consideration the foregoing, we find that petitioners have alleged the elements of critical circumstances and supported them with information reasonably available. For these reasons, we will investigate this matter further and will make a preliminary determination as soon as practicable.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury,* October 15, 1998).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on hot-rolled steel and petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our discussion with the authors of the foreign market research reports supporting the petition on Brazil and other measures to confirm the information contained in these reports (*see* memorandum to the file, dated October 14, 1998), we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain hot-rolled flat-rolled carbon-quality steel products from Japan, Brazil, and Russia are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of Japan, Brazil, and Russia. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by November 16, 1998, whether there is a reasonable indication that imports of hot-rolled steel from Japan, Brazil, and Russia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: October 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28391 Filed 10–21–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile

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

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4136 or (202) 482–4929, respectively.

The Applicable Statute:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296, May 19, 1997.

Final Determination:

We determine that certain preserved mushrooms (''mushrooms'') from Chile are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 41786, August 5, 1998), the following events have occurred:

The respondent, Nature's Farm Products (NFP) submitted revisions and corrections to its questionnaire responses during July and August 1998.

During August 1998, we conducted verification of NFP's responses to the antidumping questionnaire. Following verification, we requested NFP to submit revised sales and cost of production data bases, which NFP submitted on September 2, 1998. On September 1, 1998, we issued our verification report (*see* Memorandum for the File dated September 1, 1998 (''Verification Report'')).

The petitioners and NFP submitted case briefs on September 9, 1998. On September 10, 1998, the petitioners withdrew their request for a public hearing. Both parties submitted rebuttal briefs on September 15, 1998.

Scope of Investigation

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including

''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43, 2003.10.47, 2003.10.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by NFP covered by the description in the ''Scope of Investigation'' section, above, and sold to Brazil during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As discussed below, we determined that there were no comparable third country sales in the ordinary course of trade during the POI. Therefore, we compared U.S. sales to constructed value (''CV''), as described below.

Fair Value Comparisons

To determine whether sales of mushrooms from Chile to the United States were made at less than fair value, we compared constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Level of Trade

In the preliminary determination, we compared all U.S. sales to CV. Because we were unable to determine whether there is a difference in level of trade between any U.S. sales and CV, we did not apply a LOT adjustment or CEP offset to NV. No party to this investigation commented on this determination, and we have continued to compare all U.S. sales to CV for this final determination. Therefore, we have not made a LOT adjustment or CEP offset in this final determination.

Constructed Export Price

We calculated CEP, in accordance with subsection 772(b) of the Act, because sales to the first unaffiliated purchaser took place after importation into the United States.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

Based on information discovered at verification, we made additions to CEP for repacking charges billed to customers on certain sales, and deductions to CEP for unreported repacking expenses, bank fees, and additional discounts (*see* Comment 8).

We revised the calculation of indirect selling expenses incurred by NFP/USA in the United States to reclassify a portion of these expenses, incurred in support of NFP's production activities in Chile, to COP and CV general and administrative expenses (*see* Cost Calculation Memorandum to Neal Halper from Michael Martin dated October 13, 1998 (''Cost Calculation Memo'')).

We made corrections to specific transactions examined at verification to revise warehouse-to-customer freight expense to reflect an actual expense of zero on one sale, and to reallocate the expense on a mixed shipment of subject and nonsubject merchandise in the shipment on another sale. We also eliminated the double-counting of U.S. warehousing expenses on one U.S. sale.

Normal Value

After testing (1) home market and third country viability as discussed below, and (2) whether third country sales were at below-cost prices, we calculated NV as noted in the ''Price-to-CV Comparisons'' section of this notice.

1. Home and Third Country Market Viability

As discussed in the preliminary determination, we examined whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, in accordance with section 773(a)(1)(C) of the Act. We verified that NFP's aggregate volume of POI home market sales of the foreign like product was less than five percent of its aggregate volume for POI U.S. sales for the subject merchandise; and therefore, the home market was not viable for NFP. We also verified that Brazil, NFP's largest third country market, was viable in accordance with section 773(a)(1)(B)(ii) of the Act (*see* Comment 12). Therefore, in accordance with section 773(a)(1)(C) of the Act, we determined that Brazil is the appropriate third country market for calculating NV.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether NFP made sales of the foreign like product in the third country during the POI at prices below their cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated the weighted average COP, by model, based on the sum of NFP's cost of materials, fabrication, and general expenses. We relied on the submitted COPs except in the following specific instances where the submitted costs were not appropriately quantified or valued. For a more complete discussion, *see* Cost Calculation Memo. The following is a summary of the adjustments made to NFP's reported costs:

Financial Statement Disclosures

To account for each discrepancy between an account balance and the underlying asset or liability, we applied non-adverse facts available. In identifying the appropriate facts available on the record from which to make our adjustments, we used data reported in NFP's 1996 and 1997 financial statements (*see* Comment 2, Comment 6, and Comment 10).

Monetary Correction

We included a portion of the monetary correction amounts reflected in NFP's 1997 financial statements. Specifically, we (1) included depreciation expense calculated on revalued asset values; (2) included exchange gains and losses on current assets and liabilities; (3) included a portion of the exchange gains and losses on long-term debt; and (4) excluded gains and losses on non-monetary assets and liabilities. Chilean Generally Accepted Accounting Principles (''GAAP'') appears to treat each of these items as part of the overall monetary correction adjustment (*see* Comment 9).

Allocation of Costs

Consistent with the preliminary determination, we continued to allocate mushroom growing costs between fresh and preserved mushrooms based on the weight, in kilograms, of fresh mushrooms initially picked for either fresh or preserved mushrooms. Additionally, we continued to allocate mushroom costs entering the cannery (growing costs and harvest costs for preserved mushrooms, except for mushroom picking labor) between individual products based on the

weight, in kilograms, of output (*see* Comment 5).

General and Administrative Expense (''G&A'')

We calculated a company-wide G&A rate by dividing the total G&A expense (inclusive of expenses paid for by NFP/USA, as noted above) by the total manufacturing cost.

Interest Expense

We calculated a net financial expense amount and divided it by the total manufacturing costs. In calculating the net financial expense, we excluded from the interest expense several financial income and expense items that related to prior periods (*see* Cost Calculation Memo).

3. Test of Third Country Sales Prices

As in our preliminary determination, we compared the weighted-average COP for NFP, adjusted where appropriate, to third country sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard third country market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the third country market prices, less any applicable movement charges, and direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that all of NFP's Brazilian sales were at prices below the COP. Thus, in the absence of any above-cost Brazilian sales, we compared CEP to CV in accordance with section 773(a)(4) of the Act.

Calculation of CV

As in our preliminary determination, we calculated CV based on the sum of NFP's cost of materials, fabrication, selling, general, and administrative (''SG&A'') expenses, interest, U.S. packing costs, and profit, in accordance with section 773(e) of the Act. We made the same adjustments to NFP's reported costs for the CV calculation as discussed above for the COP calculation.

Because there were no above-cost Brazilian sales and hence no actual company-specific SG&A expenses and profit data available for NFP's sales of the foreign like product to Brazil, we calculated these amounts in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action Accompanying the URAA, H.R. Doc. 316, 103d Cong., 2d Sess. (1994) (''SAA''). Section 773(e)(2)(B)(iii) of the Act authorizes the Department to determine these amounts using any other reasonable method with the appropriate ''profit cap.'' In the preliminary determination, we used NFP's actual selling expenses incurred in Chile on Brazilian sales. No party to this investigation has commented on this determination. Therefore, we have continued to use these selling expense amounts in this final determination.

As in our preliminary determination, we were unable to determine a ''profit cap'' under alternative (iii) of section 773(e)(2)(B) of the Act, because we do not have actual amounts incurred by NFP on sales of merchandise in the same general category as the subject merchandise and because NFP is the only producer subject to this investigation. Accordingly, we again applied the1996 profit margin for Ianasafrut S.A., a leading Chilean fruit and vegetable producer as facts available under section 773(e)(2)(B)(iii) of the Act, for NFP's CV profit (*see* Comment 11).

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the amount of indirect selling expenses capped by the amount of the U.S. commissions.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: Inclusion of Fresh Mushrooms in Scope

NFP argues that the scope of investigation should include fresh mushrooms, frozen mushrooms, dried, marinated, acidified and pickled mushrooms, as well as preserved mushrooms. NFP claims that, based on the criteria set forth in *Diversified Products* v. *United States,* 572 F. Supp. 883, 889 (CIT 1993) (''*Diversified Products*''), *i.e.,* 1) the general characteristics of the merchandise; 2) the expectations of the ultimate purchaser; 3) the channel of trade in which the products are sold; and 4) the ultimate use of the merchandise, there is a significant overlap among the types of mushrooms such that they all should be considered a single class or kind. Based on this proposed scope of the investigation, NFP claims that the petitioners should be found to lack standing under section 773a(b)(4) of the Act because they do not represent the U.S. industry.

In support of its scope claim, NFP argues that fresh and preserved *agaricus bisporus* and *agaricus bitorquis* mushrooms are essentially the same but for preservation. NFP contends that fresh and preserved mushrooms are interchangeable and compete directly with each other. NFP adds that most producers of preserved mushrooms are also producers of fresh mushrooms. Moreover, NFP states, fresh and preserved mushrooms share the same channels of distribution since its pizza chain, food processor, and institutional customers purchase both fresh and preserved mushrooms. NFP cites *Initiation of Antidumping Duty Investigation: Fresh Garlic from the People's Republic of China,* 59 FR 9470, February 28, 1994 (''*Garlic*''), and *Initiation of Antidumping Investigation: Freshwater Crawfish Tail Meat from the People's Republic of China,* 61 FR 54154, October 17, 1996, (''*Crawfish*'') as analogous cases where the scope of

the investigation included both preserved and fresh products.

The petitioners respond that it is established Department practice that the petition defines the scope of an investigation. Citing *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434, July 29, 1998 (''*SSWR from Japan*''), the petitioners state that the Department's authority and role in determining whether a product is covered is based on an analysis of the express language and intent of the petition. The petitioners continue that, in this instance, the petition makes clear that the petitioners intended only to include ''preserved'' mushrooms and not fresh mushrooms in this investigation. The petitioners also contend that NFP's argument based on the *Diversified Products* criteria is misplaced, citing the decision in *Minebea Co. Ltd.* v. *United States,* F. Supp. 117 (CIT 1992) that the *Diversified Products* analysis is only necessary if the petition is ambiguous, which it is not in this case.

DOC Position

We disagree with NFP that the scope of this investigation should be expanded to include fresh and other varieties of mushrooms. As we stated in *SSWR from Japan,* the scope of an investigation is determined, in general, by the petition. The petition in this investigation expressly excluded:

> (1) all other species of mushrooms [other than preserved mushrooms of the *Agaricus bisporus* and *Agaricus bitorquis* species] including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. (*See* January 6, 1998, petition at page 13.)

Because the scope language in the petition unambiguously excluded fresh, frozen, dried, marinated, acidified, and pickled mushrooms, a *Diversified Products* analysis is not warranted. *See Minebea Co., Ltd.* v. *United States,* 782 F. Supp. 117, 120 (CIT 1992), *aff'd on other grounds* 984 F.2d 1178 (Fed. Cir. 1993); and *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6980, February 6, 1995 (''*Roses from Colombia*''). Therefore, in this case, we have followed our general practice and defined the scope of the investigation consistent with the intent of the petition. *See Mitsubishi Heavy Indus., Ltd.* v. *United States,* 986 F. Supp. 1428, 1432–33 (CIT 1997) (upholding the Department's authority to define or clarify the scope of the investigation to reflect the intent of the petition). Our scope definitions in the *Garlic* and *Crawfish* investigations are distinguishable from this investigation because the petitions in those cases expressly defined the scope to include both fresh and other varieties of the same agricultural product.

Moreover, because we have properly defined the scope of this investigation consistent with the intent of the petition, we need not revisit the issue of industry support. The Department has already made its determination regarding industry support for the merchandise under investigation, *i.e.,* certain preserved mushrooms, as specified by the petitioners, in its initiation determination (*Initiation of Antidumping Investigations: Certain Preserved Mushrooms From Chile, India, Indonesia, and the People's Republic of China,* 63 FR 5360, February 2, 1998). As clearly expressed in section 732(c)(4)(E) of the Act, after the administering authority determines that it is appropriate to initiate an investigation, the determination regarding industry support shall not be reconsidered. *See also Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, June 9, 1998 (''*Salmon from Chile*'').

Comment 2: Use of Facts Available in Lieu of the Questionnaire Response

The petitioners argue that NFP's questionnaire responses are seriously deficient and unreliable, and, therefore, the Department must base the final determination on the facts otherwise available, in accordance with section 776(a) of the Act, using the corroborated margin in the petition. Specifically, the petitioners cite instances at verification where NFP did not provide requested information, or where the Department discovered relevant information that was not included in NFP's questionnaire responses. The petitioners also point to the results of the independent audit of NFP's financial statements for 1996 and 1997, where the auditors were unable to reconcile NFP's books and records with the financial statements and otherwise unable to account for significant assets and liabilities. The petitioners assert that the verification and audit problems compromise the integrity of the sales and COP data bases reported to the Department, warranting the use of facts available. Further, the petitioners contend, the use of adverse facts available is appropriate because NFP did not act to the best of its ability in providing information to the Department, and the information on the record cannot be used without undue difficulties.

NFP responds that the application of total adverse facts available is not warranted because NFP has complied fully with the Department's requests, its information was verified, its responses are sufficiently complete and can be used without undue difficulty, and that NFP has acted to the best of its ability to provide the requested information. While NFP concedes that it made some errors and inadvertent omissions of information, which may require the use of facts available for certain specific expense items, NFP states that, in the context of the vast amount of data submitted, the errors made were minor and immaterial and do not prevent their use for the final determination. NFP notes that the verification report indicates that the vast majority of information submitted by NFP was accurate and verifiable. With regard to the audit of financial statements, NFP states that, as a private company, NFP is not obligated to have audited financial statements, and that the absence of an audited financial statement does not prevent an adequate verification.

DOC Position

Section 776(a) of the Act authorizes the resort to facts available only where necessary information is not available on the record or an interested party withholds information, fails to comply with the Department's reporting requirements, significantly impedes the proceeding, or submits unverifiable information. We have examined NFP's submitted information in light of these factors and determined that resorting to total facts available is not warranted in this investigation. Although we agree with petitioners that NFP's responses contain certain deficiencies, as discussed below in various comments, we have applied partial facts available, using adverse inferences where appropriate, for certain unreported items in its sales data base. This application of facts available is consistent with the SAA at 869, which authorizes the use of facts available to fill gaps in the record due to deficient responses.

With respect to NFP's submitted cost information, NFP's auditors identified three discrepancies in the 1997 draft audit report that raise questions as to the proper valuation of certain accounts. However, because these discrepancies were specific and quantifiable through information in NFP's 1996 and 1997 financial statements, we were able to

make adjustments to the reported costs for the discrepancies. Given the proprietary nature of this information, these adjustments are detailed in the Cost Calculation Memo. We were also able to reconcile NFP's reported costs to its 1997 financial statements (*see* Verification Report at pages 8 through 10). Because we were able to make these necessary adjustments to NFP's submitted costs and reconcile NFP's reported costs to its financial statements, we do not consider this information to be unreliable for use in the final determination.

Section 782(e) of the Act establishes five conditions that must be met before the Department rejects deficient information submitted by a respondent. NFP submitted requested information within the established deadlines, and substantially cooperated with the Department's information requests. We successfully verified most of the information in NFP's questionnaire responses, as NFP noted in its rebuttal brief. For example, we verified the completeness of NFP's reported U.S. and Brazilian sales transactions, as well as the reliability of the cost of manufacture, sales price data (except for the items discussed below at Comment 8), and SG&A expenses (*see* Verification Report). For those areas where verification of the data was incomplete, or where relevant information was discovered at verification, we were able to rely upon information obtained in the course of verification, or facts available, to make appropriate adjustments to the submitted data. We were able to make appropriate adjustments for the identified deficiencies and we were able to use the submitted information without undue difficulties. For these reasons, we find that NFP's submissions are complete to the extent that the data can serve as a reliable basis for reaching our final determination. Finally, we are satisfied that, except for certain items, NFP has demonstrated that it acted to the best of its ability in this investigation and has not otherwise significantly impeded this investigation. Therefore, rejection of its responses in their entirety is inappropriate based on the facts of this proceeding.

Comment 3: Start-Up Cost Adjustment Claim

NFP claims that an adjustment should be made to its CV and COP for the final determination to account for its use of new production facilities and the technical problems associated with the initial phase of commercial production, in accordance with section 773(f)(1)(C) of the Act. NFP argues that it meets the first condition for the startup adjustment, *i.e.*, use of new production facilities or a new product that requires substantial additional investment, because its production facility, built in 1994, is new, and that the product is new to Chile. NFP also claims that it meets the second criterion for the startup adjustment, *i.e.*, production levels are limited by technical problems associated with the initial phase of commercial production, because it encountered technical problems related to three key raw materials which has prevented it from reaching commercial production levels as of the end of the POI. As part of this claim, NFP asserts that the Department should differentiate its startup adjustment analysis between industrial and agricultural products. NFP contends that the analysis utilized in past cases dealt exclusively with industrial products, while a different set of standards must be applied to agricultural products, where the time period needed to resolve technical problems is significantly longer due to the length of production (*i.e.*, growing) cycles.

The petitioners contend that the Department properly rejected NFP's startup adjustment claim in the preliminary determination, based on NFP's inability to meet the statutory requirements for this adjustment. The petitioners dispute NFP's argument that the adjustment should account for the technical problems associated with its operations. The petitioners cite the SAA in noting that a company must demonstrate that the costs incurred are associated with the initial phase of commercial production and not with chronic production problems. According to the petitioners, NFP's technical problems and associated costs are not a result of the initial costs of purchasing and operating new capital equipment and thus there is no basis to allow a startup adjustment.

DOC Position

We disagree with NFP that a startup adjustment is warranted in this case. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for start-up operations ''only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of production'' during the POI. Based on our analysis of the information NFP submitted to support its claim, we determine that NFP's production operations do not satisfy these criteria.

In making this determination, we have not constructed a different analytical framework for agricultural products, as NFP advocates, because the startup analysis necessarily entails examining industry-specific factors in determining whether the two criteria are satisfied. The SAA at 837 states that the analysis will vary from industry to industry and product to product, requiring a fact-intensive inquiry. Furthermore, the Preamble to the Proposed Regulations states that the start-up ''conditions are somewhat generalized because they must allow for any number of startup operation scenarios'' (61 FR 7339, February 27, 1996). Moreover, the production process for preserved mushrooms is more a manufacturing process than an agricultural one. Most of the mushroom growing phase entails the production of compost, while the canning phase is purely a manufacturing operation. Therefore, given the inherent fact-intensive nature of the startup analysis and the production process for preserved mushrooms, a different analytical framework is unnecessary in this case.

First, we do not consider NFP's facilities to be ''new'' during the POI within the meaning of section 773(f)(1)(C)(ii)(I) of the Act. Although the statute does not define ''new production facilities,'' the SAA indicates that the startup period must occur during the period of investigation or review. The SAA at 836 states that ''[m]ere improvements to existing products or ongoing improvements to *existing* facilities will not qualify for a startup adjustment'' (emphasis added). NFP's production facilities were three years old at the start of the POI. That is, the POI began in NFP's fourteenth growing ''season.'' On this basis, we disagree with NFP's assertions that its production facilities were new during the POI.

The SAA and the Department's regulations define new production facilities as including ''the substantially complete retooling of an existing plant'' during the period of investigation or review (SAA at 836; 19 CFR 351.407(d)(1)(i)). This substantial retooling must involve the replacement of nearly all production equipment and a complete revamping of existing machinery (SAA at 836). NFP has not identified any additional costs associated with ''substantially retooling'' its production facilities.

Moreover, the record does not support NFP's claim that it was producing a new product during the POI. NFP produced and exported preserved mushrooms to the United States for several years prior to the POI. Although NFP switched its methods for producing preserved

mushrooms in 1991, this second process commenced in 1994 and was well established by the start of the POI. Additionally, this second process did not result in a different type of preserved mushroom. As NFP acknowledged, this change merely improved the quality of mushrooms sold under its name. Such improvements, implemented two years prior to the POI, do not qualify as ''new products'' for purposes of a startup adjustment. *See* SAA at 836 and *Final Results of Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 63 FR 13170, 13200, March 18, 1998. Nor do we consider NFP's expansion into the Chilean or Brazilian markets to constitute the production of a new product, but rather a development of new markets. Given the limited purpose of a startup adjustment, there is no basis in the statute or regulations to broaden its application to expansion of a mature product into new markets.

This finding that NFP did not use new production facilities or produce a new product during the POI is sufficient to deny NFP's claim. *See Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails from Korea*, 62 FR 51420, 51426, October 1, 1997. However, we note that NFP also has failed to establish that its production levels during the POI were limited by technical factors associated with the initial phase of production in accordance with section 773(f)(1)(C)(ii)(II) of the Act. Specifically, NFP has provided insufficient evidence to support a claim that production levels were limited for any reason, whether related to technical factors or not. The only information provided by NFP to support its claim that POI production levels were limited is a comparison of its production yields to yields of U.S. producers, which NFP identifies as efficient operations producing high quality mushrooms.

The SAA, however, does not refer to quality of merchandise produced or the efficiency of production operations as a criterion for measuring production levels. The SAA at 836 directs the Department to examine the number of units processed as a primary indicator of production levels in determining the end of the start-up period. *See also Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8930, February 23, 1998. In other words, the Department must look at processed units, not output yields. NFP provided no information, for example, on historical production or capacity usage related to its operations from 1994, the year its production facility was put into operation, through 1997, the end of the POI, to serve as a benchmark for measuring commercial production levels during the POI. The only evidence NFP submitted was a comparison of its production to that of U.S. producers, asserting that such levels are indicative of industry standards. However, we do not consider U.S. producers' production levels as an appropriate standard for the Chilean industry. We note that U.S. producers are subject to different climate conditions and availability of raw materials, thus making comparisons unreliable. Moreover, under a comparative yield approach, a respondent may never leave start-up because it may never reach comparable yields of U.S. producers.

As further evidence that NFP was not in a startup period experiencing technical factors that limited production, we note that, in 1996, the year before the POI, NFP posted a provision for non-performing fixed assets because the expected revenue stream did not justify the capitalized values. In other words, in 1996, NFP determined that its production problems were not temporary but chronic. The SAA at 838 states that a company ''must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as. * * * chronic production problems.''

Section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the test must be met before a startup adjustment is warranted. In this case, we find that NFP has failed both prongs of the test and, accordingly, we deny NFP's claim for a start-up adjustment.

Comment 4: Treatment of Raw Materials for Mushroom Growing as Fixed Costs

NFP contends that the raw materials used in the growing process should be classified as fixed overhead expenses because these costs are fixed per crop, regardless of the crop's yield of the particular product. NFP also states that these raw material expenses are not a part of the final product since the growing medium (*i.e.*, compost) is sold as scrap at the end of the growing cycle.

The petitioners state that these costs are properly classified as direct raw materials because they meet the textbook definition of materials that are physically observable as being identified with the finished good and that may be traced to the finished good in an economically feasible manner. The petitioners compare the materials identified by NFP—compost, straw, manure, spawn, etc.—to salmon feed in salmon production, which, in *Salmon from Chile*, the Department properly classified as a direct material cost item. The petitioners add that it is incorrect to classify these materials as fixed overhead costs such as rent, insurance, and depreciation, which do not vary with production volume.

DOC Position

We agree with petitioners that raw materials are more appropriately accounted for as variable costs because the consumption of these materials (and therefore the expense) varies as production volumes rise and fall. Although crop yields may vary slightly between growing cycles, in general, fewer mushrooms grow in a smaller quantity of growing medium than in a larger quantity. As such, the production of the finished product, *e.g.*, mushrooms, varies with the amount of raw materials used in the production process. However, in this case, treating raw material costs as fixed or variable has no impact on our dumping calculations because we have allocated all manufacturing costs (with the exception of mushroom picking labor) in the same manner, and no difference-in-merchandise adjustment is necessary.

Comment 5: Allocation of Fixed Costs

NFP argues that fixed overhead costs should be allocated on a basis other than the input weight of the merchandise into the production (*i.e.* canning) process. NFP proposes an allocation based on the estimated number of mushrooms consumed for each type of mushroom product. Alternatively, NFP suggests allocations based on gross sales value or total contribution margin for each type of product. NFP contends that these methodologies are more appropriate than the weight input methodology because the latter allocates a higher proportion of costs to pieces and stems, cut from the larger mushrooms, than the smaller whole preserved mushrooms based on size.

The petitioners respond that allocating costs based on the estimated number of mushrooms is unreasonable given that preserved mushrooms are sold by weight, not by the number of mushrooms per can. Noting that, in the production process, mushrooms are weighed, rather than counted, the petitioners contend that a weight-based allocation reflects the production and sales process of the product. Furthermore, the petitioners claim that the number-based allocation

methodology is based on unverified, untimely submitted information, and leads to a distortive shift of costs.

DOC Position:

We agree with the petitioners that a weight-based allocation methodology is appropriate in this case. In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under investigation. However, in those instances where it is determined that a company's normal accounting practices result in a misallocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21952, May 26, 1992, (adjusting a respondent's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); and *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29559, June 5, 1995.

NFP did not have an established cost accounting system and, therefore, for purposes of this investigation, NFP developed a reporting methodology. In NFP's original section D questionnaire response, it chose to allocate costs (*e.g.*, manufacturing costs, G&A expenses, and financial expenses) between products based on their relative sales values. At the request of the Department, NFP submitted a revised response with costs based on a weight-based allocation methodology. For purposes of the final determination, we are relying on NFP's costs derived from a weight-based allocation methodology, with the specific adjustments noted elsewhere in this notice.

Section 351.407(c) of the Department's regulations states that ''[i]n determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.'' We rejected NFP's sales value based methodology because it would, if used, require historical costs and sales data for fresh and preserved mushrooms over a period encompassing several years prior to the antidumping proceeding. *See Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7399, February 13, 1998. NFP did not provide the data necessary to utilize a sales value-based methodology. Moreover, we have determined that an allocation methodology based on weight is reasonable for the following reasons: (1) NFP tracks the mushrooms through the production process by weight, not by number of mushrooms or by relative sales value; (2) mushrooms are sold by weight, not by the number of mushrooms per can; and, (3) regardless of whether the mushrooms are going to preserved or fresh product, they are substantially the same input products. On this basis, we continue to rely upon a weight-based methodology because this calculation reasonably reflects the costs of producing the subject merchandise.

We disagree with NFP that the Department recognized in the verification report that an allocation basis other than weight should be used for allocating costs. In our report, we stated that the cost-generating elements of growing mushrooms for both preserved and fresh mushrooms are identical, that a considerable quantity of mushrooms initially selected for the fresh sales market were eventually canned, and that canned whole mushrooms may be re-processed into pieces and stems. Additionally, the Department has accounted for specific cost differences supported by factual documentation, such as differences in picking costs supported by labor union agreements specifying the additional compensation for picking specific sizes of mushrooms.

Finally, we also disagree with NFP that costs could be allocated based on the number of mushrooms used in producing specific products. NFP's suggestion is not feasible, since neither the actual number of mushrooms consumed for each specific product, nor the applicable yield rates are on the record. It would be inappropriate to extrapolate the specific numbers required for such a calculation from a sample of less than ten mushrooms, as suggested by NFP.

Comment 6: Revisions to COP and CV Data based on Auditor's Proposals

The petitioners contend that the Department should reject revisions to the COP and CV data base that NFP presented at the commencement of verification, based on adjustments proposed by NFP's auditors. The petitioners argue that these adjustments are 1) based on an incomplete audit that could not reconcile key parts of NFP's accounting records, 2) not included in NFP's tax return, and 3) associated with pre-POI expenses and thus are not relevant.

NFP states that there is no legal basis for rejecting these revisions because they were requested by the Department. According to NFP, excluding these adjustments would result in less accurate information. NFP adds that it is not relevant whether the tax return and financial statements are in complete agreement as there are differences between GAAP for financial reporting purposes and tax law for tax reporting purposes.

DOC Position

We agree with NFP. There is no basis to reject the audit adjustments proposed by NFP's auditors. All of the auditor's proposed adjustments appear to be in conformance with Chilean GAAP. While some of the adjustments relate to transactions that occurred in prior periods, auditors are required to post these adjustments to NFP's records. Moreover, we are satisfied that our adjustments to account for the items discussed in Comment 2 above isolate those problems and reasonably quantify any potential understatement to the reported costs. Additionally, the fact that the financial statements do not agree to NFP's tax return is not relevant, since the tax return was prepared soon after the end of the tax year, while the audit report did not become available until August 1998. Furthermore, the petitioners' arguments are unpersuasive because there are differences between the reporting standards applicable to a tax return and those applicable to an audited financial statement. Therefore, the exclusion of these items in NFP's tax return, filed prior to completion of the audit, does not render the adjustments unreliable.

Comment 7: Treatment of Unreconciled Value Item in NFP Financial Statement

The petitioners argue that the Department must adjust NFP's reported cost or sales data for an unreconciled value recorded in NFP's POI financial

statements.[1] To account for this unreconciled item cited by NFP's independent auditor, the petitioners state that the Department should apply facts available and either make an upward adjustment to the cost of manufacture, or assume that the unreconciled value reflects unreported sales to the United States and apply the highest calculated margin to the value in question and include this amount in the overall margin calculation.

NFP agrees that the value item was not completely reconciled during the Department's verification, but refers to the stated reason in the verification report, which shows that NFP's approach was fully consistent with Chilean and U.S. GAAP. NFP agrees with the petitioners that costs should be adjusted, but that the appropriate adjustment should result in a decrease in NFP's costs.

DOC Position

We agree with the petitioners in part. In the audit report, NFP's auditors identify discrepancies between certain account balances and the underlying assets and liabilities (see Comment 2 above). While we agree with the petitioners that we must adjust for these items, we disagree with the petitioners' proposal to include these differences as unreported sales, because the footnotes to the 1996 financial statements indicate that the unreconciled differences are not due to sales related activity. Therefore, we have adjusted NFP's costs for the unreconciled item by applying the difference identified in the footnotes to the 1996 financial statements. Since we are able to adjust NFP's reported costs for the specific items noted by its auditors using information contained in NFP's submitted financial statements, we have done so for the final determination. *See Cost Calculation Memo.*

Comment 8: Treatment of Unreported Adjustments to U.S. Sales Prices

Citing a number of omissions and errors to U.S. price adjustments discovered at verification, the petitioners argue that the Department should make adverse inferences in applying facts available to account for these items. Specifically, the petitioners contend that the following adjustments should be made:

(a) To account for unreported discounts, the Department should apply the amount of the discount to every U.S. sale.

(b) To account for unreported letter of credit and bank fees, the Department should apply the highest fee found for any sale and apply that amount to every U.S. sale.

(c) To account for unreported freight and palletizing charges on certain U.S. sales, the Department should apply the highest charges for these items found at verification to these sales.

(d) To account for unreported repacking expenses (i.e., palletizing and shrink wrap expenses), the Department should apply the highest amount for these expenses found at verification to all U.S. sales.

NFP asserts that the errors in reporting these adjustments were inadvertent and that it provided the Department with the information necessary to make appropriate adjustments. Specifically, NFP responds:

(a) To account for unreported discounts, the Department's adjustment should not exceed the amount of total discounts granted by NFP/USA.

(b) No adjustment should be made for letter of credit fees because the letters of credit were between NFP and NFP/USA, i.e., two affiliates. Should the Department consider bank fees as sales expenses, the expenses should be allocated based on sales value.

(c) No adjustment is necessary for freight and palletization charges to customers as NFP supplied this information in a revised sales listing at the Department's request.

(d) To account for unreported repacking expenses, the expenses should be allocated fairly across sales.

DOC Position

Section 776(a) of the Act requires the Department to use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information. As petitioners point out and NFP acknowledges, NFP failed to report these price adjustments in its questionnaire responses. Moreover, NFP did not identify these adjustments at the start of verification, but rather they were discovered by the Department during verification, as described in the verification report. Under these circumstances, we must account for these adjustments using the facts available. Because NFP failed to provide these requested items, we find that it failed to cooperate to the best of its ability in providing this information, and, therefore, adverse inferences are warranted, where possible. Therefore, we applied the highest discount percentage observed to all U.S. sales, as adverse facts available for the unreported discounts. We have also applied an adverse inference to the unreported freight charges by disregarding this addition to CEP.

NFP paid bank fees to unaffiliated banks for NFP's intracompany sales of the subject merchandise to NFP/USA. We did not have sale-specific information on these bank fees because the bank fees were assessed on the container shipments from Chile, not the sale transactions to the unaffiliated parties. Therefore, we have applied the percentage derived from the total expense attributable to these fees, divided by NFP/USA's total POI sales, as obtained at verification, as the only information available for this adjustment. Similarly, we did not have sale-specific information for repacking expenses, so we have applied the percentage derived from the total expense attributable to these expenses, divided by NFP/USA's total POI sales, as obtained at verification, as the only information available for this adjustment. Thus, for these two adjustments, no adverse inference is possible, based on the record evidence.

However, we do not find the use of adverse inferences appropriate with regard to the palletization charges billed to NFP's customers. Palletization charges were included in the gross prices NFP reported to the Department prior to verification. As discussed in the Verification Report at pages 17 and 18, and Exhibit 52, NFP provided a full breakout of these additions to price, and we verified the data. This information was included in a supplemental response specifically requested by the Department subsequent to verification and submitted on September 2, 1998. Therefore, we used this information in our final determination.

Finally, although neither party raised this issue in its briefs, we also applied adverse facts available for unreported bank fees on Brazilian sales. As discussed in the verification report, NFP incurred these expenses on all but one Brazilian sale, but failed to report these items in its questionnaire responses. For the applicable sales, we made an adverse inference by applying the lowest percentage rate of expense observed for a sale at verification to the other Brazilian sales.

Comment 9: Monetary Correction

NFP contends that the Department should include the full amount of its monetary adjustments in its COP and CV calculations since these inflation adjustments are required by Chilean GAAP, and the Department accepted monetary correction adjustments in *Final Results and Partial Recission of*

[1] NFP has requested business proprietary treatment for the identification of this specific item.

Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Colombia (62 FR 53287, October 14, 1997) (''*Flowers from Colombia*''). Moreover, NFP asserts that the petitioners have not identified any legal basis for denying monetary adjustments.

The petitioners object to any monetary correction offset to NFP's financial expense because the problems noted by NFP's independent auditor bring into doubt the accuracy and reasonableness of claimed corrections. Further, the petitioners argue that it is unreasonable to measurably adjust NFP's financial results, which are based on non-monetary factors, because of changes in inflation or exchange rates. The petitioners contend that, at most, the Department should allow a monetary correction only for the current portion of NFP's bank loans, as in the preliminary determination.

DOC Position

The Department's practice with respect to inflation (including the monetary correction of financial data) is to adjust for those items that have a significant impact on the antidumping analysis and to exclude those aspects of the adjustment that would distort the analysis. *See, e.g., Flowers From Columbia,* 62 FR at 53299–300; *Roses from Colombia,* 60 FR at 6993; and, *Salmon From Chile,* 63 FR at 31432. Consistent with this practice, we have: (1) included the depreciation expense calculated on revalued asset values; (2) included the exchange gains and losses on current assets and liabilities; (3) included a portion of the exchange gains and losses on long-term debt; and (4) excluded the gains and losses on non-monetary assets and liabilities.

We did not include the full amount of NFP's monetary correction adjustment because, as explained below, certain monetary adjustments do not constitute, in any meaningful sense, true income or expense to the company. In cases such as this one, where Chile experienced moderate levels of inflation during the POI but not at a level requiring the Department's high-inflation methodology, the Department's practice does not attempt to address all of the inflationary effects resulting within the twelve months of the investigation or review period, because any attempt to quantify the effects of inflation on each measure of cost and price would impose an unreasonable level of complexity to the Department's antidumping analysis. Consequently, in non-high-inflation cases, we do not calculate cost using a constant currency or replacement cost methodology. Instead, the Department adjusts for certain significant expenses, such as depreciation and amortization, because these expenses are derived from asset values recorded at historical cost and whose useful lives extend beyond the period of investigation or review. Since the compounded effects of inflation distort historical costs and the associated depreciation expense, use of unadjusted historical depreciation expenses would understate costs. *See, e.g., Flowers from Columbia,* 62 FR at 53299.

Furthermore, there is neither a statutory requirement that the Department adjust for all effects of inflation in its analysis, nor a requirement to use all aspects of a country's GAAP. Rather, the statute merely requires that the Department include in its calculation of CV the cost of manufacturing ''during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.'' *See* section 773(e)(1) of the Act. Given the inability to measure the effects of inflation on each cost and price item, the Department's practice reasonably achieves the statutory mandate to calculate cost in a manner that reasonably reflects the costs associated with the production and sale of the merchandise. Indeed, the CIT has held that full accounting for inflation is neither necessary nor possible. *See Budd Co. v. United States,* 773 F. Supp. 1549, 1554 (CIT 1991) (''The glowing deficiency in Plaintiff's argument is the underlying premise that a full accounting for inflation is necessary or even possible.''). On this basis, we disagree with NFP's assertion that inclusion of its entire monetary correction is required in this case.

Additionally, we disagree with NFP's claim that the Department should include the annual revaluation of non-monetary assets and liabilities in our calculation. The annual revaluation of non-monetary assets (*e.g.,* fixed assets) does not represent income during the fiscal year. Likewise, the revaluation of non-monetary liabilities (*e.g.,* equity and capital) does not represent a loss during the fiscal year. Rather, they represent the restatement of non-monetary assets and liabilities into current price levels. In other words, the restatement of the book value of a truck into a greater number of (lower value) pesos does not result in an economic gain, since one still only owns a truck. Therefore, we do not include these revaluations in our antidumping analysis. Instead, we include only the amortization of the revalued assets and liabilities, since they represent the expenses stated at current price levels and directly relate to the period under investigation.

Likewise, we disagree with petitioners' assertion that the Department should exclude all of the inflation adjustments (i.e., monetary correction) for purposes of calculating COP or CV. As explained above, certain elements of monetary correction must be taken into account to avoid certain distortions to the antidumping analysis. The exclusion of all inflation adjustments would result in costs that are not reflective of current price levels, producing an improper matching of revenues and expenses. *See Roses from Colombia,* 62 FR at 6993. Finally, we also disagree with petitioner's assertion that the monetary corrections should be ignored because of the problems noted by NFP's independent auditors. As noted elsewhere in this notice, the declarations made by the auditors were for specific problems which the Department addressed through appropriate adjustments.

Comment 10: Depreciation Adjustment

The petitioners challenge NFP's claim of a depreciation adjustment to the COP and CV calculations because the adjustment relates to an unreconciled item in NFP's financial statements. In addition, citing *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea* (63 FR 8934, February 23, 1998) (*SRAMS from Korea*), the petitioners contend that the Department's practice is to grant special depreciation adjustments only when used by a respondent in its regular course of business over time, while NFP's claim is of an extraordinary nature.

NFP responds that the adjustment is in full accordance with the appropriate Statement of Financial Accounting Standards (''SFAS''), which is also part of Chilean GAAP. According to NFP, its application of GAAP to its financial statements is systematic, rational, not extraordinary, and, additionally, there is no legal basis to reject this adjustment.

DOC Position

We disagree with the petitioners. As discussed above in the response to Comment 5, the Department relies on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. In 1996, NFP wrote down the value of certain non-performing fixed assets to amounts in line with the asset's ability to generate revenue. At that time, NFP recognized the loss associated with the write-down on the income statement. The write-down of the value of non-

performing fixed assets was in accordance with both U.S. and Chilean GAAP, and was reflected in NFP's historical books and records. The write-down of asset values in the period prior to an investigation does not, in this case, distort the costs reported for the POI, because, as of the filing of the petition, the asset values were properly valued and were in accordance with both U.S. and Chilean GAAP. Although the audit report for financial statements which first disclosed the write-down was dated April 30, 1998, raising the concern that the adjustment was made only for purposes of this investigation, evidence on the record demonstrates that the write-down was recorded to NFP's books and records prior to the filing of the petition.

Additionally, we disagree with the petitioners that the write-down affects our ability to adjust NFP's costs. The calculation of the write-down was not dependent on the unreconciled difference in fixed assets, cited in the auditors report, but rather was based on the net present value of the assets. Moreover, the Department has adjusted for this unreconciled difference.

Finally, the petitioners' cite to *SRAMS from Korea* is inapposite, because that case related to the selection or change in depreciation methodology, not to the proper valuation of assets and the accounting principle of conservatism. That is, NFP wrote down the value of its fixed assets when it became reasonably certain that the expected revenue stream did not justify the capitalized values. Therefore, for the reasons discussed above, we have accepted NFP's reported depreciation expense calculation. However, we have reallocated the expense based on production quantity rather than sales value, consistent with the methodology discussed in our response to Comment 5.

Comment 11: Source for Calculation of CV Profit

The petitioners claim that, in calculating CV under section 773(e)(2)(B)(iii) of the Act, the Department should rely on contemporaneous, POI data (*i.e.*, 1997 data), rather than the 1996 data from Ianasafrut, a Chilean fruit and vegetable producer, used in the preliminary determination.

Although NFP agrees with the petitioners that, ideally, the surrogate for CV profit should be based on POI data, NFP contends that, in the absence of any better information on the record, the Department should continue to use the 1996 Ianasafrut data as a surrogate for NFP's CV profit.

DOC Position

Section 773(e)(2)(B)(iii) of the Act authorizes the Department to use any reasonable method to determine profit with an appropriate ''cap'' for purposes of CV. Because we were unable to determine an appropriate profit ''cap,'' we calculated CV with an amount for profit on the basis of facts available, as provided in the SAA at 841. Based on the record evidence, we used the 1996 profit margin for Ianasafrut S.A., a leading Chilean fruit and vegetable producer as a reasonable surrogate for NFP's profit. As we explained in the preliminary determination, we consider this data, which was submitted in the petition, as a reasonable surrogate for CV profit because it is based upon a Chilean producer's sales experience on the same general category of merchandise subject to investigation.

Section 773(e)(2)(B)(iii) does not prohibit the use of non-POI data in determining CV profit, but rather provides the Department with broad authority to determine a reasonable surrogate. Although not contemporaneous with the POI, we find no other basis to reject Ianasafrut's 1996 profit margin as a reasonable surrogate for CV profit. Therefore, in the absence of any other reasonable data on the record of this proceeding, we continued to use this data in this final determination.

Comment 12: Brazilian Sales as Basis for Normal Value

The petitioners claim that NFP failed to establish that Brazil is the appropriate foreign market for U.S. sales. According to the petitioners, Chilean export statistics indicate that Hong Kong may be a larger foreign market for NFP than Brazil. In addition, the petitioners suggest that NFP's refusal to provide the financial statement for NFP's Hong Kong affiliate may be an attempt to conceal sales through the Hong Kong affiliate.

NFP contends that there is no factual basis to the petitioners' suggestion that Hong Kong is a viable third country market. NFP states that the determination on the viability of the Brazilian market should rest on NFP's submitted and verified data. In addition, NFP disputes the petitioners' allegations that it intentionally withheld data from the Department and states that it was prepared to provide any sales data on Hong Kong sales had the Department requested such information.

DOC Position

We agree with NFP. We found no discrepancies in NFP's sales reporting (*see* Verification Report). Further, we found no evidence at verification that any other foreign market was larger than Brazil during the POI. Our ability to make this determination was not affected by our inability to examine the Hong Kong affiliate's financial statement because we were able to examine all of NFP's sales records in Chile. Therefore, we are satisfied that Brazil is the appropriate third country market in this proceeding.

Comment 13: Export Incentive

NFP argues that the export incentive credits it received for its export sales should be treated as either revenue or as a reduction of costs, rather than disregarded, as in the preliminary determination. In support of its claim, NFP states that the export incentive credit is considered additional revenue under Chilean law, and that no countervailing duty case has been filed against it.

The petitioners agree with the Department's preliminary determination that there is no statutory basis for a USP or NV adjustment for the export incentive. Further, the petitioners contend that NFP failed to demonstrate that it actually received any of these credits during the POI in a manner akin to a duty drawback claim, under which NFP initially reported this item.

DOC Position

We agree with the petitioners. Section 772(c)(1) of the Act limits additions to the EP or CEP starting price to packing, rebated import duties (*i.e.*, ''duty drawback''), or the amount of any countervailing duty imposed on the product to offset an export subsidy. The Chilean export incentive does not meet any of these conditions. The program is not contingent upon importation of inputs used to produce the exported subject merchandise—the duty drawback system contemplated under section 772(c)(1)(B) of the Act. *See e.g., Certain Welded Carbon Steel Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review*, (63 FR 32825, 32828–29, June 16, 1998). Instead, the incentives are provided to any Chilean exporter (*see* NFP May 19, 1998, supplemental response at Appendix S–12). Similarly, section 773(a)(6) of the Act does not provide for this type of adjustment to NV. Therefore, there is no statutory basis for adjusting NFP's price data for this export incentive. We also disagree with NFP's contention that we should account for this incentive by reducing its costs because section 773(b)(3) of the Act provides no basis for such a reduction when the respondent

participates in an export incentive program such as that presented here. Accordingly, we have continued to disregard this claimed adjustment in our calculation.

Comment 14: Imputed Interest Rate for Brazilian Sales

NFP contends that the Department should use NFP/USA's short-term interest rate for calculating imputed credit on sales to Brazil, as applied in NFP's questionnaire response, rather than the short-term U.S. dollar interest rates the Department observed at verification. NFP states that the NFP/USA rate is more appropriate because NFP/USA is the primary funding source of NFP's operations.

DOC Position

As stated in Import Administration Policy Bulletin 98–2, where the respondent (the seller) has short-term borrowings in the same currency as that of the transaction the Department's practice is to use the respondent's own weighted-average short-term borrowing rate realized in that currency to quantify the credit expenses incurred. For example, for U.S. dollar transactions, we impute credit expenses using the respondent's interest rate realized on U.S. dollar borrowings. *See, e.g., Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555, June 28, 1995. We observed at verification that NFP, in fact, has short-term borrowings in U.S. dollars, the currency of its sales to Brazil. Thus, NFP's actual experience is the proper basis for determining the imputed credit interest rate. The only information on the record that we have for the imputed rate is the examples seen at verification. In our verification report, we noted the lowest and highest interest rates observed. Therefore, as facts available, we recalculated NFP's imputed interest rate using the midpoint of the U.S. dollar short-term borrowings observed at verification. We made no adjustments to NFP's reported inventory carrying expense claim because we had insufficient information to recalculate this expense using NFP's sale-specific methodology.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Chile, that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nature's Farm Products (Chile) S.A.	148.51
All Others	148.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: October 13, 1998.

Robert A. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28393 Filed 10–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Rutgers, The State University of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 98–027. *Applicant:* Rutgers, The State University, University Procurement & Contracting, 56 Bevier Road, Piscataway, NJ 08854–8010. *Instrument:* (10ea.) Specimen Micromanipulator, Model A–3–S. *Manufacturer:* Narishige Scientific, Japan. Date of Denial Without Prejudice to *Resubmission:* July 29, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–28396 Filed 10–21–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel, at (202) 482–4847, or Kristen Johnson, at (202) 482–4406, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

INITIATION OF INVESTIGATION:

The 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 the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On September 30, 1998, the Department of Commerce (the