COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Additions to the Procurement List; Correction

In the document appearing on page 40878, FR 98–20501, in the issue of July 31, 1998, in the second column, the service listed as Facilities Services Support, White Sands Missile Range, White Sands, New Mexico should read Facilities Services Support, High Energy Laser Systems Test Facility (HELSTF), White Sands Missile Range, New Mexico.

G. John Heyer,

General Counsel.

[FR Doc. 98–21923 Filed 8–13–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Briefing on Schools and Religion

AGENCY: Commission on Civil Rights.

ACTION: Notice of briefing.

SUMMARY: Notice is hereby given that a public briefing before the U.S. Commission on Civil Rights will commence on Friday, August 21, 1998, beginning at 9:00 a.m., in the Renaissance Madison Hotel, located at 515 Madison Street, South Room, Seattle, WA 98104. The purpose of the briefing is to collect information within the jurisdiction of the Commission, to examine the operations of the Equal Access Act and similar laws and the adherence by the public schools to these laws and the Constitution in regard to religious freedom. The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the briefing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD) (202) 376–8116, at least five (5) working days before the scheduled date of the briefing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: August 10, 1998.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–21816 Filed 8–13–98; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Technical Advisory Committee (MTAC) will be held August 27, 1998, 10:30 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda:

1. Opening remarks by the Co-Chair.
2. Discussion of Biological Weapons Convention (BWC) on-site activity; specifically, visits.
3. Discussion of BWC declaration triggers and of activities besides vaccine production that should trigger a declaration.
4. Review of proposed BWC declaration format.
5. Discussion of any other BWC-related issues.
6. Presentation of papers or comments by the public.
7. Committee assignments.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS: 3886C, 15th St. & Pennsylvania Ave., NW., U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 10, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–21891 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

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

SUMMARY: On April 9, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers seven producers/exporters of the subject merchandise. The period of review is July 1, 1996, through June 30, 1997. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the section **Final Results of Review.**

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0650 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to the regulations provided in 19 CFR part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Siam Food Products Public Company Ltd. (SFP); The Thai

Pineapple Public Company, Ltd. (TIPCO); Thai Pineapple Canning Industry Corp., Ltd. (TPC); Malee Sampran Factory Public Company Ltd. (Malee); The Prachuab Fruit Canning Co. Ltd. (Prachuab); Siam Fruit Canning (1988) Co. Ltd. (SIFCO); and Vita Food Factory (1989) Ltd. (Vita). On April 9, 1998, the Department published the preliminary results of this review. See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 17357 (Preliminary Results). On June 8, 1998, we received case briefs from: (1) Maui Pineapple Co. Ltd. and the International Longshoremen's and Warehousemen's Union (collectively, the petitioners); (2) all respondents listed above except for Prachuab and Vita; [1] (3) U.S. importers Heartland Foods Inc., J.A. Kirsch Corp., Mandi Foods, Inc., North East Marketing Co., Port Royal Sales, Ltd., and Summit Import Corp. (collectively, Heartland *et al.*); and (4) U.S. importer UniPro Foodservice, Incorporated (UniPro). On June 15, 1998, we received rebuttal briefs from the petitioners, Malee, TIPCO, TPC, and from Heartland *et al.*

Scope of Review

The product covered by this review is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Duty Absorption

On February 12, 1998, the petitioners requested that the Department investigate the extent to which duty absorption has occurred in this review. As we stated in the Preliminary Results (63 FR at 17358), section 351.213(j)(1) of our regulations provides that we will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation. Because the petitioners' request was untimely filed, we did not investigate the occurrence of duty absorption in this review. We received no comments on this aspect of our preliminary results.

Partial Rescission of Antidumping Duty Administrative Review

On October 6, 1997, Dole Food Company Inc., Dole Packaged Foods Company and Dole Thailand Ltd. (collectively, Dole) withdrew its request for a review. Because there was no other request for a review of Dole, and because Dole's letter withdrawing its request for a review was timely filed, we are rescinding the review with respect to Dole in accordance with 19 CFR 351.213(d)(1). See Preliminary Results, 63 FR at 17357. No parties commented on this issue for the final results.

Fair Value Comparisons

We calculated export price (EP), constructed export price (CEP) and normal value based on the same methodology used in the preliminary results with the following exceptions. Where applicable, we have cited to the relevant interested party comment; otherwise, we address these changes further in the company-specific final analysis memoranda.

SFP

We deducted international freight expenses for U.S. sales on which this expense was incurred.

TPC

1. We added to normal value an amount for bank fees incurred in Thailand after converting it from Thai baht. See TPC Comment 5, below.

2. We converted TPC's reported inventory carrying costs from Thai baht before adding it to TPC's dollar-denominated indirect selling expenses to create the variable INDH2BHT. See TPC Comment 4 below.

3. We corrected an erroneous exchange rate conversion of the variable ISEL2COP.

4. For EP sales, we corrected certain programming language regarding our use of contract date as the date of sale for purposes of the margin calculation.

5. We corrected an exchange-rate conversion error on TPC's commissions on comparison market sales.

6. We corrected errors reported by TPC to information related to U.S. sales observations 130 and 145.

SIFCO

1. We adjusted the per-unit price of U.S. sales invoice SFC–524/1996 based on findings at verification.

2. We converted inventory carrying cost and commission expenses to Thai baht.

Prachuab

We corrected exchange-rate conversion errors on bank charges, indirect selling expenses, commissions and credit on Prachuab's comparison market sales and on bank charges on its U.S. sales.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average cost of production (COP), by product, based on the sum of each respondent's costs of materials, fabrication, general expenses and packing costs. We calculated the COP based on the same methodology used in the preliminary results with the following exceptions:

Malee

We adjusted Malee's interest expense (see Malee Comment 2, below). We adjusted general and administrative (G&A) expense to correct a double-counting error.

TIPCO

We recalculated the cost of goods sold figure used in determining TIPCO's G&A ratio. See TIPCO Comment 1, below.

SIFCO

We adjusted the following cost variables to account for corrections at verification: sugar, fresh fruit, acid, direct labor, variable overhead, fixed overhead, cans and lids, packing and tax rebates.

Prachuab

We calculated Prachuab's fruit costs based on the net realizable value (NRV) methodology.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners, five of the respondents, and domestic interested parties.

General Issues

Fruit Cost Allocation

SFP and TIPCO contend that the Department improperly used a net realizable value (NRV) methodology to allocate fruit costs to calculate COP and

[1] We received comments from SIFCO on May 29, 1998, in addition to its June 8, 1998 submission. All dates referenced for documents submitted by SIFCO are the dates on which the particular document was certified as received by the Department, which differ from the dates listed on the cover page of these documents.

constructed value (CV). The respondents state, first, that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO, Inc.* v. *United States,* 965 F.2d 1056 (Fed. Cir. 1992) (*IPSCO*) that value-based allocations of costs shared by co-products are not allowed under the antidumping law. Second, the respondents argue that the IPSCO ruling was applied specifically to this case by the Court of International Trade (CIT) in *Thai Pineapple Public Co., Ltd.* v. *United States,* 946 F. Supp. 11 (CIT 1996) (*TIPCO*), where the CIT ruled in an appeal of the Department's final determination in the underlying investigation that *IPSCO* applies to allocation of fruit costs.

Regarding the specific cost allocation methodology to be used in place of the NRV methodology, the respondents state that they included weight-based fruit cost allocations in their section D response that are consistent with those reported by certain mandatory respondents in the original investigation and later adopted by the Department in the remand proceedings stemming from the less-than-fair-value investigation.

The petitioners respond that the Department's use of the NRV methodology in the preliminary results was correct and should not be replaced with invalid weight-based allocations for the final results. With respect to the validity of the NRV methodology, the petitioners claim that: (1) it reasonably reflects the significantly different quality of the fruit parts used in the production of CPF versus those used in the production of juice products; and (2) *IPSCO* does not invalidate this methodology, since it involved the allocation of costs between two grades of merchandise that were physically identical, including identical inputs, except in quality and in market value. The petitioners argue that *IPSCO* did not indicate that use of a value-based allocation methodology was legally impermissible but, rather, that the courts will defer to the Department's preference for reliance on a respondent's normal allocation methodology where appropriate, particularly when there are significant differences in the raw materials.

With respect to the validity of the weight-based methodologies submitted by SFP and TIPCO, the petitioners state that these allocations: (1) do not reflect the historical fruit cost allocations used by these companies; and (2) do not reasonably reflect the costs associated with the production of canned pineapple fruit because they fail to incorporate any measure of the qualitative factor of the different parts of the pineapple. For these reasons, the petitioners claim, such methodologies do not meet the statutory requirements set forth in section 773(f)(1)(A) of the Act.

DOC Position: Consistent with past segments of this proceeding, we have continued to allocate raw fruit costs incurred by SFP and TIPCO using an NRV methodology, which reasonably reflects qualitative differences that exist between the joint raw materials used to produce CPF and juice.[2] In the less-than-fair-value investigation involving this case (Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553, 29559–62 (June 5, 1995) (LTFV Final Determination)), we rejected the respondents' arguments that we should disregard fruit costs as recorded in their normal books and records in favor of fruit costs calculated based on the relative weight of the fruit contained in CPF versus juice products.[3] In the Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 7392 (February 13, 1998) (1995–96 Final Results), we determined that, while certain respondents had replaced their historical fruit cost allocation methodologies with weight-based allocation methodologies, such allocations were inappropriate because they did not incorporate any measure of the qualitative factor of the different parts of the pineapple, and therefore did not reasonably reflect the costs associated with production of canned pineapple fruit. See 1995–96 Final Results, 63 FR at 7398.

For the same reasons as those provided in the above determinations, we continue to reject the use of a weight-based allocation methodology in this review. As we stated in the 1995–96 Final Results, a reasonable fruit cost allocation methodology is one that reflects the significantly different quality of the fruit parts that are used in the production of CPF versus those used in the production of juice products. An allocation methodology based on NRV data recognizes these differences.

We disagree with the respondents' arguments that the CAFC ruled in *IPSCO* that value-based cost allocations are unlawful. In that case, the Department allocated costs equally between two grades of pipe, reasoning that because they were produced simultaneously, the two grades of pipe in fact had identical production costs. While the CAFC noted, in deferring to the Department's ''consistent and reasonable interpretation of section 1677b(e),'' that the allocation of costs based on relative value resulted in an unreasonable circular methodology (i.e., because the value of the pipe became a factor in determining cost, which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. *IPSCO,* 965 F.2d at 1061. On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on a respondent's normal allocation methodologies, particularly when there are significant differences in the raw materials. Thus, our reasoning in the instant case (i.e., that the use of the pineapple cylinder in production of CPF and the use of the shells, cores, and ends in production of juice and concentrate, requires a value-based allocation) is fully consistent with *IPSCO*.

Company-Specific Issues

Vita

Use of Adverse Facts Available for Vita

U.S. importers Heartland *et al.* and UniPro submitted comments addressing the following alleged errors in the application of adverse facts available to Vita in the preliminary results: (1) the margin assigned to Vita fails to reflect the amended final determination in the underlying investigation (see Comment 2A, below); (2) the assignment of an adverse rate to Vita is inappropriate because the company acted to the best of its ability (Comment 2B); (3) the preliminary margin assigned to Vita is not ''representative'' because it does not reflect current market conditions (Comment 2C); (4) the rate applied to Vita for the purposes of the preliminary results cannot be corroborated (Comment 2D); and (5) the antidumping law should not be administered in a manner that would cause unjust and unwarranted harm to U.S. companies (Comment 2E).

Comment 2A: The Use of a Facts Available Rate from the Final Determination Instead of the Amended Final Determination—Heartland *et al.* and UniPro argue that the 55.77 percent margin assigned to Vita (based on the

[2] In addition to SFP and TIPCO, we have used an NRV methodology for all companies in this review based on sales and separable costs for 1990–94 period, with the exception of Malee. Because Malee already allocates fruit costs on a basis that reasonably takes into account qualitative differences between pineapples parts used in CPF versus juice products in its normal accounting records, we have not required Malee to recalculate its reported costs using the NRV methodology. See Preliminary Results, 63 FR at 17360–17361.

[3] As noted by SFP and TIPCO, this aspect of the LTFV Final Determination was overturned by the CIT in TIPCO and is currently on appeal before the CAFC.

rate calculated for Siam Agro Industry Pineapple & Others Public Company Ltd. (SAICO) in the underlying investigation) reflects a rate that was subsequently reduced to 51.16 percent after certain clerical errors were corrected in the amended LTFV determination in this case (Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand, 60 FR 36775 (July 18, 1995)). Therefore, they assert, if the Department decides to use the SAICO rate in the final results, the correct rate should be 51.16 percent from the amended final determination.

The petitioners agree with Heartland *et al.* and UniPro on this point.

DOC Position: We agree that the amended final rate is the correct rate and have used it for the purposes of these final results.

Comment 2B: Assignment of an Adverse Rate—Heartland *et al.* argue that the Department's assignment of an adverse rate to Vita is inappropriate because the company acted to the best of its ability. Instead, these companies maintain, the Department should base Vita's rate on the ''all others'' rate from the investigation.

Heartland *et al.* state that section 776(a) of the Act lists specific instances in which the Department must determine dumping margins on the basis of facts available. According to Heartland *et al.*, the Department is permitted, but not required, to use an inference that is adverse to the interests of a party only if that party has been deemed uncooperative due to a failure to act to the best of its ability. Heartland *et al.* assert that, in the preliminary results, the Department merely quoted the antidumping statute with regard to the use of adverse facts available, and made no factual finding that Vita was uncooperative due to a failure to act to the best of its ability. In this regard, Heartland *et al.* cite *Borden Inc., et al.* v. *United States,* Slip Op. 98–36 at 74 (CIT, March 26, 1998) for the proposition that the Department must make a specific factual finding of non-cooperation, as opposed to simply quoting section 776 of the Act. Heartland *et al.* maintain that such a finding must be made on the basis of substantial evidence on the record before the Department can resort to the use of adverse facts available.

As evidence that Vita acted to the best of its ability, Heartland *et al.* point out that Vita provided a timely response to sections A through C of the Department's questionnaire. In this respect, Heartland *et al.* contend that Vita's position in this review is analogous to that of SNFA, the foreign manufacturer in *Allied-Signal Aerospace* v. *United States,* 28 F.3d 1188 (Fed. Cir. 1994) (*Allied-Signal*), in which the CAFC found that SNFA had responded to the best of its ability even though it had been unable to provide the Department with all requested information. Upon remand SNFA was assigned a margin based on the ''all-others'' rate. Heartland *et al.* maintain that, like SNFA, Vita submitted a substantial amount of information, but claim that factors outside Vita's control (three questionnaires in 25 days, loss of legal counsel, currency depreciation, and the Thai economic crisis), rather than ''deliberate recalcitrance,'' prevented it from providing a more complete response.

The petitioners respond that, while any of the instances described in section 776(a) is a sufficient basis for facts available, Vita's voluntary termination of its participation involves three of these (i.e., withholding requested information, failing to provide information within established deadlines, and significantly impeding a proceeding). Moreover, the petitioners state, the Department clearly made a fact-based finding that Vita was an uncooperative respondent, citing the chronology of events listed in the Preliminary Results (63 FR at 17358) detailing the Department efforts to notify Vita directly of its obligations, along with Vita's failure to respond. The petitioners argue that, given the fact that Vita dismissed its counsel and dropped out of the review shortly after the petitioners filed a below-cost allegation with respect to Vita, an inference can be made that Vita realized that its margin would be above its deposit rate (which was based on the ''all others'' rate) if it provided the requested NRV data, noting that Vita and its counsel were well aware that the magnitude of the margins in this case has been driven by the NRV data submitted by the respondents. The petitioners further argue that, in order to be deemed cooperative, the respondent must remain cooperative throughout the review, and maintain that the courts have uniformly approved the use of facts available where respondents attempt to control the process to their benefit through a submission of piecemeal information (citing *Pistachio Group of the Association of Food Industries* v. *United States,* 671 F. Supp. 31, 40 (CIT 1987)).

The petitioners state that, unlike the *Allied-Signal* case cited by Heartland *et al.,* where the respondent in that case demonstrated that it was willing to respond but was unable to do so, there is no record evidence that Vita was unable to respond. On the contrary, the petitioners argue, Vita acknowledged in a September 25, 1997, letter to the Department (at 2) that it ''maintained all of the sales data'' requested by the Department. As to the purported reasons for Vita's inability to respond to the questionnaire, the petitioners point out that the other respondents were also dealing with the same economic conditions and they all participated in this review, two of them doing so without counsel.

Finally, the petitioners contend that they specifically requested a review of Vita based on information that the current margin applicable to Vita was not indicative of current market conditions, and argue that Vita's failure to cooperate has affirmed that the petitioners were correct. Therefore, they submit, the Department may not reward Vita's non-participation by continuing to apply the ''all others'' rate as suggested by Heartland *et al.*

DOC Position: We disagree with Heartland *et al.*'s assertion that no adverse inferences should be made in selecting Vita's facts available rate. Contrary to Heartland *et al.*'s assertions, our decision to rely on an adverse rate was grounded in a fact-based finding in the preliminary results that Vita had not cooperated to the best of its ability in this review, and not on a mere recitation of the statutory provisions concerning the use of facts available.

As we explained in the preliminary results, Vita was given multiple opportunities to respond to the Department's request for information. As illustrated by the following sequence of events, we made repeated requests to obtain the information necessary for our analysis from Vita, but were ultimately unsuccessful in our efforts to gather such data. On January 8, 1998, counsel for Vita notified us that it had withdrawn its representation of and entry of appearance on behalf of Vita. On January 9, 1998, we contacted Vita to determine whether the company planned to continue as a respondent in this review. Vita notified the Department on January 12, 1998, that it planned to continue in this review. On January 20, 1998, we notified Vita that we had not received its response to our January 2, 1998, supplemental section A questionnaire. Vita notified the Department on January 22, 1998, that it had no knowledge of the supplemental section A questionnaire. Because we initially issued the supplemental section A questionnaire to counsel for Vita prior to its withdrawal as Vita's representative, we sent another copy of the questionnaire directly to Vita on January 27, 1998, and requested that

Vita respond by February 4, 1998. We also provided Vita with instructions on how to file submissions with the Department, instructions for serving such submissions to interested parties, and an interested parties list for this review. On the same date, we sent a supplemental questionnaire for sections B and C directly to Vita by certified mail. On February 5, 1998, we again informed Vita that we had not received its response to the supplemental section A questionnaire. At the same time, we reminded Vita of the February 6, 1998, deadline for its responses to questionnaire section D (which we issued directly to the company on January 13, 1998), and its February 11, 1998 response to supplemental sections B and C questionnaire. Vita did not respond, nor did it provide any explanation as to why it was unable to do so.

Unlike in *Allied-Signal,* Vita did not show a willingness to respond throughout the review, but simply ceased communicating. Section 782(c)(1) of the Act requires that an interested party promptly notify the Department if it is unable to submit information in the form and manner requested, and that it provide a ''full explanation and suggested alternate forms'' in which it is able to provide the information. Because Vita, in not responding to our repeated requests for information, has failed to act to the best of its ability, we have applied adverse facts available in accordance with section 776(b) of the Act.

Comment 2C: ''Representativeness'' of the Rate Selected—UniPro and Heartland *et al.* argue that the proposed margin is not representative of current market conditions, rendering it inappropriate. For example, UniPro states, the proposed facts available rate is more than nine times greater than the average margin for the six respondents for whom the Department calculated margins in this review. UniPro holds that the Department has previously rejected rates as unrepresentative in similar circumstances, citing Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996), where the Department rejected as facts available a margin that was ''out of proportion'' and where the respondent ''represented only a small fraction of the industry.'' Likewise, UniPro claims, SAICO's margin from the underlying investigation cannot be said to be representative of the industry nor relevant to or probative of current conditions. UniPro suggests that, given that the highest margin calculated for the preliminary results was 14.19 percent, and the average of all calculated margins was 6.13 percent, it is highly unlikely that Vita would be able to compete in the U.S. market even if the Department applies the ''all others'' rate for the final results, much less the selected adverse facts available rate.

The petitioners respond that the fact that the facts available rate used by the Department in the preliminary results is four times higher than the highest calculated rate for the instant review is irrelevant, considering that SIFCO's preliminary calculated rate of 14.19 percent is 14 times higher than Malee's preliminary calculated rate of 1.01 percent.

DOC Position: Our presumption is that the highest calculated margin for any company in any segment of the proceeding is reflective of current conditions, and that, had Vita been able to demonstrate that its margin was lower than the highest margin calculated for any company in any segment of the proceeding, it presumably would have done so. See *Mitsuboshi Belting Ltd.* v. *United States,* CIT Court No. 93–09–00640, Slip Op. 97–28 (March 12, 1997) (*Mitsuboshi Belting*) (CIT affirmed that the use of a margin drawn from the investigation ''reflects a common sense inference that the highest margin is the most probative of current margins because, if it were not so, the importer, knowing the rule, would have produced current information showing the margin to be less''). See also *Rhone Poulenc, Inc.* v *United States,* 899 F. 2d 1185 (Fed. Cir. 1990) (*Rhone Poulenc*). Unlike *Flowers from Mexico,* the facts in this case do not overcome this presumption. In *Flowers from Mexico,* the highest calculated rate (264.43 percent for Florex) was determined to be unrepresentative of the industry because Florex's accumulated interest expenses from a separate line of business skewed its cost of production figures. Conversely, there is no record of evidence to suggest that SAICO's business practices differ from the rest of the Thai pineapple industry such that it is not unable. We further note that Florex's rate was considered so unusual that it was not included in the calculation of the ''all others'' rate. That SAICO's rate was included in the calculation of the ''all others'' rate in the LTFV investigation is a further indication that the company was considered to be representative of the pineapple industry. Accordingly, we find that SAICO's rate from the investigation has probative value.

Comment 2D: Corroboration of the Rate Selected—Heartland *et al.* argue that the rate applied to Vita in the preliminary results cannot be used in the final results because the rate is not in accordance with section 776(c) of the Act, which requires the Department to corroborate secondary information used as adverse facts available. These companies point out that not only does the 55.77 percent margin assigned to Vita not reflect the publication of an amended final in the underlying investigation (as stated above), it does not reflect the Department's redetermination upon remand directed by the CIT in *TIPCO,* where in the Department reduced SAICO's rate to 26.92 percent. While Heartland *et al.* acknowledge that the Department has appealed *TIPCO,* they maintain that the CIT's decision in this case invalidates, or at least casts significant doubt upon the appropriateness of, the higher rate as a basis for adverse facts available. In support of their argument, Heartland *et al.* claim that, in *D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (*D&L Supply Co.*), the court found that the Department could not use a rate that has been vacated as erroneous as the basis for best information available (facts available). Finally, Heartland *et al.* contend that the 55.77 percent rate is not corroborated because there is no evidence suggesting that Vita is now selling CPF in the United States at dumping margins twice as high as previously estimated, referencing the company's historical rate of 24.64, the ''all others'' rate.

The petitioners respond that, as the Department stated in the *Preliminary Results* (63 FR at 17358), ''if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.'' Therefore, the petitioners argue, the Department need not further corroborate such margins. The petitioners add that *D&L Supply Co.* does not apply in this instance because, unlike the ''invalidated'' rate in that case, the *TIPCO* ruling is on appeal and is not yet final.

DOC Position: We agree with the petitioners that margins from other segments of the proceeding are by definition reliable sources. *See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12753 (March 16, 1998). Because the Department has filed an appeal and the CAFC has not yet ruled on the case, the CIT decision in *TIPCO* is not final and conclusive. Therefore, we may continue to assign a rate based on the NRV methodology where appropriate, until such time as there is a final court decision not in harmony with the Department's position on this issue. For this reason, Heartland *et al.*'s reliance on *D&L Supply Co.* is premature. Absent evidence to the contrary, we consider SAICO's rate from the underlying investigation to be reliable and, as discussed in Comment 2C, above, to have probative value.

Comment 2E: Effect of Adverse Facts Available on Importers—Heartland et al. maintain that they imported from Vita with the knowledge that they would be liable for a cash deposit requirement of 24.64 percent and that they could not foresee or prevent the circumstances that led to Vita being assigned a margin based on adverse facts available. Therefore, they argue that they should not be made victims of events beyond their control.

UniPro adds that the facts available rate assigned to Vita would unduly punish importers, such as itself, who purchased from Vita, without encouraging compliance with the Department's information requests. UniPro points out that the petitioners did not request a review of UniPro nor did the Department request any information from UniPro during the review. Moreover, Unipro states, unlike the facts in *Rhone Poulenc,* in which the CIT discusses obligations of U.S. importers in the context of an affiliated importer,[4] it does not control the information needed by the Department, nor does it maintain an ongoing commercial relationship with Vita, such that it would have been able to provide it or to pressure Vita into providing it.

The petitioners respond that neither the statute nor the Department's regulations require the Department to consider injury or harm to U.S. importers of merchandise that has been found to be sold at less than fair value. Instead, the petitioners contend, the Department's responsibility is to measure the degree of dumping by the Thai exporters on a continuing basis, so as to alleviate and to offset the injury to the domestic industry. The petitioners argue further that the importers knew that the deposit rate could rise and that they knowingly assumed this liability when they chose to purchase canned pineapple fruit from Thailand rather than from the domestic industry. The petitioners claim that Heartland *et al.* and UniPro cannot now claim they are being injured as a result of their unilateral decision to purchase from the Thai exporters, simply because the Department is following its statutory authority to enforce U.S. trade laws.

DOC Position: Section 737(b)(1) of the Act mandates that any antidumping duties in excess of the amount deposited be collected when the deposit is lower than the duty determined. Therefore, importers are on notice that the cash deposit rate is not a duty assessment rate but, rather, an estimate dependent upon the continued cooperation of the exporter. There is no guarantee that the final assessment rate will not be higher than the cash deposit rate. On this point, the CIT has held that the expectations of the U.S. importer are irrelevant in setting a dumping margin. ''When a U.S. importer deals with a foreign company that is subject to an antidumping duty order, the importer must realize that the dumping margin could change to its benefit or detriment.'' *Union Camp Corporation* v. *United States,* CIT Court No. 97–03–00483, Slip Op. 98–38 at 22 (March 27, 1998).

TPC

Comment 1: Date of Sale

TPC argues that the Department erroneously based date of sale for TPC's EP sales on contract date, rather than invoice date, in the preliminary results. TPC presents three primary arguments as to why the Department should use invoice date as the date of sale, as follows.

1. TPC asserts that use of contract date as the date of sale for TPC's EP sales is inconsistent with the Department's regulations (19 CFR 351.401(i)), which TPC interprets as providing that invoice date is to be used not only where there are material changes between the date of contract and the date of invoice, but also where the potential for such change is present. While acknowledging that the date of sale regulation allows for a date other than invoice date where such date better reflects the date on which the material terms of sale are established, TPC contends that the cautionary language regarding this exception in the preamble to the Department's final regulations (Preamble) (*e.g.,* ''a preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly 'established' in the minds of the buyer and seller''[5]) renders the exception inappropriate under the facts of this case. According to TPC, the canned pineapple business is the type of industry where ''the existence of an enforceable sales agreement between the buyer and the seller does not alter the fact that, as a practical matter, customers frequently change their minds and sellers are responsive to those changes'' (citing the Preamble, 62 FR at 27348–49). Along these lines, TPC also notes that the non-invoice date of sale example provided in the Preamble concerns the sale of large, custom-made merchandise in which the parties engage in formal negotiation and contracting procedures.

As a further indication that, for the Thai pineapple industry in general, terms of sales contracts remain negotiable, TPC notes that in the instant review the Department has relied on invoice date as the date of sale for SFP, Malee and TIPCO in connection with

[4] In *Rhone-Poulenc,* 889 F.2d at 1190, the Court stated that the Department ''fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference.''

[5] Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27349 (May 19, 1997).

those respondents' EP sales. TPC maintains that there is nothing about its contracts that make them any more enforceable or any less renegotiable than similar contracts entered into by the other respondents. Further, TPC argues, given that the structure of its direct sales to the comparison market is very similar to the structure of its EP sales, and considering that the Department based date of sale on comparison market sales on invoice date (based on evidence of actual changes to the material terms of sale in that market), the potential for change similarly existed on TPC's EP sales contracts.

2. TPC argues that the Department's use of the contract date as the date of sale is inconsistent with its current practice. According to TPC, the Department recently clarified in Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998) (Flat Products From Korea) that the key to its date of sale analysis is whether the material terms of sale can change up until the invoice date, not whether any changes have actually occurred. TPC claims that there is no record evidence in the instant review to indicate that the terms could not be changed after the contract date—only that for TPC's EP sales during the POR the terms did not change. In fact, TPC argues, in Flat Products From Korea, the Department did not discuss, nor does it appear that the respondent was required to demonstrate, the number of changes that occurred between contract date and invoice date for U.S. sales.

3. TPC suggests that use of invoice date as date of sale would ensure fair price comparisons, promote consistency from one review to the next, and would enable TPC to accurately predict which normal value will ultimately be selected for comparison to individual U.S. sales. Along these lines, TPC claims that use of invoice date as the date of sale for its EP sales would be consistent with the date of sale for its CEP and comparison market sales, noting the Department's stated preference for comparing sales with dates of sale that are established on the same basis as stated in Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47446 (September 9, 1997) (Seamless Pipe). Moreover, TPC claims, determining the date of sale based on an empirical examination of the actual number of changes that took place between the contract date and the invoice date during a particular POR—and possibly changing the basis for the date of sale from review to review—defeats two of the objectives of the new date of sale regulation: predictability of outcome and efficient use of the Department's resources. Otherwise, TPC claims, it will never be sure which date will ultimately be used by the Department in each new review unless and until a threshold number of changes occurs.

The petitioners respond that the Department correctly based TPC's EP date of sale on the contract date, consistent with the first administrative review, since there were no changes made to the material terms after this date for such sales. The petitioners state that when the Department adopted its date of sale policy, where invoice date is identified as the ''normal'' date of sale, it did so with the understanding that under certain circumstances it may be appropriate to use some other date, as explained in, e.g., Memorandum for Acting Deputy Assistant Secretary from Team: Date of Sale in Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, December 7, 1997.

The petitioners contend that TPC's cite to Flat Products From Korea in an attempt to demonstrate that the key to the Department's date of sale analysis is whether the material terms of sale can change up until the invoice date is inaccurate. Whereas TPC states that there is no record evidence in the instant review to indicate that the terms could not be changed after the contract date, the petitioners state that the only record evidence available indicates that no changes occurred to the material terms of sale after the contract date. According to the petitioners, this is a compelling reason to use a date other that invoice date, and is fully consistent with Flat Products From Korea, where the Department said that its current practice ''is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise.'' See Flat Products From Korea, 63 FR at 13194.

With respect to TPC's argument that, in Seamless Pipe, the Department found that the U.S. date of sale should be invoice date because use of the order confirmation date would mean comparing sales for which prices were not established in the same manner, the petitioners argue that the same rationale is precisely why the Department's use of contract date is correct in the instant review: this date represents the date when prices were established for all U.S. EP sales.

The petitioners also address TPC's claims that if the Department focuses on whether a certain number of changes has actually occurred, instead of on whether such changes could occur, TPC would never be sure which sales it should look to in the comparison market to ascertain normal value. Instead, the petitioners claim, there is no guesswork involved because TPC established the terms of sale for all U.S. EP sales on the contract date, made no changes to price or quantity after that date, and knew from the prior administrative review that the Department considered these sales to have been established on the contract date.

Finally, the petitioners state, given the severe and drastic devaluation of the

Thai currency, use of the invoice date in the current and in future reviews of this order would artificially distort the actual extent of dumping because an exchange rate that is significantly lower than it was when the U.S. price was contractually set would be used in the conversion of normal value. Because TPC negotiated and established a U.S. price on the date of the contract, the petitioners argue, the Department's date of sale methodology should not be changed for the final results.

DOC Position: As in the prior review, we have continued to base TPC's EP sales on contract date. The record evidence in this segment of the proceeding indicates that the material terms of sale were established in the contracts that TPC entered into for such sales, and that such terms never varied after the contract date.

In determining in the 1995–96 review to base EP sales on contract date, we considered, and rejected, TPC's arguments that the Department's regulations and preamble require a different result:

> The general presumption in favor of invoice date continues to be our normal practice. As explained in the preamble to the Department's final regulations, ''in the Department's experience, price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced.'' *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27348 (May 19, 1997)(''Final Regulations'') at 27348. However, this presumption applies ''absent satisfactory evidence that the terms of sale were finally established on a different date.'' *Id.* at 27349. This caveat reflects an awareness that, ''[i]n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale *usually* are established on some date other than the date of invoice.'' *Id.* (emphasis added). Accordingly, ''[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department *will* use that alternative date as the date of sale.'' Id. (emphasis added). For these reasons, while section 351.401(i) maintains the general presumption in favor of invoice date, it provides for the use of a different date of sale where the alternative date ''better reflects the date on which the exporter or producer establishes the material terms of sale.''

Thus, while section 351.401(i) of our regulations maintains the general preference in favor of the use of invoice date as the date of sale, it does not, as TPC suggests, require such use wherever there is any possibility for changes to the material terms of sale up to that date. If the invoice date does not reasonably approximate the date on which the material terms of sale were established, its use as the date of sale in an antidumping analysis is inappropriate. The evidence on the record indicates that there were in fact no changes to the contracted terms of TPC's EP sales during the POR. Accordingly, consistent with our current practice (see, e.g., Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review, 63 FR at 3536, 3537 (January 23, 1998))[6] as well as with the prior review of TPC's sales (1995–96 Final Results, 63 FR at 7394), we determined that contract date is the appropriate date of sale for TPC's EP sales.

We disagree with TPC's contention that the uniform use of invoice date as date of sale would ensure fair price comparisons. On the contrary, the only dates that are substantively equivalent for purposes of measuring price discrimination are the contract date for EP sales and the invoice date for comparison market sales; although different in name, these are the respective dates at which the material terms of sale were established.

Our reasons for not simply basing date of sale on invoice date across all markets, where such date does not reflect the material terms of sale, were addressed in a recent determination involving Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32836 (June 16, 1998), as follows:

> If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand. Notwithstanding the respondent's comment that the terms of sale are subject to change and that, therefore, the final terms are not known until the date of invoice, we find that, in this case, there is no information on the record indicating that the material terms of sale change frequently enough on U.S. sales so as to give both buyers and sellers any expectation that the final terms will differ from those agreed to in the contract.

In that case, as in the 1995–96 Final Results, the Department relied on contract date as the date of sale for U.S. sales other than CEP sales out of inventory based on the reasons set forth above.

We also disagree with TPC that it has been unfairly penalized because it is not able to predict, from review to review, which date of sale the Department will choose. In fact, TPC has been well aware of our practice in this regard for each of the two reviews of this case, and our stated preference for contract date where virtually no post-contractual changes are made has remained in place during both reviews. TPC acknowledged early on in the first review that the Department might find contract date to be the appropriate date of sale where the material terms of sale where established at the contract date for virtually all sales in a given market. See 1995–96 Final Results, 63 FR at 7394–7395. In that review, we relied on contract date for EP and comparison market sales, where changes were made to the contracted terms for only one EP sale and five comparison market sales (out of several hundred sales made in each market). *Id.* In this review, TPC provided evidence of routine post-contractual changes in the material terms of sale for third-country sales; accordingly, we agreed with the company that invoice date was appropriate for this market.[7] In contrast, the company indicated that no EP sales had post-contractual changes during the POR. Given the complete absence of POR changes, and our use of contract date for EP sales in the first review where the same company had only one post-contractual change on such sales, the use of contract date for EP sales in this review is consistent and predictable. Finally, given the precedent established in this case, we are not persuaded by TPC's claim that it was unable to predict the correct date of sale due to purported inconsistencies in the Department's treatment of date of sale issues in other cases.

Comment 2: Interest Calculation

The petitioners argue that the Department should exclude foreign exchange gains from TPC's net interest calculation because it is unclear and unsubstantiated from TPC's response that these gains are related to TPC's production rather than to sales functions. According to the petitioners, it is the Department's practice to include foreign exchange gains and losses on financial assets and liabilities in its calculations of COP and CV only where those gains and losses are related to the company's production. This standard, the petitioners assert, was not met with respect to the gains at issue because TPC did not substantiate its claim that, after excluding certain

[6] Our decision to use the purchase order date as the appropriate date of sale in that case was explained in the preliminary results. However, no change in this decision was made for the final results.

[7] The frequency and the reasons for changes in contractual terms are discussed in the business proprietary version of TPC's October 22, 1997 questionnaire response (at 28) and in its January 20, 1998 supplemental questionnaire response (at 4).

exchange gains and losses associated with interest arbitrage and investment activities, the remaining exchange gains are attributable to operations, as opposed to sales.[8] In fact, the petitioners state, such gains may be attributable to accounts receivable. In this respect, the petitioners note that the Department disallowed certain gains related to accounts receivable made by another respondent in the first review of this case, citing 1995–96 Final Results, 63 FR at 7401.

TPC responds that the Department should not exclude foreign exchange gains and losses from its net interest calculation, labeling as speculation the petitioners' argument that these foreign exchange gains might include gains on export sales. Rather than point to record evidence, TPC argues, the petitioners relied instead on the observation that, for other companies, the Department has on occasion adjusted interest expense to disallow foreign exchange gains on receivables. TPC notes that the petitioners did not ask that the Department request additional information from TPC regarding exchange gains and losses after the company submitted its response to section D of the Department's questionnaire. Finally, TPC states that its calculation of foreign exchange gains and losses in this review closely tracks the methodology that was verified and accepted in the prior review.

DOC Position: We disagree with the petitioners' assertion that TPC's reported exchange rate gains should be disallowed. Our practice is to include foreign exchange gains as an offset to finance expenses if they are related to the cost of acquiring debt for purposes of financing production operations, and to exclude this item if it relates to sales. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebar from Turkey), 62 FR 9737, 9741 (March 4, 1997). More specifically, we include in COP and CV the amortized portion of net foreign exchange gains and losses resulting from foreign-currency denominated loans as a part of the financial expenses because they reflect the actual amount of local currency that will have to be paid to retire the foreign-currency denominated loan balances. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31430 (June 9, 1998) (Salmon from Chile). On the other hand, we do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company and we do not include them in the financial expense calculation. See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998). In its financial expenses rate calculation, TPC identified exchange gains attributable to debt and exchange gains attributable to combined other operations (i.e., sales and purchase transactions combined). Accordingly, we were able to determine that TPC properly excluded from its calculation exchange gains attributable to ''other operations.''

While we are not disallowing this offset based on the arguments set forth by the petitioners, we adjusted it to reflect our practice regarding the amortization of such gains. In its submitted financial expense calculation, TPC included the total net exchange gains and did not amortize its net exchange gains related to loans. For purposes of our analysis, it is appropriate to amortize the foreign exchange gains or losses over the life of the associated debt, as the gain or loss is realized only as the loans are paid. See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 63 FR 35190, 35199 (June 29, 1998) (Pipe and Tube From Turkey). Therefore, for these final results, we amortized the net foreign exchange gains related to loans reported in TPC's financial statements over the average remaining life of the loans on a straight-line basis. We included the amortized portion of the net exchange gains in the recalculation of financial expenses. This adjustment did not change the net interest expense reported by TPC. Due to the proprietary nature of this issue, it is discussed in more detail in the Memorandum from Case Analyst to Office Director: Final Results Analysis Memorandum for The Thai Pineapple Canning Industry Corp., Ltd. (TPC) (August 7, 1998) (TPC Final Results Analysis Memorandum).

Finally, we note that we confirmed through our review of TPC's financial statements in connection with this issue that TPC does not have any assets that would generate long-term interest income. It is the Department's practice to allow a respondent to offset financial expenses with short-term interest income earned from the general operations of the company. See, e.g., Pipe and Tube From Turkey, 63 FR at 35199. The Department does not offset interest expense with interest income earned on long-term investments because long-term investments do not relate to current operations. *Id.*

Comment 3: G&A Expense Calculation

The petitioners claim that TPC's reported G&A expenses are understated for two reasons. First, they are allegedly inconsistent with TPC's 1996 financial statements. Due to the proprietary nature of this comment, it is discussed in more detail in the TPC Final Results Analysis Memorandum.

Second, the petitioners claim that TPC failed to include G&A expenses incurred by Princes, an affiliated party located in the Netherlands that resells the foreign like product in the comparison market (Germany). In this regard, the petitioners note that the Department's section D questionnaire (at 53) instructed TPC to ''include in your reported G&A expenses an amount for administrative services performed on your company's behalf by its parent company or other affiliated party.'' The petitioners claim that, because Princes is involved in the sale of the foreign like product in TPC's third-country market, Princes' G&A expenses should be included.

TPC disagrees with the petitioners' contention that the Department's questionnaire instructed TPC to include Princes' expenses in the G&A calculation. Instead, TPC states, the Department's instruction is intended to cover a situation where the normal administrative functions of an exporter/producer (e.g., the financial department or senior management functions) are provided by an affiliated party, such as a parent corporation. TPC suggests that this is to alleviate any concern that such services are provided without charge or at below market rates, and is not intended to cover situations in which affiliated resellers are performing a sales function in other markets. In this regard, TPC states that, because Princes acts as a sales office, its expenses are selling expenses, which are reported in the sections B and C sales responses, whereas TPC's G&A expenses are reported in the section D cost response. Furthermore, TPC argues, because selling expenses incurred by Princes are already deducted from the gross price of comparison market sales in determining the net price used for the cost test, including Princes' expenses in TPC's G&A would constitute double-counting of such expenses.

DOC Position: Due to the proprietary nature of the petitioners' assertion that TPC's reported G&A expenses are inconsistent with its 1996 financial statements, we address the claim further

[8] The petitioners note that TPC, in its October 22, 1997 section D questionnaire response (at 45), claims merely that these exchange gains are ''attributed to operations.''

in the TPC Final Results Analysis Memorandum.

Regarding expenses incurred by Princes, we disagree with the petitioners' claim that TPC inappropriately excluded such expenses from its G&A calculation. Where an affiliate's costs pertain to reselling the merchandise to unaffiliated customers, it is our practice to treat such expenses as selling expenses. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61287 (November 17, 1997).[9] All of the expenses incurred by Princes were related to sales activities on behalf of TPC's comparison market sales. Princes operates a single sales office in the Netherlands, through which it sells canned and packaged foods, canned fruits, fish, meats, vegetables and pastas and sauces throughout Europe and to Japan. See TPC's October 22, 1997 questionnaire response at 12. The evidence on the record of this review indicates that TPC correctly included Princes' expenses in its indirect selling expense calculation. See Exhibit B–8 of TPC's October 22, 1997, questionnaire response. For these reasons, consistent with the prior review of this case, we have treated these expenses as selling expenses.[10]

Comment 4: Comparison Market Indirect Selling Expenses

TPC claims that the Department incorrectly excluded domestic (Thai) inventory carrying costs (DINVCART) in calculating comparison market indirect selling expenses.

The petitioners respond that the Department properly excluded this expense in the calculation of third-country selling expenses, just as it properly excluded Thai inventory carrying costs from the calculation of U.S. indirect selling expenses. The petitioners assert that this expense is not related either to economic activities in the third-country or U.S. markets, and therefore should be treated the same in the normal value and CEP calculations.

DOC Position: We agree with TPC that we mistakenly omitted inventory carrying costs incurred in Thailand when calculating comparison market indirect selling expenses. The petitioners' reference to restricting indirect selling expenses to "economic activities occurring in the United States or in the third country market" is overly broad, since we do not apply this standard to third-country indirect selling expenses, only to CEP selling expenses. In calculating the CEP, we deduct from the starting price expenses (and profit) associated with economic activities occurring in the United States that relate to the sale to the unaffiliated purchaser. See TPC Comment 5, below. We do not place a corresponding limitation on comparison market selling expenses, but instead cap such expenses (to the extent that we adjust for them, as a CEP offset), by the amount of indirect selling expenses deducted in calculating the CEP. See 19 CFR 351.412(f)(2).

Comment 5: U.S. Direct Selling Expenses Incurred in Thailand

TPC claims that, for CEP comparisons, the Department erroneously both: (1) added U.S. direct selling expenses incurred in Thailand (DDIRSELU) to normal value, and (2) subtracted them from the gross U.S. price.

While the petitioners agree with this assertion, they claim that the Department failed to add U.S. warranty expenses to normal value for EP comparisons.

DOC Position: Regarding our treatment of U.S. direct selling expenses incurred in Thailand, we have added such expenses to normal value for both CEP and EP comparisons. In calculating CEP, we deduct from the starting price expenses (and profit) associated with economic activities occurring in the United States[11] that relate to the sale to the unaffiliated purchaser. See 19 CFR 351.402(b). We do not adjust for any expense that is related solely to the sale to an affiliated importer in the United States. However, we may make a COS adjustment to normal value for such expenses. *Id.*

The expenses reported under variable DDIRSELU are related to bank fees incurred by TPC in Thailand. Exhibit 7C of TPC's October 22, 1997 questionnaire response clearly shows that these expenses were incurred on sales to MIC, TPC's U.S. affiliate. As explained above, such expenses may not be deducted from the starting price in calculating the CEP. Therefore, while we intended to add this expense to normal value as a COS adjustment, we have corrected the erroneous deduction from the starting price in the United States.

We also agree with the petitioners' claim that any warranty expenses incurred by TPC with respect to its EP sales should be added to normal value as a COS adjustment.

Comment 6: Commission Offset

The petitioners claim that the Department failed to make a commission offset for CEP comparisons involving home market commissions but no U.S. commissions. According to the petitioners, such an offset should be made as an upward adjustment to normal value, using the lesser of home market commissions or indirect selling expenses incurred in Thailand on U.S. sales. The petitioners note that, while U.S.-incurred indirect selling expenses were deducted from the starting price in calculating the CEP, Thai-incurred indirect selling expenses were not.

TPC responds that the Department's preliminary margin program is in this respect fully in accordance with the Department's current practice, and claims that the petitioners' proposal would incorrectly adjust for indirect selling expenses incurred in Thailand on sales made to TPC's affiliate in the United States, which is contrary to section 772(d) of the Act and with Department practice. In this regard, TPC cites Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review, 63 FR 30185, 30191 (June 3, 1998) in support of the proposition that the Department "does not deduct indirect selling expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act."

DOC Position: We agree with the petitioners that a commission offset, based on the lesser of home market commissions or those indirect selling expenses incurred on U.S. sales that are not associated with economic activities in the United States, is appropriate for CEP comparisons involving commissions in the home market but not in the U.S. market. Contrary to TPC's claim, this would not involve the deduction from the U.S. starting price of indirect expenses not associated with economic activities in the United States. We have not deducted such expenses in arriving at the constructed export price, in accordance with section 772(d) of the Act and the SAA. However, having constructed an export price, it is appropriate to add such expenses to normal value as a commission offset for

[9] We determined that labor expenses incurred by a respondent's U.S. affiliate were related to selling the merchandise to the first unaffiliated customer in the United States and were not related to production. Therefore, we deducted such expenses from the starting price on CEP sales rather than including the expenses in the COP.

[10] See Memorandum to Director, Office of Accounting From Senior Accountant: Cost of Production and Constructed Value Memorandum for Preliminary Results; Antidumping Duty Administrative Review, Canned Pineapple Fruit from Thailand, Thai Pineapple Canning Industry Corp. Ltd. (July 31, 1997). We calculated TPC's G&A using only TPC's administrative expenses.

[11] See the SAA at 823 discussing section 772(d)(1) of the Act.

comparisons involving home market commissions but no U.S. commissions, just as we would do so generally in an export price analysis. This in accordance with the Department's regulations, which preclude a downward adjustment to the U.S. starting price for such expenses in determining the CEP, but allow for a COS adjustment to normal value for such expenses, pursuant to section 773(a)(6)(C)(iii) of the Act. See 19 CFR 351.402(b); see also 19 CFR 351.410(e) (''The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations [sic], and no commission is paid in the other market under consideration.'').

TIPCO

Comment 1:

The petitioners argue that the Department should recalculate TIPCO's G&A and interest expense ratios in accordance with the Department's normal practice.

First, the petitioners claim that TIPCO has understated its actual G&A ratio because record evidence indicates that TIPCO calculated the ratio using an unconsolidated G&A expense amount as the numerator and what appears to be a consolidated cost of goods sold (COGS) amount as the denominator. The petitioners state that the Department should recalculate TIPCO's G&A ratio using the 1996 unconsolidated COGS amount from Exhibit 20 of TIPCO's October 20, 1997, questionnaire response.

In addition, the petitioners argue that TIPCO failed to submit its 1996 consolidated financial statements in accordance with the Department's instructions and, as a result, the Department cannot corroborate the reported 1996 consolidated interest expenses or the 1996 consolidated cost of goods sold figures, which were used to calculate the reported interest expense ratio. Therefore, the petitioners suggest that the Department use, as facts available, TIPCO's 1995 consolidated financial statements to recalculate TIPCO's interest expense ratio.

Finally, the petitioners argue that TIPCO improperly deducted an amount for foreign exchange gains from its 1996 interest expenses to arrive at its net interest expense ratio. According to the petitioners, deducting the exchange gain from the interest expense amount does not reflect the Department's policy since there is no evidence on the record to demonstrate that these exchange gains were related to TIPCO's production. The petitioners claim that in the prior review the Department excluded exchange gains from the net interest expense calculation when TIPCO failed to provide support for its claim that exchange gains were related to financing activities (citing 1995–96 Final Results, 63 FR at 7401).

TIPCO did not comment on the calculation of its G&A expense. Regarding the interest expense, TIPCO responds, first, that the petitioners' assertion that the Department cannot corroborate the interest expenses and COGS information appearing in TIPCO's 1996 consolidated financial statements is incorrect, claiming that the information needed for corroboration is already on the record for this proceeding because the complete 1996 consolidated financial statements were submitted to the Department during the verification of the prior review. TIPCO adds that the information it submitted during the first review is part of the record for this review, noting that section 357.104(a) of the Department's regulations provides that the Department maintains ''an official record of each antidumping and countervailing duty proceeding'' and that a ''proceeding'' as defined by the Department's regulations includes the time period covering multiple reviews.[12] Accordingly, TIPCO claims, the Department should adhere in the final results to the interest expense calculation used in the preliminary results.

Second, regarding the exchange gain offset to interest expense, TIPCO maintains that in its supplemental questionnaire response it corrected its deduction of exchange gains from interest expenses for precisely the reason put forth by the petitioners, i.e., in light of the Department's finding in the final results of the prior review. Thus, TIPCO claims, its interest calculation is in accordance with the Department's decision in the prior review.

DOC Position: Regarding TIPCO's reported G&A expense, we agree with the petitioners that the numerator and denominator were not calculated on the same basis. We have corrected the denominator in the manner suggested by the petitioners, to reflect a G&A ratio based on TIPCO's unconsolidated G&A expenses in relationship to its unconsolidated COGS. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan, 63 FR 40434, 40440 (July 29, 1998).

Regarding the petitioners' claims concerning TIPCO's reported interest expense, we have accepted this expense as reported for the following reasons. First, we disagree with the petitioners' assertion that TIPCO's reported 1996 interest expense and cost of goods sold amounts must be disallowed due to insufficient documentation. Based on the information provided by TIPCO in this case, as well as the absence of any evidence to call into question the reliability of these figures, we have accepted these items as reported, in accordance with our normal practice.

In addition, we have allowed TIPCO's claimed exchange gain offset to interest expense. The amount that the petitioners assert was claimed as an offset reflects that reported in the initial response. Subsequently, TIPCO reduced its reported exchange gain to a minor fraction of that originally claimed, explaining that it was doing so in light of our treatment of the company's exchange gains and losses in the 1995–96 final results.[13] We note that TIPCO made this reduction to its interest offset on its own initiative, as part of its supplemental questionnaire response. See TIPCO's February 9, 1998, supplemental questionnaire response (at 63 and at Exhibit 23B). For these reasons, we have accepted TIPCO's reported interest expenses for these final results.

SIFCO

Comment 1: Appropriate Comparison Market

SIFCO contends that the Department's selection of Japan as the appropriate comparison market to be used as the basis for normal value was erroneous. Instead, while acknowledging that Japan is the most viable third-country market in terms of volume and value of sales, SIFCO claims that Canada is the most appropriate comparison market in terms of price, cost of production, similarity of merchandise, and market size.

According to SIFCO, during verification it used samples to demonstrate the difference between the grade of merchandise sold to Japan

[12] TIPCO cites section 351.102(a) of the Department's regulations as stating that a proceeding ''begins on the date of filing a petition * * * and ends on the date of publication of the earliest notice of: (1) Dismissal of petition, (2) Revision of initiation, (3) Termination of investigation, (4) A negative determination that has the effect of terminating the proceedings, (5) Revocation of an order, or (6) Termination of a suspended investigation.''

[13] Contrary to the petitioners' assertion that we disallowed TIPCO's exchange rate gains generally in the 1995–96 final results, in fact we excluded only those exchange rate gains and losses related to accounts receivable, while including those relating to loans. 1995–96 Final Results, 63 FR at 7401.

versus that sold to the United States. SIFCO adds that in the sales verification report, the Department concluded that the products were sorted according to specifications reported in SIFCO's January 13, 1998, questionnaire response (at Appendix 2), and that the products destined for Japan were generally more yellow in color than the products destined for other countries. Based on those results, SIFCO argues, Japan is not the most appropriate comparison market because the merchandise sold to Japan is not similar in every aspect to the merchandise sold to the United States.

Furthermore, SIFCO claims that where prices in more than one third in a country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act,[14] section 351.404(e)(1) of the Department's regulations provides that the Department generally will select the third country in which ''[t]he foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries.'' SIFCO claims that its reported sales data indicate that the merchandise sold to Japan was particular to the Japanese market, whereas most of the merchandise sold to Canada was also sold to the United States; therefore, the Department should use sales of the foreign like product to Canada as the basis for its calculation of normal value.

The petitioners respond, first, that the volume of SIFCO's sales to Japan was substantially greater than the volume of its sales to Canada, noting that, in accordance with section 351.404(e) of the Department's regulations, volume of sales is one of the primary criteria in the Department's selection of third-country markets. The petitioners contend that, in view of the magnitude of the sales volume to Japan and, because SIFCO has failed to prove that Japan represents a particular market situation such that it does not permit a proper comparison with the export price, the Department cannot reject Japan as the appropriate comparison market.

Second, the petitioners assert that the ''nominal'' product differences between SIFCO's Japanese sales and its U.S. sales do not render the Japanese market an unsuitable basis for normal value. The petitioners claim that the only differences claimed by SIFCO that would distinguish between the Japanese and the U.S. markets are in color and in trimming. Moreover, the petitioners argue that these differences are of little relevance to the selection of the appropriate comparison market because the majority of SIFCO's sales to Japan and to the United States were of standard grade. Acknowledging that fancy grade was sold only to Japan, the petitioners state that it nevertheless accounted for a relatively small volume (19 percent) of SIFCO's total Japanese sales.

Finally, the petitioners argue, Canada cannot be used as the comparison market for determining normal value because SIFCO's sales to Canada were not verified. Instead, the petitioners state, the Department verified SIFCO's sales to Japan and found no evidence that Japan is inappropriate as the comparison market. Finally, the petitioners argue that SIFCO's argument in favor of Canada as the appropriate comparison market was untimely, because, in accordance with section 351.301(d) of the Department's regulations, claims with respect to the proper comparison market must be made within 40 days of the transmittal of the questionnaire.

DOC Position: For these final results, we have continued to rely on Japan as the comparison market for SIFCO. This market is the most appropriate choice, considering both volume of sales and product comparability. With respect to sales volume, SIFCO's sales to Japan were approximately twice the volume of sales to Canada. In terms of product comparability, while SIFCO focuses on the fancy grade merchandise involved in a minority of sales to Japan, we note that SIFCO's POR sales to both Japan and the United States were predominantly of standard grade; such sales accounted for over 80 percent of the merchandise sold to both markets. While we recognize SIFCO's claim that certain of its other sales to Japan are fancy grade, this fact alone does not preclude our use of Japan as the comparison market. For these reasons, we continue to find that Japan is the most comparison market for SIFCO under the standard set forth in the Department's regulations. See 19 CFR 351.404(e)(1) and (2) (regarding product comparability and sales volume, respectively, as relevant criteria for third-country market selection).

Comment 2: Allocation of Sugar Costs

SIFCO argues that, in the preliminary results, sugar costs were erroneously included in the cost of manufacture for U.S. sales. Instead, SIFCO claims, all sugar costs should be allocated to the cost of manufacturing for sales to Japan. SIFCO points out that in its January 9, 1998, questionnaire response (at Appendix 6), it requested that sugar costs be excluded from the cost of manufacturing for sales to the United States because, as indicated by SIFCO's reported U.S. sales data, all products sold to the United States were packed in natural juice.

Contrary to SIFCO's claim, the petitioners argue that, during the POR, SIFCO sold to the United States canned pineapple fruit packed in heavy syrup. Notwithstanding the fact that the Department's cost verification report (at 2)[15] also states that all SIFCO's products sold to the United States were packed in natural juice, the petitioners note that Exhibit S–1 of the sales verification report indicates a particular sale to the United States packed in heavy syrup. Therefore, the petitioners argue, sugar costs should not be excluded from the cost of manufacturing of any products that contain sugar.[16]

The petitioners add that SIFCO's claim that sugar costs should be excluded from the calculation of cost of manufacturing for U.S. sales is irrelevant because CV was not used as normal value, as all U.S. sales were compared to sales in Japan. Finally, the petitioners argue that, because all sales to Japan were packed in syrup, sugar costs should not be removed from the costs of manufacturing for purposes of the test of sales to Japan made below the cost of production.

DOC Position: We acknowledge that in the cost verification report we erroneously stated that all of SIFCO's sales to the United States were packed in natural juice. The petitioners are correct in pointing out that the invoice attached to the sales verification report[17] as Exhibit S–1 does indicate that this U.S. sale was packed in syrup. We have reexamined SIFCO's reported U.S. sales list and have determined that

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[14] Normal value is based on prices at which the foreign like product is sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if (I) such price is representative, (II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and (III) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

[15] *Memorandum to Office Director from Case Analysts: Verification of the Cost of Production and Constructed Value Data Submitted by Siam Fruit Canning (1988) Co. Ltd., in the 1996–97 Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit From Thailand,* June 3, 1998.

[16] Heavy syrup contains sugar.

[17] *Memorandum to Office Director from Case Analysts: Verification of Sales Information Submitted by Siam Fruit Canning (1988) Co. Ltd., in the 1996–97 Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit From Thailand,* June 3, 1998.

this represents the only such sale during the POR. For the final results we have allocated sugar costs to all products that contained sugar.

Malee

Comment 1: Calculation of G&A Expenses

The petitioners assert that the G&A expenses for Malee Supply (1994) Co., Ltd. (Malee Supply) should be included in the calculation of Malee's G&A expenses because Malee Supply is a distributor of CPF in the home market. According to the petitioners, the Department's questionnaire (at D–20) explicitly instructs the respondent to include all relevant G&A incurred in connection with the production and sale of the foreign like product, including ''an amount for administrative services performed on your company's behalf by its parent company of other affiliated party.''

Malee responds that the Department should not include Malee Supply's selling and administrative expenses in the calculation of Malee's COP and CV because doing so would mis-classify selling expenses as production costs, and would also result in the double-counting of such expenses since Malee has already reported them as selling expenses. Malee states that Malee Supply, as Malee's subsidiary selling arm, has no other purpose than to perform selling functions and, therefore, its G&A expenses should be deemed selling expenses to be used as adjustments to home market price. In addition, Malee argues that even in cases where a selling agent has participated in further manufacturing, the Department has treated SG&A expenses as selling expenses, citing, *e.g., Oil Country Tubular Goods from Argentina; Final Determination of Sales at Less than Fair Value,* 60 FR 33539, 33550 (June 28, 1995) (*OCTG From Argentina*).

DOC Position: As we stated in response to TPC Comment 3, above, where an affiliate's costs pertain to reselling the merchandise to unaffiliated customers, it is our practice to treat such expenses as selling expenses. All of the expenses incurred by Malee Supply were related to sales activities on behalf of Malee's home market sales. See Page B–30 and Exhibit B–14 of Malee's October 21, 1997, response. Accordingly, we have treated these expenses as selling expenses.

Comment 2: Calculation of Interest

The petitioners argue that Malee should have calculated its interest factor based on Malee's consolidated financial statements, in accordance with the Department's normal practice, citing Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17160 (April 9, 1997) (*Cement from Mexico*), and *Camargo Correa Metais, S.A.* v. *United States,* 17 CIT 897 (1993).

Malee agrees with the petitioners' suggestion.

DOC Position: In accordance with the Department's practice (*see Cement from Mexico,* 62 FR at 17160), we have recalculated Malee's interest factor net of Malee's short-term interest income.

Comment 3: Conversion of U.S. Duty

Malee argues that, in the preliminary results, the Department failed to convert to U.S. dollars those U.S. duty expenses reported in Thai baht.

The petitioners respond that, acccording to Malee's October 20, 1997, questionnaire response (at C 25–26), Malee's U.S. duty was reported in U.S. dollars and no conversion is necessary.

DOC Position: We agree with the petitioners and have not made any adjustments to U.S. duty in the margin calculation.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd.	0.59
The Thai Pineapple Public Company, Ltd.	5.24
Thai Pineapple Canning Industry Corp., Ltd.	4.37
Malee Sampran Factory Public Company Ltd.	0.30
The Prachuab Fruit Canning Co. Ltd.	11.87
Siam Fruit Canning (1988) Co. Ltd.	5.41
Vita Food Factory (1989) Co. Ltd.	51.16

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

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 administrative review, as provided by section 751(a) of the Act: (1) for the companies named above, the cash deposit rate will be the rate listed above, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–21927 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–803]

Notice of Postponement of Time Limit for Antidumping Duty Investigation: Extruded Rubber Thread from Indonesia

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

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Eric Greynolds, or Stephanie Moore at (202) 482–2876, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Postponement

On April 20, 1998, the Department of Commerce (the Department) initiated an antidumping duty investigation of extruded rubber thread from Indonesia. On August 3, 1998, in accordance with section 351.205(e) of the Department's regulations (62 FR 27295, May 19, 1997), the petitioner made a timely request that the Department postpone its preliminary determination. As we find no compelling reasons to deny this request, we are postponing the preliminary determination in this investigation to no later than October 27, 1998, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 733(c)(2) of the Act, and 351.205(f).

Dated: August 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–21929 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico

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

ACTION: Notice of Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico.

SUMMARY: The Department of Commerce and producers/exporters of fresh tomatoes from Mexico signed an amendment to the Suspension Agreement on Fresh Tomatoes from Mexico. The amendment establishes new reference prices and provides for enhanced enforcement of the Suspension Agreement.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Taverman at (202) 482–0161 or Judith Wey Rudman at (202) 482–0192; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1996, the Department of Commerce (''the Department'') and the producers/exporters of fresh tomatoes from Mexico signed the Suspension Agreement on Fresh Tomatoes from Mexico (''the Agreement'') and, on November 1, 1996, the Agreement was published in the **Federal Register** (61 FR 56618). Following consultations with producers/exporters of fresh tomatoes from Mexico and with members of the domestic industry, on August 6, 1998, the Department accepted an amendment to the Agreement. The amendment establishes a second reference price and the time periods during which each reference price is applicable. In addition, the amendment establishes documentation requirements as a condition of release of subject tomatoes beyond the Customs port of entry and provides that the Department may notify producer/exporter trade organizations composed of signatory parties of any sales that may have been made at prices inconsistent with the Agreement. Finally, the amendment makes other minor changes to the Agreement to facilitate the Department's administration of the Agreement. The text of the amendment is attached to this notice.

Additional producers/exporters have signed the Agreement as amended. The additional signatories and the revisions provided for in the amendment ensure that the Agreement continues to eliminate completely the injurious effect of imports of tomatoes from Mexico, and that the Agreement continues to be in the public interest.

Dated: August 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Amendment to the Suspension Agreement on Fresh Tomatoes From Mexico

Consistent with the requirements of section 734(c) of the Tariff Act of 1930, as amended, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic tomatoes, the Department of Commerce (the Department) and signatory producers/exporters of subject merchandise agree to amend the Suspension Agreement on Fresh Tomatoes From Mexico (the Agreement) as indicated below. All other provisions of the Agreement remain in force and apply to this Amendment.

1. In order to establish a second reference price which would be applicable during the July 1 to October 22 time period and to revise the reference price applicable at all other times of the year, the parties amend the Agreement to add the following after the third paragraph of Appendix A:

The Department and the signatory producers/exporters agree to adjust the reference price applicable to imports into the United States between July 1 and October 22 of any given year. The Department has calculated a reference price for this period by calculating a ratio of Mexican tomato import prices to domestic tomato prices. The ratio consists of weighted-average prices for the United States and Mexico based on data reported by the Agricultural Marketing Service. As calculated pursuant to this methodology, the reference price for the July 1 through October 22 period will be $0.172 per pound (equivalent to $4.30 for a 25-pound box).

Effective October 23, 1998, the Department and the signatory producers/exporters have agreed to adjust the reference price applicable to imports into the United States between October 23 and June 30 of any given year. The Department has calculated a reference price for this period by calculating a ratio of Mexican tomato import prices to domestic tomato prices.