D. Obtain from a person subject to this order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the related persons named above, after notice and opportunity for comment as provided in § 766.23 of the regulations, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until October 23, 2009.

VI. In accordance with Part 756 of the Regulations, Elashyi, and any of the related persons may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Elashyi and each related person. This Order shall be published in the **Federal Register**.

Dated: June 19, 2003.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 03–16250 Filed 6–26–03; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination To Not Revoke Order in Part: Canned Pineapple Fruit From Thailand

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

SUMMARY: In response to requests by producers/exporters of subject merchandise and by the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers seven producers/exporters of the subject merchandise. The review of one additional company is being rescinded because it did not ship during the period of review (POR), July 1, 2001, through June 30, 2002.

We preliminarily determine that for certain producers/exporters sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP), as applicable, and the NV.

EFFECTIVE DATE: June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle, at (202) 482-2336 or (202) 482–0650, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

On July 18, 1995, the Department issued an antidumping duty order on CPF from Thailand. *See* Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand, 60 FR 36775 (July 18, 1995). On July 1, 2002, we published in the **Federal Register** the notice of opportunity to request the seventh administrative review of this order. *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 67 FR 44172 (July 1, 2002).

In accordance with section 351.213(b)(2) of the Department's regulations, the following producers/exporters made timely requests that the Department conduct an administrative review for the period from July 1, 2001, through June 30, 2002: Kuiburi Fruit Canning Company Limited (Kuiburi); Malee Sampran Public Co., Ltd. (Malee); The Thai Pineapple Public Co., Ltd. (TIPCO); and Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd (collectively, Dole).

In addition, on July 31, 2002, the petitioners, Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union, in accordance with § 351.213(b)(1) of the Department's regulations, submitted a timely request that the Department conduct a review of Malee, Prachuab Fruit Canning Company (Praft), Siam Fruit Canning (1988) Co., Ltd. (SIFCO), the Thai Pineapple Canning Industry Corp., Ltd. (TPC), Vita Food Factory (1989) Co. Ltd. (Vita), Siam Food Products Public Co., Ltd. (SFP), TIPCO, Kuiburi and Dole.

On August 27, 2002, we published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 2001, through June 30, 2002. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 67 FR 55000 (August 27, 2002); and Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews, 67 FR 60210 (September 25, 2002).[1] On March 27, 2003 and again on June 6, 2003 the Department partially extended the preliminary results. See Canned Pineapple Fruit from Thailand: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review (68 FR 14941) and Canned Pineapple Fruit from Thailand: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review (68 FR 33910), respectively.

[1] On July 31, 2002, SFP requested a deferral of the seventh administrative review for CPF from Thailand pending the final results on its request for revocation in the sixth administrative review. On September 25, 2002 the Department rescinded its review of SFP and, in accordance with section 351.213©) of the Department's regulations, deferred for one year the initiation of the July 1, 2001 through June 30, 2002 administrative review of the antidumping duty order on CPF from Thailand with respect to SFP. On December 13, 2002 the Department revoked the order with respect to SFP. *See* Notice of Final Results of Antidumping Duty Administrative Review, Recession of Administrative Review in Part, and Final Determination to Revoke Order in part: Canned Pineapple Fruit from Thailand (67 FR 76718).

On October 4, 2002, in response to the Department's questionnaire,[2] Praft stated that it made no shipments to the United States of the subject merchandise during the POR. The Department independently confirmed with the BCBP that there were no shipments from Praft during the POR. *See Memorandum to File from Marin Weaver,* October 24, 2002. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are treating Praft as a non-shipper for purposes of this review and are preliminarily rescinding this review with respect to Praft.

Scope of the Review

The product covered by this review is CPF, 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, the written description of the scope is dispositive.

Verification

As provided in sections 782(i)(2) and (3) of the Act, we verified information provided by Malee, TIPCO and Dole. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records.

Facts Available (FA)

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2), 776(b) and 782(d) of the Act, the use of adverse facts available (AFA) is appropriate for the preliminary results for TPC.

1. Background

On September 19, 2002, the Department issued a market economy questionnaire to TPC. In section A(1) TPC was instructed to submit a chart that reports the volume and value of sales of the merchandise under review to the United States and in the home market or, if the home market is not viable, as in this case, to each of its three largest third-country markets. When reporting volume, the questionnaire instructed respondents to exclude sales to affiliated resellers and ''[r]eport instead the resales by the affiliates to unaffiliated customers.'' [3] In addition, the general instructions of the questionnaire instructed TPC to ''identify any methodological changes you have made from your response in any previous administrative review'' and to ''identify any reporting methodologies that you know to not be in accordance with previous Departmental decisions regarding your company.'' [4]

On October 23, 2003, the Department received TPC's section A response and the accompanying volume and value of sales chart labeled as Exhibit A–1. TPC failed to report resales to unaffiliated customers in the United States and in its two largest third-country markets, the Netherlands and Japan, in both the response and in Exhibit A–1 as instructed by the Department's questionnaire. TPC stated in its response that its answers and the accompanying exhibits were predicated on TPC not being affiliated to Mitsubishi International Corporation (MIC) and Princes Foods B.V. (Princes), which have sales in the United States and the Netherlands respectively.[5] In addition, for Mitsubishi Corporation's (MC's) sales of CPF in Japan, TPC stated that because of MC's layered distribution system, lack of a centralized computer system to collate sales, different levels of trade at which sales are made to the final customer, and Japan's import protection scheme for Okinawan pineapple, it was ''impossible to limit [its] reporting of the value and volume of sales in Japan to resales to unaffiliated customers.''[6]

On November 14, 2002, the Department sent a letter to TPC stating that:

> Based upon the information provided in your response and the Department's preliminary finding in the sixth review, you are required to resubmit your section A response so that it reflects downstream sales made by Mitsubishi International Corporation and Princes to unaffiliated customers, and also U.S. sales made by Chicken of the Sea International. To the extent necessary, please revise the quantity and value chart submitted as Exhibit A–1 of your October 23, 2002 response to reflect any transhipments by Princes.
>
> Furthermore, please ensure that you have accounted for all sales to Japan made either directly by TPC or through an affiliate. Provide a revised Exhibit A–1 to reflect the three largest third-country markets after taking into account the sales by affiliates.[7]

The Department specified that the information was to be provided to the Department no later than November 22, 2002. On November 22, 2002, TPC submitted a revised section A response reporting sales to unaffiliated customers by Princes in the Netherlands, and by MIC and Chicken of the Sea International (COSI) in the United States, but still failed to report sales in Japan by affiliates to unaffiliated customers. TPC again claimed that it ''proved impossible'' to limit its reporting of sales in Japan to sales by affiliates to unaffiliated customers citing the same reasons it gave in its original section A response.[8]

At this point in the review, the primary issue in the case had become whether the Netherlands or Japan was the appropriate third-country comparison market.[9] Therefore, on

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

[3] *See* Antidumping Questionnaire at A–2.

[4] Antidumping Questionnaire at G–7.

[5] TPC argued that although the Department found it to be affiliated with MIC and Princes in the preliminary determination of the sixth review, it was responding to the Department's questionnaire in the seventh review as if it was not affiliated with MIC and Princes because it challenged the finding in its case brief for the sixth review and the Department's final determination in that review was still pending at the time it submitted its section A response on October 23, 2002. In the final results of the sixth review TPC was found to be affiliated with MIC and Princes. *See* Notice of Final Results of Antidumping Duty Administrative Review, Recission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (December 13, 2002) and accompanying Issues and Decision Memorandum at Comment 12. The Department continues to find TPC to be affiliated with MIC, Princes, and COSI in this review, as no relevant facts have change since the sixth review. *See* TPC's November 22, 2002, section A response at 1–9.

[6] TPC's October 23, 2002, section A response at 10.

[7] *See* November 14, 2002, letter from the Department to TPC (footnote omitted).

[8] TPC's November 22, 2002, revised section A response at 11 and 12.

[9] In TPC's original section A chart submitted to the Department on October 23, 2002, the volume of sales to the Netherlands was somewhat higher than the volume of sales to Japan. This difference was significantly reduced however when TPC submitted its revised section A chart on November 22, 2002, showing the volume of sales of subject merchandise to unaffiliated customers in the Netherlands. The equivalent sales information for Japan was thus imperative in order to make a determination as to the appropriate third-country comparison market.

December 4, 2002, the Department sent a second letter to TPC informing the company that ''[i]t is critical that the third-country summary information be presented in a consistent and uniform manner in order for the Department to make a decision regarding selection of the appropriate third-country market.'' The Department requested that TPC ''revise Exhibit A–1 to account for the resales by affiliated companies to unaffiliated customers for all sales to Japan during the POR, as requested in the Department's original questionnaire'' no later than December 11, 2002. TPC responded on December 11, 2002 that ''it is impossible to provide [MC's] resale data specific to TPC-produced canned pineapple fruit'' [10] citing the same reasons it did in its October 23, 2002, section A response. TPC went on to state, however, that if the Department insisted upon having the data, TPC was requesting a six-week extension.

On December 27, 2002, the Department sent a third letter to TPC stating that ''the Department again requests that you revise Exhibit A–1 to account for the resales by affiliated companies to unaffiliated customers for all sales to Japan during the period of review'' no later than January 10, 2003. In the letter, the Department warned TPC that [i]f you fail to provide this information, we may be forced to use AFA, as we will be unable to determine the appropriate third-country market to be used as the basis for normal value.'' On January 10, 2003, the Department partially granted a request by TPC for an extension making the requested data due on January 21, 2003. On January 21, 2003, TPC submitted a revised volume and value of sales chart reflecting sales by affiliates to unaffiliated customers in the United States, the home market, and each of TPC's largest third-country markets, including Japan.

On April 4, 2003, TPC made a submission bringing to the Department's attention for the first time that the ''cases'' it reported as a unit of measure for its volume and value of sales in Exhibit A–1 referred to the number of actual cases sold, rather than the number of cases sold on a 20-ounce equivalent basis. TPC's reporting of its volume and value of sales in actual cases sold rather than on a 20-ounce equivalent basis represented a change in its reporting methodology from the previous administrative review.[11] On April 16, 2003, the Department sent a letter to TPC requesting that it revise Exhibit A–1 to reflect its volume and value of sales on a 20-ounce equivalent basis. In addition, the Department stated that [g]iven the current deadline of June 6, 2003 for the preliminary results of this review, there is now insufficient time to resolve the question of the proper comparison market and then, at a later date, to possibly request data for a new third-country market. Accordingly, we are now requiring that you provide the Department with a *complete* section B response for all of your sales to unaffiliated customers in Japan.'' In its April 16, 2003, letter to TPC the Department again warned that ''if you fail to provide this information in the time provided, we may use facts available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), as we will be unable to determine the appropriate third-country market to be used as the basis for normal value.'' The requested information was to be provided to the Department no later than April 24, 2003.

On April 24, 2003, the Department received a submission from TPC in which it failed to provide both its volume and value of sales on a 20-ounce equivalent basis and a complete database of its sales to unaffiliated customers in Japan. TPC argued that the Department should permit the reporting of volume and value on the basis of actual cases sold because: (1) CPF is inventoried, booked, and sold on the basis of actual cartons; (2) the price of CPF does not vary directly based upon the quantity of CPF in each can; and (3) there is no uniform, objective method in the industry for calculating a 20-ounce equivalence. TPC also stated that [i]t was impractical to arrange for [MC and its affiliates] to report sales volumes on a 20-ounce equivalent basis that is consistent with the methodology used by TPC in the time allotted for TPC's response.'' [12] TPC did not request an extension so that it could attempt to report its volume and value of sales on a 20-ounce equivalent basis.

In regard to the section B sales database for Japan, TPC claimed that it would not be able to provide the Department with the requested information for the following reasons: (1) Due to TPC's distribution system in Japan, there are several companies with separate financial statements in many locations where invoicing takes place; (2) there has been a consolidation between two of the MC affiliates which would necessitate compiling their portion of the sales listing by hand; (3) one of TPC's affiliates has a policy of removing aggregate volume data on a 13-month rolling basis and thus the relevant data no longer exist; (4) many of the affiliates lack computerized sales data systems; (5) the complexity of the distribution system would make calculating movement and inventory expenses alone ''a gargantuan and fundamentally unmanageable task;'' (6) MC was moving offices in May and all of its accounting records had been put into boxes; and (7) the first week in May is a Japanese holiday. TPC stated that [f]or all of these reasons [i]t is regrettably unable to comply with the Department's request, even within any foreseeable extension of the current deadline.'' [13] TPC did however, request that the Department make a finding as to Japan's appropriateness as a possible third-country comparison market prior to requiring TPC to provide a complete section B sales database.

2. Applicable Statute

Section 776(a)(2) of the Act, provides that:

> * * * if an interested party or any other person—(A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782 * * *; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this subtitle.

The statute requires that certain conditions be met before the Department may resort to the FA. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency.

If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as

[10] TPC's December 11, 2002, letter at 4.

[11] *See* Memorandum from Charles Riggle, Program Manager, Office 5, to File, dated April 16, 2003.

[12] TPC's April 24, 2003, submission at 7.

[13] *Id.* at 13.

a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994). The statute provides, in addition, that in selecting from among the FA the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

3. Application of FA

As described above, TPC has withheld information, failed to respond to the Department's requests for information by the deadlines established or in the form required, and has significantly impeded this review. TPC failed to properly respond to the Department's request, pursuant to section 782(d) of the Act, that it report its volume and value of sales on a uniform (20-ounce equivalent) basis as it had done in the prior review. In asking for a revised chart of TPC's volume and value of sales, the Department informed TPC in its April 16, 2003, letter that reporting the ''actual cases sold is meaningless in terms of providing a basis for comparing the volume sold between different markets'' and that ''to conduct the necessary analysis needed to determine the appropriate third-country market, it is imperative that [the Department] be provided with data that is consistent and uniform across countries.'' By not providing the Department with a revised chart of its volume and value of sales based on a consistent and uniform unit of measure, *e.g.*, on a 20-ounce equivalent basis, TPC prevented the Department from conducting the necessary analysis for determining the appropriate third-country comparison market to be used as a basis for calculating NV.

TPC's refusal to provide the Department with its volume and value of sales on a 20-ounce equivalent basis has also precluded the Department's consideration of TPC's request for a finding regarding Japan's appropriateness as a third-country comparison market.[14] Pursuant to §351.404(e) of the Department's regulations, the Secretary will generally select the third-country market on the basis of certain criteria when, as in this review, several third-country markets are viable. The ''market situation'' and product similarity issues raised by TPC in its November 23, 2003, Combined Section A Response and again in its April 24, 2003, letter to the Department, would be considered among the factors in a third-country selection analysis. However, no one factor is considered in isolation when conducting such an analysis. All the criteria under §351.404(e) of the Department's regulations, product similarity, volume of sales, and other factors, are considered together when determining the appropriateness of a third-country comparison market. Therefore, without having TPC's volume of sales reported on a 20-ounce equivalent basis, which would allow for a meaningful comparison of sales volume across countries, the Department is unable to make a finding as to the appropriateness of Japan as a third-country market.

According to the volume of sales (one of the relevant factors the Department considers under § 351.404(e) of its regulations), submitted in TPC's October 23, 2002, response at Exhibit A–1, the third-country market with the largest volume of sales was either Japan or the Netherlands. However, the Department was unable to make this determination from the outset of the review because TPC failed to report its sales to unaffiliated customers first in the Netherlands, and then in Japan. Furthermore, as detailed above, due to the delays in the progress of this review, in particular caused by TPC's reluctance to provide the Department with its volume and value of sales in Japan to unaffiliated customers, and the impending deadline for the preliminary results, the Department was forced to request a complete section B response, including a sales database for Japan. TPC failed to provide the requested response, thereby preventing the Department from calculating NV if it were eventually to find Japan to be the most appropriate third-country market.

Finally, we find that the application of section 782(e) does not overcome the respondents' failure to respond, given that the deadline for submitting the necessary information has passed. *See* sections 782(e)(1), (3) and (4). Because the information that TPC failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary results, pursuant to sections 776(a)(2)(A)–(C) of the Act.

4. Use of Adverse Inferences

We also find that the application of an adverse inference in this review is appropriate, pursuant to section 776(b) of the Act. As discussed above, TPC has significantly impeded and delayed the progress of this review by repeatedly failing to properly report its volume and value of sales to the United States, and because its home market is not viable, to each of its three largest third-country markets. After TPC's initial failure to properly report its volume and value of sales as part of its October 23, 2003, section A response, it required three additional requests by the Department, pursuant to section 782(d) of the Act, and multiple extensions, to obtain TPC's sales in Japan to unaffiliated customers. TPC eventually provided the Department with the requested data despite its claims that the information would be ''impossible'' to obtain. These delays resulted in the Department having to extend the preliminary results for this review from April 2, 2003, to June 6, 2003.[15]

TPC also failed to bring to the Department's attention in a timely manner that it was reporting its volume and value of sales on the basis of actual cartons sold, rather than on a 20-ounce equivalent basis. This represented a change in TPC's reporting methodology from the prior review and should have been identified as such by TPC in its section A response as required in the general instructions of the market economy questionnaire sent to TPC by the Department. When the Department learned of the change in TPC's reporting methodology it requested that TPC provide the Department with a chart of its volume and value of sales on a 20-ounce equivalent basis. The Department gave TPC clear instructions and warned that without the data it would not be able to conduct the necessary analysis to determine the appropriate third-country market in this review. TPC failed to provide the Department with the requested information despite its having demonstrated in the previous review

[14] While we requested that TPC report its volume and value of sales on a 20-ounce equivalent basis, consistent with its methodology in prior reviews, some respondents used other common units of measure, *e.g.* kilograms and metric tons. TPC not only failed to report sales on a 20-ounce equivalent basis, it also offered no alternative common unit of measure.

[15] *See* Memorandum from Charles Riggle, Program Manager, Office 5, to Gary Taverman, Acting Deputy Assistant Secretary, concerning an Extension of Time Limit for Preliminary Results of Review, dated March 20, 2003.

that it is capable of doing so.[16] Moreover, TPC did not attempt to provide an alternative means of reporting its sales volume in a consistent and uniform manner that would allow for a proper comparison of the volume of sales across countries. We have therefore concluded that TPC has failed to cooperate with the Department by not acting to the best of its ability, and has hampered the Department's ability to evaluate the appropriateness of the Japanese market and to make the necessary third-country comparison market determination.

Finally, TPC failed to provide the Department with a section B sales database for Japan. In doing so, TPC did not request an extension of the April 24, 2003 deadline so that it could attempt to comply with the Department's request. To the contrary, TPC stated that even if the Department were to substantially extend the deadline it would not be able to comply with the Department's request. The reasons cited by TPC for its inability to provide the requested data are inadequate. TPC has known since the beginning of this review that Japan was a potential third-country market. Therefore, TPC should have taken the appropriate steps to ensure that its affiliates would gather and retain any necessary documentation in an accessible format. TPC also requested that the Department make a finding as to Japan's appropriateness as a possible third-country comparison market prior to requiring TPC to provide a complete section B sales database. However, as previously mentioned, the Department is not able to conduct a proper third-country analysis without having its volume of sales reported in a consistent and uniform manner, which TPC has failed to provide.

For the reasons described above, we believe that TPC did not act to the best of its ability in responding to the Department's request for information and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See, e.g.*, Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 3; see also Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum at Comment 24.

5. Selection and Corroboration of Information Used as AFA

Where we must base the entire dumping margin for a respondent in an administrative review on FA because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Due to TPC's failure to cooperate, we have preliminarily assigned to TPC as AFA a rate of 51.16 percent, the highest rate calculated for any respondent during any segment of this proceeding. This rate was calculated for a respondent in the less than fair value (LTFV) investigation.[17]

Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total AFA 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. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See, e.g.*, Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as AFA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render the use of the margin selected for TPC as inappropriate.

Product Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared products sold in the United States with the most similar merchandise sold in the comparison markets based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For all respondents, we based the date of sale on the date of the invoice.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the

[16] *See* Memorandum from Charles Riggle, Program Manager, Office 5, to File, concerning Seventh Administrative Review of Canned Pineapple Fruit from Thailand, dated April 16, 2003.

[17] *See* Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand, 60 FR 36775 (July 18, 1995).

packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we calculated the EP and CEP by deducting movement expenses and export taxes and duties from the starting price, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP. Accordingly, for CEP sales we also reduced the starting price by direct and indirect selling expenses incurred in the United States and an amount for profit.

We determined the EP or CEP for each company as follows:

TIPCO

For TIPCO's U.S. sales, the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation. We calculated an EP for all of TIPCO's sales because CEP was not otherwise warranted based on the facts of record. Although TMC is a company legally incorporated in the United States, the company does not have either business premises or employees in the United States. TIPCO employees based in Bangkok conduct all of TMC's activities out of TIPCO's Bangkok headquarters, including invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage. Accordingly, as the merchandise was sold before importation by TMC outside the United States, we have determined these sales to be EP transactions. *See* Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2000) and accompanying Decision Memorandum at Hylsa Comment 3.

We calculated EP based on the packed free on board (FOB) or cost, insurance, and freight (CIF) price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling. *See Analysis Memorandum for The Thai Pineapple Public Co., Ltd.* dated June 20, 2003 (TIPCO Analysis Memorandum).

Vita

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed FOB price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, terminal handling charge, bill of lading fee, customs clearance (shipping) charge, port charges, document legalization fee, stuffing expenses, inland freight and other miscellaneous charges). *See Analysis Memorandum for Vita Food Factory (1989) Co., Ltd.,* dated June 20, 2003 (Vita Analysis Memorandum).

Kuiburi

We calculated an EP for all of Kuiburi's sales because the merchandise was sold directly by Kuiburi outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed FOB or Cost and Freight (CFR) price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight. *See Analysis Memorandum for Kuiburi Fruit Canning Company Limited,* dated June 20, 2003 (Kuiburi Analysis Memorandum).

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or CFR price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses including inland freight (which consisted of handling charges, port/gate charges, stuffing charges, document charges, truck costs, and U.S. brokerage and handling) and international freight. *See Analysis Memorandum for Siam Fruit Canning (1988) Co., Ltd.,* dated June 20, 2003 (SIFCO Analysis Memorandum).

Malee

For Malee's U.S. sales, the merchandise was sold indirectly through a U.S. affiliate to the first unaffiliated purchaser in the United States prior to importation. We calculated an EP for all of Malee's sales because CEP was not otherwise warranted based on the facts of record. Although Malee's U.S. affiliate is a company legally incorporated in the United States, the company merely acts as a processor of documents, including arranging for merchandise clearance in the United States and contacting the customer for pick up. Malee negotiates U.S. sales through its Thailand headquarters and issues the U.S. affiliate's invoices to the U.S. customer. Accordingly, as the merchandise was sold before importation by Malee outside the United States, we have determined these sales to be EP transactions. *See* Canned Pineapple Fruit from Thailand: Final Results of Antidumping Duty Administrative Review, 66 FR 52744 (October 17, 2001) and accompanying Decision Memo at TIPCO Comment 16. *See also* Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2000) and accompanying Decision Memo at Hylsa Comment 3.

We calculated EP based on the packed CIF ex-dock price to unaffiliated purchasers in the United States. We made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees and merchandise processing fees. *See Analysis Memorandum for Malee Sampran Public Co., Ltd.,* dated June 20, 2003 (Malee Analysis Memorandum).

Dole

For this POR, the Department found that all of Dole's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Dole Packaged Foods (DPF), a division of Dole.

CEP was based on DPF's price to unaffiliated purchasers in the United States. We made deductions from the starting price for discounts in accordance with section 351.401(c) of the Department's regulations. We also made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. Because all of Dole's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct and

indirect selling expenses incurred by DPF in the United States. We also deducted from the starting price an amount for profit in accordance with section 772(d)(3) of the Act. *See Analysis Memorandum for Dole,* dated June 20, 2003 (Dole Analysis Memorandum).

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee, the quantity of foreign like product each respondent sold in Thailand did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than 5 percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for all respondents except Malee, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest viable third-country market, *i.e.*, Germany for Vita, France for SIFCO, Canada for Dole, Canada for Kuiburi, and Germany for TIPCO. With respect to Malee, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

B. Cost of Production Analysis

Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of comparison markets for each respondent. Because we disregarded sales that failed the cost test in the last completed review for TIPCO, TPC, Malee, Kuiburi, SIFCO, Dole, and Vita, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.[18] As a result, we initiated an investigation of sales below cost for each of these companies. We conducted the COP analysis as described below.

[18] The 2000/2001 review was not completed until five months after the current review was initiated. Therefore, at the time the questionnaires were issued, we initiated the COP investigations based on the results of the completed 1999/2000 review. *See* Notice of Final Results of Antidumping Duty Administrative Review and Recession of Administrative Review in Part: Canned Pineapple Fruit From Thailand, 66 FR 52744 (October 17, 2001).

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, for each respondent, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative (SG&A) expenses, interest expense, and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (*i.e.*, pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See* Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29561 (June 5, 1995),[19] and Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 7392, 7398 (February 13, 1998). For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology.

Several respondents that revised their fruit cost allocation methodologies during the 1995/1996 POR changed from their historical net realizable value (NRV) methodology to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on NRV methodology.

Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made the following company-specific adjustments to the cost data submitted in this review.

SIFCO

We adjusted SIFCO's calculation of general and administrative (G&A) expenses and interest expenses as a ratio of its cost of goods sold. SIFCO included SG&A expenses, interest expenses, and packing expenses in the denominator of its original calculation of G&A and interest expenses. We recalculated the ratios after adjusting the denominator to deduct these costs. *See* SIFCO Analysis Memorandum.

Malee

In past reviews, we have not asked Malee to submit NRV because Malee allocated fruit costs on a basis that reasonably took into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records. For this review, it has changed the way it allocates fruit costs in its normal accounting records. However, we do not accept the methodologies Malee submitted for this review for the reasons outlined in the Malee Analysis Memorandum. Therefore, we calculated Malee's fruit costs for this review using Malee's standard allocation methodology that we have used in prior reviews.

Kuiburi

Since the first administrative review of CPF from Thailand the Department has utilized a NRV methodology to allocate pineapple fruit costs among joint products. Under this methodology, the separable costs for each joint product are subtracted from the gross revenue for each joint product. The ratio of the net realizable value of each joint product to the total net realizable value of all products is then used as the allocation base. Kuiburi reported two NRV methodologies in its response, one based on an historical period and the other based on a five-year period of 1997 through 2001. For the following reasons, we have found that Kuiburi's reported NRV methodologies were

[19] This determination was upheld by the Court of Appeals for the Federal Circuit. The Thai Pineapple Public Co. v. United States, 187 F.3d 1362 (Fed. Cir. 1999) (finding that the Department's cost allocation methodology in the original investigation was reasonable and supported by substantial evidence).

unusable for the purposes of the dumping analysis. Both methodologies used by Kuiburi were based solely on revenue; that is, they did not factor in separable costs in determining the NRV for each product. Moreover, for Kuiburi's historical NRV methodology, it was unable to provide separable cost information; Kuiburi's joint cost allocation methodology did not comport with the Department's established NRV methodology. Kuiburi's NRV methodology based on a floating five-year period beginning in 1997 and ending in 2001 was unusable for dumping purposes because it was based on prices from a time period when the Department had determined that CPF was being sold at LTFV. *See* Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple from Thailand, 63 FR 7392 (February 13, 1998). Because Kuiburi's reported NRV methodologies are unusable, we have, pursuant to section 776(a)(1) of the Act, determined to apply FA. As a facts available for Kuiburi's NRV methodology, we averaged Dole, TIPCO, SIFCO, and Vita's historical NRVs and utilized it for Kuiburi's applicable costs. *See* Kuiburi Analysis Memorandum.

2. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where (1) 20 percent or more of a respondent's sales of a given product were made at prices below the COP and such sales were made over an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on comparisons of price to weighted-average COPs for the POR, we determine that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act, we disregard the below-cost sales.

We found that for certain CPF products, Dole, Kuiburi, TIPCO, Malee, SIFCO, and Vita made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We also made adjustments, in accordance with section 351.410(e) of the Department's regulations, for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. Company-specific adjustments are described below.

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: Brokerage and handling, port charges, stuffing expenses, liner expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (commissions, credit expenses, and bank charges) and adding U.S. direct selling expenses (commissions, credit expenses, and bank charges).

Vita

We based third-country market prices on the packed, FOB and CFR prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: international freight, inland freight, terminal handling charges, container stuffing charges, bill of lading fees, customs clearance charges, port charges, document legalization fees and other miscellaneous charges. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, commissions, and bank charges) and adding U.S. direct selling expenses (credit expenses, commissions, and bank charges).

SIFCO

We based third-country market prices on the packed, FOB or CFR prices to unaffiliated purchasers in France. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges, and commissions).

Kuiburi

We based third-country market prices on the packed, FOB and CFR prices to unaffiliated purchasers in Canada. We adjusted for foreign movement and international freight expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges, and commissions).

Malee

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight and warehousing. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, advertising expenses, and commissions) and adding U.S. direct selling expenses (credit expenses, advertising expenses, and commissions). We also made a level of

trade (LOT) adjustment where appropriate. *See* the *Level of Trade* section, below.

Dole

We based third-country market prices on Dole Foods of Canada Ltd.'s (DFC) prices to unaffiliated purchasers in Canada. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, warranty, advertising, royalties, and commissions) and adding U.S. direct selling expenses (credit expenses, advertising, warranty, and commissions).We adjusted Dole's Canadian interest rate so that it reflects the one month prime commercial paper rate published by the Bank of Canada instead of the prime business rate which Dole had used to calculate credit expenses. In addition, because the NV LOT is more remote from the factory than the CEP LOT (*see* the *Level of Trade* section, below), and available data provide no appropriate basis to determine a LOT adjustment between NV and CEP, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act.

D. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, interest expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the *Calculation of COP* section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market to calculate SG&A expenses and comparison market profit.

Where we compared U.S. price to CV, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and section 351.410 of the Department's regulations, and as described under the *Calculation of Normal Value* section above. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses for comparison to EP transactions in the United States. We did not compare U.S. price to CV for Kuiburi or TIPCO because all U.S. sales were compared to contemporaneous sales of identical or similar merchandise in the ordinary course of trade. For the other companies—Vita, Malee, Sifco and Dole—we compared U.S. price to CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in the LOTs between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See* Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada, 67 FR 8781 (February 26, 2002).

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, all respondents except Malee and Dole claimed that all of their sales involved identical selling functions, irrespective of channel of distribution or market. We examined these selling functions for Vita, SIFCO, TIPCO, and Kuiburi, and found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment. There was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market by the respondents. Therefore, for all respondents except Malee and Dole, we have preliminarily found that there is an identical LOT in the U.S. and relevant comparison market, and no LOT adjustment is required for comparison of U.S. sales to comparison market sales.

Malee

Malee reported that all of its sales made to the United States were to distributors and involved minimal selling functions on the part of Malee. Malee reported two different channels of distribution for its sales in the home market: (1) Sales through an affiliated reseller, Malee Enterprise Co. Ltd. (Malee Enterprise), which are made at a more advanced marketing stage than the factory-direct sales, and (2) factory-direct sales involving minimal selling functions and which are at a marketing stage identical to that of the CEP transactions after deductions.

In the home market, Malee reported numerous selling functions undertaken by Malee Enterprise for its resales to small wholesalers, retailers, and end-users. In addition to maintaining inventory, Malee Enterprise also handled all advertising during the POR. The advertising was directed at the ultimate consumer. Malee also reported that Malee Enterprise replaces damaged or defective merchandise and, as necessary, breaks down packed cases into smaller lot sizes for many sales. Malee made direct sales to industrial users. Malee claimed that its only selling function on direct sales was delivery of the product to the customer.

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Where possible, we compared sales at Malee's U.S. LOT to sales at the

identical home market LOT. If no match was available at the same LOT, we compared sales at Malee's U.S. LOT to Malee's sales through Malee Enterprise at the more advanced LOT.

To determine whether a LOT adjustment was warranted, we examined the prices of comparable product categories, net of all adjustments, between sales at the two home market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs. In making the LOT adjustment, we calculated the difference in weighted-average prices between the two different home market LOTs. Where U.S. sales were compared to home market sales at a different LOT, we reduced the home market price by the amount of this calculated LOT difference.

Dole

Dole reported six specific customer categories and one channel of distribution (sales through an affiliated reseller) for its comparison market and seven specific customer categories and one channel of distribution (sales through an affiliated reseller) for its U.S. sales. In its response, Dole claims, and the Department concurs, that all of its sales to unaffiliated comparison market customers (*i.e.*, the six customer categories) are at the same LOT because these sales are made through the same channel of distribution and involve the same selling functions.

Dole had only CEP sales in the U.S. market. Dole reported that its CEP sales were made through a single channel of distribution (*i.e.*, sales through its U.S. affiliate, Dole Packaged Foods (DPF)), which we have treated as one LOT because there is no apparent difference in the selling functions performed by DPF for the different customers. After making the appropriate deductions under section 772(d) of the Act for these CEP sales, we found that the remaining expenses associated with selling activities performed by Dole are limited to expenses related to the arrangement of freight and delivery to the port of export that are reflected in the CEP price. In contrast, the NV prices include a number of selling expenses attributable to selling activities performed by DFC in the comparison market, such as inventory maintenance, warehousing, delivery, order processing, advertising, rebate and promotional programs, warranties, and market research. Accordingly, we concluded that CEP is at a different LOT from the NV LOT, *i.e.*, the CEP sales are less remote from the factory than are the NV sales.

Having determined that the comparison market sales were made at a level more remote from the cannery than the CEP transactions, we then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, Dole only sold at one LOT in the comparison market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above. *See* Porcelain-on-Steel Cookware from Mexico Final Results of Administrative Review, 65 FR 30068 (May 10, 2000). Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the comparison market is at a more advanced stage of distribution than the LOT of the CEP transactions, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the comparison market not exceeding the amount of indirect selling expenses deducted from the U.S. price in accordance with 772(d)(1)(D) of the Act.

No Revocation in Part

On July 31, 2002, Dole requested that the Department revoke the antidumping duty order in part as regards Dole based on the absence of dumping pursuant to §351.222(b)(2) of the Department's regulations. Dole submitted, along with its revocation request, a certification stating that: (1) The company did not sell subject merchandise at less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* §351.222 (e)(1)(i)) of the Department's regulations; (2) the company has sold subject merchandise to the United States in commercial quantities during each of the past three years (*see* §351.222(e)(1)(ii)) of the Department's regulations; and (3) the company agreed to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV. *see* §§351.222(b)(2)(i)(B) and 351.222(e)(1)(iii)) of the Department's regulations.

Based on a recent redetermination currently pending review, pursuant to a court remand for *Maui Pineapple Company, Ltd.* v. *United States and Dole Food Company, Dole Packaged Foods and Dole Thailand,* Slip Op. 03–42 (April 17, 2003), Court No. 01–03–01017, the margin for the fifth POR of this proceeding has risen above *de minimis. See* Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order *Maui Pineapple Company, Ltd.* v. *United States and Dole Food Company, Dole Packaged Foods and Dole Thailand* Court No. 01–03–01017 filed with the court on June 16, 2003. We preliminarily determine that Dole has failed to demonstrate that it has not made sales at less than NV over the past three years. Interested parties are invited to comment in their case briefs, *inter alia,* on all of the requirements that must be met by under §351.222 of the Department's regulations in order to qualify for revocation from the antidumping duty order. Based on the above, the Department preliminarily determines that the continued application of the order with regard to Dole is necessary to offset dumping. Therefore, if these preliminary findings are adopted in our final results, we will not revoke the order with respect to merchandise produced and exported by Dole.

Currency Conversion

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

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 1, 2001, through June 30, 2002:

Manufacturer/exporter	Margin (percent)
Dole Food Company, Inc. (Dole)	0.49
The Thai Pineapple Public Company, Ltd. (TIPCO)	0.12
Kuiburi Fruit Canning Co. Ltd. (Kuiburi)	0.40
Thai Pineapple Canning Industry (TPC)	51.16
Siam Fruit Canning (1988) Co. Ltd. (SIFCO)	8.39
Vita Food Factory (1989) Co. Ltd. (Vita)	1.10
Malee Sampran Public Co., Ltd. (Malee)	7.60

We will disclose the calculations used in our analyses to parties to this proceeding within five days of the publication date of this notice. *See* § 351.224(b) of the Department's regulations. Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* § 351.310(c) of the Department's regulations. If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to § 351.212(b) of the Department's regulations, the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the BCBP to assess antidumping duties on all entries of subject merchandise by those importers. We have calculated each importer's duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the assessment rate is above *de minimis*, the importer-specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the ''All Others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

Dated: June 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16343 Filed 6–26–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods From India: Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Herzog, Stephen Bailey, or Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4271, (202) 482–1102, and (202) 482–3434, respectively.

Amendment of Final Results

On May 8, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** the final results of its administrative review of stainless steel wire rods (''SSWR'') from India for the period December 1, 2000, through November 30, 2001. *See Stainless Steel Wire Rods From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 26288 (May 15, 2003) and accompanying Issues and Decisions Memorandum (''*Final Results*'').

On May 16, 2002, petitioner Carpenter Technology Corporation timely filed ministerial error allegations, pursuant to section 351.224(c)(2) of the Department's regulations. Respondent, Mukand, Limited (''Mukand'') did not file rebuttal comments. Respondent, the Viraj Group, Limited (''the Viraj Group'') filed ministerial error allegations on May 27, 2003, and on June 2, 2003, petitioner filed rebuttal comments.

As a result of our analysis of respondent's and petitioner's comments, the Department is amending the *Final Results* in the antidumping administrative review of stainless steel wire rods from India covering the period December 1, 2000 through November 30, 2001, for Mukand and the Viraj Group.

Scope of the Review

The merchandise under review is certain stainless steel wire rods, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and