Section 351.412(c)(2) of the new regulations defines an LOT as a marketing stage ''or the equivalent'' and provides that different LOTs depend on one level (or stage) being more remote, characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different LOTs.

Accordingly, as a threshold matter in examining whether home market sales were made at a more advanced LOT than the LOT of the CEP, we considered the selling activities performed for the home market LOT and compared them to the selling activities performed for the LOT of the CEP. Specifically, we examined the selling activities performed by ISL for setting up, shipping, and delivering furfuryl alcohol destined for the U.S. market up to the point of tank storage at the U.S. port of entry (selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act). Next, we compared the selling activities performed by ISL for home market sales.

In the preliminary results, we determined that there was one LOT in the home market and, furthermore, that the LOT for home market sales was comparable to the LOT of the CEP. In other words, we determined that the home market LOT did not constitute a more advanced stage of distribution than the LOT of the CEP and, therefore, no adjustment to price (i.e., LOT adjustment or CEP offset) was necessary. We explained, in detail, in the preliminary results our rationale for making this determination. 62 FR 36488, 36490 (July 8, 1997). ISL's arguments in its case brief do not establish that our analysis in the preliminary results was incorrect.

We disagree with ISL's argument that we ignored the level or degree of selling functions performed in the home market. While it is our preference to examine selling functions on both a qualitative and a quantitative basis, our examination is not contingent on the number of customers nor on the number of sales for which the activity is performed.

Thus, having determined that the LOT for home market sales is comparable to the LOT of the CEP, we are precluded in this case from granting a CEP offset.

Comment 8: Basis for the Calculation of CEP Profit: The petitioner argues that the Department's calculation of CEP profit understates the amount of profit that should be deducted from CEP. In the preliminary results, the Department relied upon revenue and cost of sales data from ISL's 1995 and first-half 1996 financial statements to calculate a profit ratio. The figures in those financial statements are representative of all ISL products. The petitioner cites the SAA (at 824–825, regarding section 772(f)(2)(C) of the Act) for the proposition that, where the Department has not requested cost data, CEP profit information shall be based on ''the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise or * * * the narrowest category of merchandise sold in all countries which includes the subject merchandise.'' The petitioner contends that there is information on the record, in the form of an internal report, that would allow the Department to base the calculation of a CEP profit ratio on a more narrow category of merchandise, *e.g.* excluding sugar, than that contained in ISL's financial statements.

ISL argues that the financial statements on which the Department relied in its calculation of profit are audited and, given the Department's normal reliance on audited or published data, are the proper basis for the calculation of a CEP profit ratio. ISL notes that the information that the petitioner advocates is found in an unverified internal report used to report gross sales and profit figures. As such, it does not take account of reversals, reconciliations, and adjustments made only at year-end. Therefore, the Department should continue to use the information contained in the audited financial statements in its calculation of a CEP profit ratio for the final results.

DOC Position: We agree with the petitioner in part. Section 772(f)(2)(C)(iii) of the Act provides that, absent more specific data related to expenses incurred in selling subject merchandise in the United States or home market, the expenses used in the profit calculation should be based on ''the narrowest category of merchandise sold in all countries which includes the subject merchandise.'' In this review, there is information on the record that would allow the Department to base the calculation of a CEP profit ratio on a more narrow category of merchandise than that covered by ISL's overall profit amount for all products sold by the company. However, contrary to petitioner's assertions, the audited financial statements contain profit data on a product basis (*i.e.* by-products) that is sufficiently narrow to fulfill the statutory requirements regarding CEP profit.

Instead of relying on the internal report, we were able to derive a more appropriate CEP profit ratio from the audited financial statements, thus meeting our obligation to rely on information for the ''narrowest category of merchandise.'' We were able to discern from the audited financial statements the relative amount of profit due to the sale of sugar, ISL's primary merchandise, and the profit due to the sales of by-products, which includes the subject merchandise sold. Thus, we revised the CEP profit ratio for the final results based on information from audited financial statements. (*See Analysis Memorandum to File,* November 5, 1997.)

We note that, given the statutory preference for profit based on a narrow category of merchandise, the use of internal financial reports may be appropriate where we do not otherwise have sufficiently tailored profit data. The preamble of the proposed regulations at 61 FR 7308, 7332 (February 27, 1996), reflects this, stating ''[p]aragraph (d)(2) [of section 351.402] specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that the Department make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible

to the merchandise under investigation or review.''

Comment 9: Inclusion of Quality Testing Expenses in the Calculation of CEP Profit: The petitioner notes that the Department determined that the expense ISL incurs for the quality testing of furfuryl alcohol upon its arrival in the United States is an indirect selling expense. The Department therefore made a circumstance of sale adjustment to CEP for the preliminary results, but the petitioner contends that this quality testing expense should also be included as part of total selling expenses for the calculation of CEP profit.

ISL argues that this expense is a movement expense undertaken solely for U.S. sales insurance purposes because of the possibility of contamination during shipment and because the U.S. Customs periodically requires purity reports. Therefore, ISL argues that this expense is not an indirect selling expense and, as a movement expense, should not be included as part of selling expenses when calculating CEP profit.

DOC Position: We agree with ISL that the quality testing expense that the company incurs upon furfuryl alcohol's arrival in the United States is a movement expense undertaken solely for U.S. sales as a result of shipment from South Africa. We note ISL's description at page 84 of its September 19, 1996, response, that, ''Furfuryl alcohol is tested on arrival to detect any impurities that may have entered the product while in transit * * * [t]he testing is performed * * * at the time the product is unloaded from the maritime vessel.'' We also note that there is no similar testing done for shipments in the home market; all semi-bulk sales of furfuryl alcohol in the home market are made f.o.b., so there is no chance of contamination that will result in a loss to the company and though drum sales are sometimes made on a c.i.f. basis, it is not subject to contamination because it is packed. Because contamination only results from transporting furfuryl alcohol via a shipping vessel, which carries many other different products, not just furfuryl alcohol, we have determined that the quality testing expense is associated with the type of transportation, and, thus, is a movement expense. Accordingly, we have changed the margin calculation to treat this expense as a movement expense, which is not included in total U.S. expenses in the calculation of CEP profit.

Comment 10: Treatment of ISL U.S. Travel Expenses in the Margin Calculation: The petitioner claims that the expenses ISL personnel incurred for travel to the United States to market furfuryl alcohol are indirect selling expenses incurred in the United States. As such, they should be deducted from U.S. price when calculating CEP and should be included in the total U.S. selling expenses used to derive profit attributable to those expenses.

ISL contends that the expenses in question are already included in the South African component of U.S. indirect selling expenses, given that most of the expenses associated with U.S. travel of ISL personnel, such as airfare and salaries, were incurred and paid for in the home market. Therefore, it would be incorrect for the Department to deduct these expenses once again.

DOC Position: We agree with ISL that the expenses ISL personnel incurred for travel to the United States to market furfuryl alcohol are included in the South African component of U.S. indirect selling expenses (DINDIRSU). As such, for the preliminary results, they had already been deducted from U.S. price when calculating CEP.

We do not deduct indirect selling expenses incurred in the home market on behalf of U.S. sales, except when such expenses are associated with economic activity in the United States. The expenses of ISL personnel incurred for travel to the United States are associated with economic activity in the United States. Therefore, for these final results, we segregated the expenses of ISL personnel incurred for travel to the United States from all other indirect expenses incurred in the home market on behalf of U.S. sales, and deducted only those travel expenses from CEP. *See Final Results and Partial Rescission of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia,* 62 FR 53287, 53293 (October 14, 1997) (''selling expenses incurred in the home market that are not associated with U.S. economic activity should neither be deducted from CEP nor included in the basis for calculating CEP profit'').

Comment 11: Addition of Tank Car Rental Credits to CEP: The petitioner claims that the U.S. tank car rental expense is reported net of credits. Therefore, tank car rental credits should not be added to CEP.

ISL concedes the petitioner's claim.

DOC Position: We agree that the U.S. tank car rental expense reported is net of credits for tank car utilization. Therefore, we have deducted these expenses from CEP.

Comment 12: Conversion of Certain Inventory Carrying Cost Expenses: ISL contends that the Department failed to convert the U.S. inventory carrying cost expense, which is expressed in rand, to U.S. dollars.

The petitioner did not comment on this issue.

DOC Position: We agree with ISL. This expense was expressed in rand because the inventory value used in the calculation of this inventory carrying cost was the total cost of manufacture in rand. Accordingly, we have converted this to U.S. dollars.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period of December 16, 1994, through May 31, 1996:

Manufacturer/exporter	Margin (percent)
Illovo Sugar Ltd	0.00

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturer/exporter subject to this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for ISL is zero; (2) if the exporter is not a firm covered in this review or the original 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 (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the ''all others'' rate of 11.55 percent established in the less than fair value investigation (60 FR 28840, June 21, 1995). These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

This notice is 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 353.34(d)(1). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a) of the Act and 19 CFR 353.22, and this notice is published in accordance with section 777(i) of the Act.

Dated: November 5, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29958 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–089. *Applicant:* Worcester Polytechnic Institute, 100 Institute Road, Worcester, MA 01609. *Instrument:* Fire Modeling Research Apparatus. *Manufacturer:* Fire Testing Technology Ltd., United Kingdom. *Intended Use:* The instrument will be used to determine certain fire properties from a particular substance, object or material—sometimes testing each type of material present in a composite then calculating experimental values if the materials were burned together. In addition, the instrument will be used for educational purposes in the course FPE580F. *Special Problems:* Fire Science Laboratory providing overall instruction and hands-on experience with fire science related experimental measurement techniques. *Application accepted by Commissioner of Customs:* October 23, 1997.

Docket Number: 97–090. *Applicant:* University of Minnesota, Department of Psychology, N218 Elliott Hall, 75 East River Road, Minneapolis, MN 55455. *Instrument:* Visual Stimulus Generator, Model VSG2/3S. *Manufacturer:* Cambridge Research Systems Ltd., United Kingdom. *Intended Use:* The instrument will be used to investigate the sensory limitations on letter recognition which involves measuring the spatio temporal properties of letter recognition across the human visual field. The experiments will tell the size of the visual span (the number of letters that can be recognized in a single fixation) for different print sizes, contrasts and fixation duration. This data will test models that relate letter recognition to reading. *Application accepted by Commissioner of Customs:* October 23, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–29957 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097E]

Small Takes of Marine Mammals Incidental to Specified Activities; Space Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of applications and proposed authorizations for small take exemptions; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force for continuation of incidental harassment authorizations to take small numbers of marine mammals incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to continue to authorize these takings (limited to harassment), for a period not to exceed 1 year.

DATES: Comments and information must be received no later than December 15, 1997.

ADDRESSES: Comments on this application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. A copy of this application, previous documentation and **Federal Register** notices on this action may be obtained by writing to this address or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 562–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to one year. The MMPA defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application