DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

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

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

SUMMARY: On August 7, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. The review covers shipments of this merchandise to the United States during the period of review (POR) January 11, 1995, through June 30, 1996.

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

EFFECTIVE DATE: February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1442 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations, codified at 19 CFR part 353, as they existed on April 1, 1997.

Background

This review covers three manufacturers/exporters of merchandise subject to the antidumping order on canned pineapple fruit from Thailand: Siam Food Products Public Company Ltd. (SFP), The Thai Pineapple Public Company, Ltd. (TIPCO), and Thai Pineapple Canning Industry Corp., Ltd. (TPC). On August 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** a notice on *Canned Pineapple Fruit from Thailand; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review* (62 FR 42487) (*Preliminary Results*). We received case briefs from the three respondents on September 8, 1997. Maui Pineapple Co., Ltd. (the petitioner) did not file a case brief. We received a rebuttal brief from the petitioner on September 17, 1997. Pursuant to a timely request by SFP and TIPCO, we held a public hearing on October 14, 1997, at which the three respondents and the petitioner made presentations.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Scope of the Review

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

Comparison of United States Price and Normal Value

For both companies involved in this review, we calculated transaction-specific U.S. prices (export price (EP) or constructed export price (CEP), as applicable) and compared them to normal values (NV) based on either weighted-average third-country market prices or constructed values (CV). For price-to-price comparisons, we compared identical merchandise where possible. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we made comparisons of similar merchandise based on the characteristics listed in the Department's antidumping questionnaire.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in section 772 of the Act. We calculated EP and CEP based on the same methodology used in the *Preliminary Results,* except that we corrected two errors in our computer program with respect to commission offsets and CEP offsets. Contrary to our intention, the program (1) included not only U.S. commissions, but also U.S. indirect selling expenses, in deriving the cap that limits the third-country commission offset, and (2) granted a CEP offset, where none was appropriate. We have also modified the program to correct certain ministerial errors identified by TPC. *See* Memorandum from Gabriel Adler to Kris Campbell, dated December 5, 1997, regarding analysis of TPC data for final results.

Normal Value

Where NV was based on a third-country price, we used the same methodology to calculate NV as that described in the *Preliminary Results,* with modifications for clerical errors with respect to TPC's data, and one additional exception. In the preliminary results, we erred in automatically basing NV on CV where comparison market sales of the most physically comparable product made during the first comparison month in the 90/60 day contemporaneity window were found to be below cost. For these final results, in accordance with our practice, we have revised our computer program to ensure that it searches the entire 90/60 day contemporaneity window for any sales of the most comparable product retained after the cost test, and bases NV on such sales if they exist. *See* TPC Sales Comment 2 below.

We note, however, that this methodology does not attempt to base NV on sales of other, less comparable, models in the event that we find all contemporaneous sales of the most comparable model to be below cost. On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States,* 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value (normal value) when the Department finds home market sales to be outside the ordinary course of trade. Although the impact of the below-cost test on our matching methodology was raised generally (*see* Comment 2, below), the specific issue discussed in *Cemex* was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had

sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this ''post-URAA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV.

Where NV was based on CV, we used the same methodology as that described in the *Preliminary Results,* with the following exceptions:

SFP

1. We modified the margin calculation program to eliminate the double-counting of an adjustment to direct labor and overhead expenses;

2. We revised the calculation of general and administrative (G&A) and interest expenses to include data for the fiscal year corresponding to the last three months of 1995; and

3. We revised G&A expenses to exclude ocean freight charges that had been improperly included in the original calculation.

TIPCO

We revised the program to eliminate the double-counting of packing expenses in CV.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether the respondents made third country sales of the foreign like product during the POR at prices below their cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP following the same methodology as in the *Preliminary Results,* except that for SFP we corrected the errors discussed with respect to constructed value above, which also pertain to COP.

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 did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' In accordance with sections 773(b)(2)(B) and (C) of the Act, where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities.'' Based on comparisons of third-country prices to weighted-average COPs for the POR, we determined, in accordance with section 773(b)(2)(D) of the Act, that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time. Where all contemporaneous sales of a specific product were made at prices below the COP, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the *Preliminary Results.* We received comments from the three respondents and rebuttal comments from the petitioner.

Sales Issues—General

Provisional Measures Cap

Respondents TPC and SFP argue that the Department erred in the *Preliminary Results* by calculating a single duty assessment rate based on all sales reported for the period of review. The respondents argue that such a calculation is contrary to the intent of the ''provisional measures cap'' (section 737 of the Act), which limits the assessment of duties on entries made between the date of the Department's preliminary determination and the date of the International Trade Commission's affirmative injury determination under section 735(b) of the Act (''the cap period'') to the amounts deposited during this period.

According to the respondents, most of the dumping margins found during the period of review occurred with respect to sales of entries made during the cap period. The dumping found on these sales exceeded both the deposit rate in effect for the cap period and the rates found on sales of post-cap entries. The respondents argue that, even if the Customs Service (Customs) ultimately applies the cap to cap-period entries, the inclusion of these sales in the calculation of a single POR assessment rate, which is then applied to entries outside the cap period, will shift a portion of the excess liability from the cap period onto post-cap period entries, partially vitiating the intended effect of the cap. Instead, the respondents argue, the Department should calculate separate assessment rates for sales of entries made during the cap period and sales of entries made after the cap period.

The respondents acknowledge that the record contains entry dates for only a few of TPC's sales and none of SFP's sales, but claim that the record contains other data that would allow the Department to infer which sales correspond to data during the cap period. SFP further argues that if the Department decides that it must have SFP-specific entry data on the record in order to calculate separate assessment rates, it should allow SFP to collect such information from importers of SFP merchandise and to place the information on the record.

The petitioner argues that the Department's preliminary results correctly calculated a single weighted-average assessment rate based on the margins found on all entries during the period of review. According to the petitioner, the provisional measures cap has no bearing on the assessment of duties on entries after the cap period, because section 737 of the Act mandates a cap on deposits, not on assessments, with respect to entries subject to provisional measures. The petitioner contends that assessment of duties is governed instead by section 736 of the Act, which requires that assessment account for the full amount that normal value exceeds the export price, and which contains no limitation on the assessment of duties in the post-cap period. The petitioner argues that the courts have held that the Department has broad discretion in calculating assessment rates, since the Act does not specify how duties should be assessed. According to the petitioners, the Department's preliminary calculation is consistent with sections 736 and 737 of the Act, and the Department is not compelled to adopt the methodology proposed by the respondents.

The petitioner opposes the making of any inference with respect to the missing entry dates, arguing that surrogate entry dates would not be accurate and would not provide a specific link of sales to entries. Further, the petitioner opposes reopening of the record to gather the missing entry date data.

DOC Position: We disagree with respondents. Consistent with our established practice, and in accordance with 19 CFR 351.212,[1] we have calculated importer-specific POR-average assessment rates by ''dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes.'' The provisional measures cap will be applied in this case, as in all cases, to the appropriate entries. Those entries will not be assessed final duties in excess of the amount of the deposit of estimated antidumping duties, in accordance with section 737(a) of the Act. We disagree with respondents that

[1] While the final regulations do not govern this review, they do describe the Department's current practice with respect to assessment.

section 737(a) also requires a change in our method of calculating duty assessment rates. In limiting the amounts to be assessed against provisional period entries, we have met our statutory obligation to disregard the antidumping duties due on such entries to the extent that the amount deposited is lower than the final duty amount. Further, the calculation of multiple assessment rates would raise concerns about possible manipulation of data to avoid AD duties and unrestrained dumping of certain merchandise subject to an order.

Even if it were otherwise appropriate to determine assessment rates based on the respondents' proposed methodology, they did not provide adequate information to allow a proper application of this methodology. SFP and TPC suggest that a return to master-list assessment is not necessary in order to achieve their request that we calculate multiple assessment rates for each importer. While we agree that the calculation of multiple assessment rates does not require a master list, the concerns that led us to discontinue the master-list approach (difficulties in tying specific entries to specific sales, particularly in CEP situations, as well as the practical difficulties, and the concomitant increase in the probability of administrative error, in assessing based on such ties) are also present regarding the proposals submitted by SFP and TPC. In order to calculate multiple assessment rates as proposed, we would have to determine the entry dates of the sales under review. In this case, the data regarding entry dates is largely incomplete, and we have no way to ascertain whether specific sales correspond to entries subject to the cap. Such incomplete information could lead to manipulation. For instance, a respondent could provide entry dates for the sales with the highest dumping margins and argue that this should form the basis for the cap-period assessment rate, while failing to report entry dates for non-dumped sales of provisional period entries, which would then be factored into, and could lower, the post-cap rate. The respondents' suggestions for estimating entry dates do not adequately allay these concerns.

Finally, we note that the calculation of a single assessment rate, as opposed to multiple rates for each such period, is not biased in favor of, or against, respondents. Under some situations, the single assessment rate methodology may result in the collection of a lesser amount of duties compared with assessment using multiple rates. For instance, this would hold true where the dumping rate during the provisional period exceeds the cap but is less than the post-cap-period dumping rate.

Sales Issues—TPC

Comment 1: Date of Sale

TPC argues that the Department should have relied on the date of invoice as the date of sale for EP sales and third country sales, rather than relying on the date of contract. According to TPC, this review is subject to the date of sale methodology set forth in the Department's proposed regulations, and this methodology bases date of sale on the date of invoice, except in rare situations such as those involving long-term contracts. TPC contends that the Department followed this practice in recent cases on *Yarn from Austria* and *Steel Wire Rod from India*, and maintains that there were no compelling reasons to depart from reliance on the date of invoice in the *Preliminary Results.*

The petitioner responds that the Department's use of contract date as the date of sale is supported by the Department's regulations and practice.

DOC Position: We disagree with TPC that the date of invoice is the appropriate date of sale for the sales in question. For these final results, we have continued to base date of sale on the date of contract.

TPC is correct that at the time of initiation of this review, the Department had a policy of normally relying on the date of invoice as the date of sale. *See Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308, 7381 (February 27, 1996) (''Proposed Regulations''); *see also* Memorandum from Susan G. Esserman to Joseph Spetrini and Barbara Stafford, March 29, 1996. The general presumption in favor of invoice date continues to be our normal practice. As explained in the preamble to the Department's final regulations,[2] ''in the Department's experience, price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced.'' *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27348 (May 19, 1997) (''Final Regulations'') at 27348.

However, this presumption applies ''absent satisfactory evidence that the terms of sale were finally established on a different date.'' *Id.* at 27349. This caveat reflects an awareness that, ''[i]n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale *usually* are established on some date other than the date of invoice.'' *Id.* (emphasis added). Accordingly, ''[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department *will* use that alternative date as the date of sale.'' *Id.* (emphasis added). For these reasons, while section 351.401(i) maintains the general presumption in favor of invoice date, it provides for the use of a different date of sale where the alternative date ''better reflects the date on which the exporter or producer establishes the material terms of sale.''

The evidence on the record indicates that there were changes to the contracted terms of TPC's POR sales for only one out of several hundred EP sales, and five out of several hundred third country sales. *See Memorandum from Case Analysts to Office Director, Regarding Verification of CEP sales by TPC* (CEP verification report) at 1 (''[W]e noted that for virtually all transactions the terms of sale were established on the date of contract, and these same terms were applied without modification on the date of invoice.'') Thus, while the Department's date of sale policy provides that a written agreement may not provide a reliable indication that the material terms of sale are truly established, even if, for a particular sale, the terms were not renegotiated, the fact pattern presented by TPC is one where the invoiced terms of virtually *all* sales are identical to those set in the corresponding contracts. In the context of the Department's practice on date of sale, it is therefore reasonable to conclude that the material terms of the sales in question were usually set on the date of contract, and that the date of contract is therefore the appropriate basis for the date of sale.

Finally, we note that TPC anticipated from the outset of this review that the Department might reject the use of date of invoice as the date of sale. In its initial questionnaire response TPC stated that the Department might find the date of contract to be a more appropriate date of sale than the date of invoice, and provided the date of contract for EP and third-country sales even though the date of contract had not been specifically requested by the Department. *See* letter from Dickstein, Shapiro, Morin & Oshinsky to the Department of Commerce, Case No. A–549–813 (November 12, 1997), at 21. Subsequently, TPC provided, at the Department's request, certain additional third-country sales needed in order to

[2] While the final regulations do not govern this review, they do describe the Department's current practice with respect to date of sale.

base our third-country sales analysis on contract date. Thus, our determination that the contract date is the appropriate date of sale for EP and third-country sales does not prejudice TPC, because we had all information to perform our analysis basing the date of sale on the contract date for these transactions.

Comment 2: Matching of Sales in Contemporaneity Window

TPC argues that the Department erred in comparing U.S. sales to constructed value in instances where there were above-cost third-country sales of the most physically comparable product within the 90/60 day contemporaneity window. According to TPC, the Department's practice in model matching is, first, to search for above-cost comparison market sales of the most comparable product in the month of the U.S. sale and, if no such sales are found, to search three months back and two months after the month of the U.S. sale for any above-cost sales of that product (the 90/60 day contemporaneity window). TPC argues that the Department, contrary to its practice, immediately resorted to constructed value if comparison market sales of the most comparable product in the month of the U.S. sale were below cost, without searching for above-cost sales of that product elsewhere within the 90/60 day window.

The petitioner did not address this comment.

DOC Position: We agree with TPC. The Department's practice in past proceedings, which we have continued to follow in this review (*see Normal Value,* above), is to search the 90/60 day contemporaneity window to determine whether, based on the cost test, we disregarded all sales of the best model for comparison before resorting to CV. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2111–12 (January 15, 1997) (''*AFBs VI*''). We have revised the Department's margin calculation program accordingly for these final results of review. Although SFP and TIPCO did not comment on this issue in their case briefs, the error identified by TPC was also contained in the programs used for calculation of the dumping margins of the other two respondents, and we have corrected those programs as well.

Comment 3: Calculation of CEP Profit

TPC argues that the Department erred in calculating CEP profit, because it calculated a ratio of total profit to total selling expenses that did not include imputed selling expenses, and applied that ratio to a U.S. selling expense figure that included imputed selling expenses. According to TPC, this treatment is inconsistent and overstates profit on U.S. selling activities.

The petitioner responds that the Department's calculation was consistent with the statute and the Department's practice.

DOC Position: We disagree with TPC. For these final results, we continued to exclude imputed selling expenses in deriving total actual profit. We included these expenses in the pool of U.S. selling expenses used to allocate a portion of total actual profit to each sale.

The preamble to the Final Regulations addresses this issue directly. In response to a comment that we should include imputed expenses in the total selling expenses used to derive total profit in order to avoid double counting, we stated, ''We have not adopted this suggestion, because the Department does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit.'' Final Regulations at 27354.

Our policy regarding imputed expenses in the CEP profit calculation was explained in greater detail recently in *AFBs VI*, as follows:

> Sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the ''total actual profit'' calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1).
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> When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines ''total United States Expense'' as the total expenses described under section 772(d) (1) and (2). Such expenses include both imputed credit and inventory carrying costs.

AFBs VI at 2127. This policy is also described in a recent policy bulletin. *See* Import Administration Policy Bulletin number 97/1, issued on September 4, 1997, concerning the *Calculation of Profit for Constructed Export Price Transactions*, at 3 and note 5. As in the *Preliminary Results*, we have followed this policy for these final results of review.

Comment 4: Level of Trade/CEP Offset

TPC argues that the Department erred in finding that CEP sales in the U.S. and third-country market were made at the same level of trade and in denying TPC a CEP offset. According to TPC, sales in the U.S. and third-country market would be at the same level of trade only if no adjustments were made for the activities of the U.S. reseller. However, TPC maintains, the level of trade for CEP sales must be determined after making adjustments for the reseller's activities, so that CEP sales necessarily were made at a less advanced level of trade than its third-country sales. TPC contends that since a level of trade adjustment is not possible, the Department should grant TPC a CEP offset.

The petitioner argues that adjustments to CEP for U.S. selling expenses do not automatically warrant a CEP offset, and contends that TPC has failed to demonstrate the existence of different levels of trade in the U.S. and third-country market, so that a CEP offset is not warranted.

DOC Position: We disagree with TPC. In the *Preliminary Results*, we expressly stated that, consistent with the statute, we had determined the level of trade for CEP sales *after* excluding those selling activities related to the expenses deducted under section 772(d) of the Act. Once these selling activities (which included warehousing, co-op advertising, and sales visits to customers) were excluded, we found that the selling functions performed for TPC's sales in the two markets were essentially the same, irrespective of channel of distribution, and were limited to the processing of sales-related documentation, invoicing, and collection of payment. *See Preliminary Results* at 42489. Since all of TPC's sales were made at the same level of trade, no level of trade adjustment or CEP offset is warranted in the calculation of TPC's antidumping margin.

Comment 5: TPC's Alleged Clerical Errors

Warranties: TPC argues that the Department erred in its recalculation of warranty expenses incurred by affiliated reseller MC Foods, Inc. (MFI) based on verification findings. According to TPC, the Department should have recalculated warranty expenses incurred

by affiliated reseller Mitsubishi International Corporation (MIC), not those incurred by MFI. Further, the expenses in question should have been decreased rather than increased.

The petitioner does not address TPC's claim.

DOC Position: We disagree with TPC that the Department should have recalculated warranty expenses incurred by affiliated reseller MIC, rather than those incurred by MFI. In the list of clerical error corrections presented at the outset of verification, TPC explained that it was necessary to make a correction to warranty expenses by one of its affiliated resellers, but incorrectly identified the reseller as MIC. *See* CEP verification report at Exhibit LA–1. In fact, in verifying warranty expenses, we found that the correction applied to MFI warranty expenses (and not to MIC expenses), and resulted in a small decrease of the MFI warranty expense ratio. *See* CEP verification report at exhibit LA–16. In the preliminary results, the Department was therefore correct in seeking to recalculate the MFI warranty expense ratio. However, we agree with TPC that the adjustment should have resulted in a decrease, rather than an increase, to those expenses. *See Id.*, containing worksheet recalculating the expenses. We have revised the MFI warranty expenses accordingly for these final results.

U.S. Direct Selling Expenses: TPC argues that certain revisions to TPC's U.S. sales database that were presented at verification with respect to bank fees were not properly implemented in the preliminary results of review. According to TPC, the spreadsheet presented at verification to revise the bank fees was incorrectly captioned, and this error was not detected by the Department when incorporating the revised data into the preliminary margin calculation program, resulting in adjustment to a different expense (billback expense).

The petitioner does not address this issue.

DOC Position: We agree with TPC. At verification, TPC indicated that an error had been made in the calculation of bank fees, which correspond to variable ''DDIRSELU'' in TPC's sales database. However, the revised spreadsheet presented by TPC was incorrectly captioned ''DIRSELU'', a variable name that corresponds to billback expenses, which are unrelated to bank fees. Despite this error, the record indicates that the correction in question, as verified by the Department, should have been made to bank fees and not to billback expenses. We have revised the margin calculation program accordingly.

U.S. Indirect Selling Expenses: TPC argues that the Department erred in the manner in which it increased indirect selling expenses incurred by affiliated reseller MIC on U.S. sales to account for certain unreported selling expenses. According to TPC, the expenses reported in the sales database under the indirect selling expense field (INDIRSU) included certain expenses that do not concern the under-reported expenses, namely handling and storage expenses. In the preliminary results, the Department increased the INDIRSU field by the ratio of the unreported selling expenses to the reported selling expenses. TPC argues that by doing so, the Department inadvertently increased the handling and storage expenses as well. TPC requests that the Department recalculate the indirect selling expenses so as not to increase the handling and storage expenses.

The petitioner argues that the Department correctly calculated indirect selling expenses, and maintain that there is no evidence on the record to support the correction proposed by TPC.

DOC Position: We agree with TPC. The record shows that the expenses reported in the indirect selling expense field included unrelated brokerage and handling expenses, and that these expenses varied by warehouse. *See* TPC's November 12, 1996 questionnaire response at 139; *see also* CEP verification report at Exhibit LA–31. For these final results, we have revised the indirect selling expenses so as not to increase the reported brokerage and handling expenses.

Inventory Carrying Costs: TPC argues that the Department erred in implementing a correction to inventory carrying costs presented by TPC at verification. According to TPC, these expenses varied by warehouse location, and the Department erred in identifying the Kansas warehouse.

The petitioner argues that there is no evidence on the record for TPC's claim that the warehouse in question was incorrectly identified.

DOC Position: We agree with TPC. In its preliminary results of review, the Department's program erroneously referred to the Kansas warehouse as ''Kansas'', but TPC identified this warehouse using other codes. We have revised the program to correct this error for the final results.

International Freight: TPC argues that the Department, in attempting to correct errors in TPC's reported international freight expenses for CEP sales that were identified by TPC at the outset of verification, made the following three errors: (1) the Department identified the destination based on the field DESTINU (which provides the location of the end customer) rather than WARLOC (which provides the location of the warehouse the merchandise was actually shipped to), (2) the Department did not apply a weight factor to the reported freight rates to convert the freight expenses to a standard 20 oz. case equivalent weight basis (the basis on which prices and adjustments are used in the program), and (3) the Department incorrectly applied the rate for eight-ounce merchandise to shipments to a single warehouse, rather than all warehouses.

The petitioner argues that there is no basis in the record to support TPC's allegation with respect to the third error described above.

DOC Position: We agree with TPC on all three points. We note, with respect to the third error, that TPC demonstrated at verification that the rate for shipments of eight-ounce merchandise applied to all shipments, irrespective of destination. *See* CEP verification report at Exhibit S–41.

CEP Selling Expenses: TPC argues that the Department incorrectly double counted inventory carrying expenses in the calculation of CEP selling expenses, and also deducted these expenses twice from U.S. price.

The petitioner does not comment on this claim.

DOC Position: We agree with TPC, and have revised the final results accordingly.

U.S. Commissions: TPC argues that the Department improperly treated U.S. commissions incurred on CEP sales in the margin calculation program, by both deducting such commissions from U.S. price and adding the same commissions to normal value.

The petitioner disagrees that commissions were double counted, and argue that U.S. commissions were deducted from normal value in the form of a commission offset.

DOC Position: We agree with TPC that we double counted U.S. commissions incurred on CEP sales in the preliminary results by subtracting these commissions from U.S. price and adding them to NV. The commission offset alluded to by petitioners consists of home market indirect selling expenses, capped by the amount of U.S. commissions. Although such an offset, when capped by U.S. expenses, results in a deduction from normal value in the amount of the U.S. expenses, the actual adjustment is for home market expenses rather than U.S. commissions. We have revised the margin calculation program accordingly. We note that the language suggested by TPC to correct this error pertains only to price-to-price comparisons. Since an identical error

was made for price-to-CV comparisons, we have also corrected this error.

Entered Values: TPC argues that the Department should incorporate into the margin calculation program revised entered value data that were presented at the outset of verification.

The petitioner does not comment on TPC's request.

DOC Position: We agree with TPC, and have incorporated the revised entered value information.

Sales Issues—TIPCO

Comment 1: Knowledge of Final Destination

TIPCO argues that the Department erred in disregarding certain U.S. sales based on a finding that the producer that supplied TIPCO with the merchandise involved in these sales knew the merchandise was destined for export to the United States. According to TIPCO, the manufacturer knew that its merchandise was destined for export, but did not know with certainty that it would be exported to the United States. TIPCO argues that the Department should therefore regard the sales in question as subject to TIPCO's antidumping margins, rather than the margins corresponding to the manufacturer of the merchandise.

The petitioner argues that the evidence on the record supports a conclusion that the manufacturer knew that its merchandise was destined for the United States.

DOC Position: We agree with the petitioner. The Department found at verification that the manufacturer of the merchandise in question was responsible for labeling, packing, and loading of the merchandise into containers. The labels applied by the manufacturer were standard U.S. market labels, listing U.S. distributors and nutrition facts as required by U.S. government regulations. Moreover, as explained by TIPCO officials at verification, CPF products with such labels are exported exclusively to the U.S. market. *See Memorandum from Case Analysts to Office Director, Regarding Verification of Sales by TIPCO,* July 30, 1997, at 5–6. Since the manufacturer was clearly in possession of information indicating the destination of the subject merchandise, we have determined that the manufacturer knew, or should have known, the ultimate destination of the subject merchandise purchased by TIPCO. Therefore, we have continued to exclude these sales from TIPCO's margin calculation for purposes of the final results of this review.

Comment 2: Use of CV for Certain U.S. Sales of Other Producers' Merchandise

TIPCO argues that the Department erred in comparing certain U.S. sales of merchandise produced by other manufacturers to constructed value, rather than comparing these sales to third-country sales of identical or similar products produced by TIPCO. TIPCO acknowledges that it did not sell merchandise produced by these suppliers to the third-country market (Germany) during the POR. However, according to TIPCO, it is more logical to compare the *selling* prices of other producers' merchandise to the *selling* prices of identical or similar TIPCO merchandise than to the *costs* of TIPCO merchandise.

The petitioner argues that the Department properly used CV for comparison to the sales in question. According to the petitioner, the Department did not learn of the identity of the producers of that merchandise until verification, and was thus unable to collect information on third-country sales involving merchandise produced by the same suppliers. The petitioner contends that there is therefore no basis for comparison of the U.S. sales in question to third-country sales of merchandise produced by TIPCO.

DOC Position: We disagree with TIPCO. The statutory definition of foreign like product requires sales of merchandise produced by the same manufacturer as that involved in the U.S. sales. *See* section 771(16) of the Act. Given this requirement, the record does not contain evidence that there are third-country sales of a foreign like product that would serve as a proper basis for comparison of the merchandise produced by the other manufacturers. Because TIPCO did not inform the Department until verification that certain of its U.S. sales involved merchandise produced by other manufacturers, and did not identify any sales of such merchandise in the comparison market, there is no foreign-like product to which the sales in question can be compared. Further, because TIPCO did not report the cost of the merchandise produced by the other manufacturer, there is no basis on which to calculate a constructed value using the actual cost of that merchandise. Therefore, the only alternative left to the Department is to compare the U.S. sales in question to the constructed value reported by TIPCO with respect to merchandise produced by TIPCO.

Comment 3: Double-Counting of Packing Charges

TIPCO argues that the Department double-counted packing in the calculation of constructed value.

The petitioner does not address TIPCO's comment.

DOC Position: We agree with TIPCO, and have revised the margin calculation program to eliminate the double-counting of packing in the calculation of constructed value.

Cost Issues—General

Fruit Cost Allocation Methodology: Respondents SFP and TIPCO claim that the Department's decision to allocate joint production costs (including fruit costs) using a net realizable value (NRV) methodology is unlawful. According to the respondents, the courts have disallowed the use of value-based data to allocate shared costs, finding that such allocations undermine the statutory requirement that production costs serve as an independent yardstick by which to judge the fairness of prices. Specifically, the respondents argue that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO Inc.* v. *United States,* 965 F.2d 1056 (CAFC 1992)(IPSCO) that value-based cost allocations are unlawful, and the Court of International Trade (CIT) applied this ruling to the present case in *The Thai Pineapple Public Co., Ltd. et al.* v. *United States,* 946 F. Supp. 11 (CIT November 8, 1996), appeal filed May 15, 1997 (*TIPCO*). The respondents argue that, based on these precedents, the Department should accept an allocation of joint fruit costs on the basis of the weight of fruit used.

In the alternative, SFP argues that the Department should accept the allocation basis used in its normal accounting system during the POR. SFP points out that after the Department rejected the weight-based allocation of fruit costs in the original investigation (because such an allocation did not capture qualitative differences among different parts of a pineapple), SFP changed the manner in which fruit costs were allocated in its normal accounting system during the period of the first review, so as to ensure that qualitative differences among different parts of the fruit were properly reflected.

TIPCO adds that, even if an NRV methodology were a permissible basis for allocation of costs, the Department incorrectly calculated the NRV ratios based on sales prices and costs incurred during a five-year period prior to the POR, instead of using TIPCO's submitted POR NRV costs. TIPCO argues that if the Department insists on

using a value-based methodology, it should, at a minimum, base any such methodology solely on NRV ratios derived from costs and revenues during the POR.

In addition, TIPCO argues that the Department improperly applied NRV ratios to shared ''upstream'' labor and overhead expenses, which were incurred in the production of both CPF and juice. TIPCO contends that such expenses are not dependent on qualitative differences among raw material inputs, and should be allocated on a weight basis.

The petitioner argues that the Department's practice fully supports the use of a value-based allocation for shared costs, and that an NRV methodology results in a more reasonable and accurate allocation of costs than a weight-based methodology. The petitioner further argues that the new methodology used by SFP in its normal accounting system was in fact a weight-based method, and was therefore unreliable.

In addition, the petitioner contends that the use of an NRV methodology is entirely consistent with court rulings that establish that the Department's allocation methodologies must reflect actual production costs based on a company's normal (*i.e.,* historical) allocation formulas consistent with generally accepted accounting principles. According to the petitioner, the use of POR data to calculate NRV ratios (as advocated by TIPCO) would be inappropriate given that the cost allocation methodologies followed during the POR represented a change from the historical allocation bases.

The petitioner also claims that the Department properly allocated TIPCO's shared labor and overhead costs using an NRV methodology. The petitioner notes that the NRV ratios were derived in order to allocate all pre-split-off costs, including labor and overhead, and that labor and overhead cost data were used to derive the NRV ratios.

DOC Position: We agree with the petitioner. The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records if they are prepared in accordance with home country generally accepted accounting principles (GAAP) *and* reasonably reflect the costs of producing the merchandise. Also, as described in section 773(f)(1)(A) of the Act, the Department must consider whether reported allocations ''have been historically used by the exporter or producer.''

In the *Preliminary Results,* we found that the respondents had abandoned their historical fruit cost allocation methodologies during the POR. *See Preliminary Results* at 62 FR 42487, 42490. We carefully reviewed each of the new cost allocation methodologies to determine whether they were in accordance with home country GAAP and whether they allocated costs reasonably. We determined that the newly adopted fruit cost allocation methodologies were based on the relative weight of the fruit contained in the CPF produced. *Id.* As discussed in the final determination in the underlying investigation, the allocation of pineapple fruit costs among products solely on the basis of weight (*i.e.,* a quantitative factor) is inappropriate. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29561 (June 5, 1995) (*Final Determination*).[3] Since the newly adopted allocation methodologies do not incorporate any measure of the qualitative factor of the different parts of the pineapple, we find that such methodologies do not reasonably reflect the costs associated with production of canned pineapple fruit. A reasonable fruit cost allocation methodology is one that reflects the significantly different quality of the fruit parts that are used in the production of CPF versus those used in the production of juice products. *Id.* An allocation methodology based on net realizable value data recognizes these differences while a weight-based approach does not.

We disagree with respondents' arguments that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO Inc.* v. *United States,* 965 F.2d 1056 (CAFC 1992)(*IPSCO*) that value-based cost allocations are unlawful. *IPSCO* involved the Department's use of an appropriate methodology for allocating costs between two grades of steel pipe. There were no physical differences between the two grades of pipe, only differences in quality and market value. Furthermore, the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. Given these facts, the Department, in its final determination for the underlying case, allocated production costs equally between the two grades of pipe, reasoning that because they were produced simultaneously, the two grades of pipe in fact had identical production costs.

[3] Although, as noted above, this aspect of the *Final Determination* was overturned by the CIT in *TIPCO,* it is currently on appeal before the CAFC.

This aspect of the case was upheld in *IPSCO,* based on the CAFC's holding that the Department ''computed constructed value according to the unambiguous terms of [the Act].'' *IPSCO* at 1061. While the CAFC noted, in deferring to the Department's ''consistent and reasonable interpretation of section 1677b(e),'' that the allocation of costs based on relative value resulted in an unreasonable circular methodology (*i.e.,* because the value of the pipe became a factor in determining cost which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. *Id.* On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on a respondent's normal allocation methodologies, particularly when there are significant differences in the raw materials. The Department's reasoning in the instant case (*i.e.,* that the use of the pineapple cylinder in production of CPF and the use of the shells, cores, and ends, in production of juice and concentrate, requires a value-based allocation basis) is thus fully consistent with *IPSCO.*

We disagree with SFP that its normal accounting system during the POR allocated fruit costs in a manner that accounted for qualitative differences in the different parts of the fruit. Due to the proprietary nature of the facts at issue, our analysis of SFP's normal allocation methodology is contained in the proprietary version of a memorandum in the Department's Central Records Unit. *See Memorandum from William Jones through Cathie Miller to the File, Regarding SFP Fruit Cost Allocation* (December 5, 1997). As discussed in that memo, we have determined that SFP's normal allocation methodology during the POR does not ''reasonably reflect'' the cost of producing the merchandise and we cannot employ this method in our COP analysis. Alternatively, we have applied the NRV methodology used for the preliminary results in our calculations for these final results.

In response to TIPCO's argument that NRV ratios, to be used at all, should have been based on POR data, we continue to believe that we correctly relied upon historical data in calculating the NRV ratios used in the *Preliminary Results.* The NRV is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal. *See Cost Accounting: A Managerial Emphasis* at 550 (Horngren, 9th ed.

1997). In order to calculate NRV ratios for the *Preliminary Results,* it was necessary to compare historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding, and also to include data for markets where allegations of dumping had not been lodged. We therefore collected company-specific historical data from 1990 through 1994 and used this information to perform our calculations and adjust the allocation of shared costs.

Finally, with respect to the allocation of TIPCO's joint labor and overhead costs, we continue to believe that these costs should be allocated in the same manner as the costs of purchasing fruit. The Department recognizes that a ''joint production process occurs when 'two or more products result simultaneously from the use of one raw materials as production takes place.' '' *See Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part,* 61 FR 58374, 58376 (November 14, 1996) (*PET Film*) (quoting Keeler, *Management Accountants' Handbook,* Fourth Ed. at 11:1). Moreover, a joint production process produces two distinct products and the essential point of that process is that the raw material, labor and overhead costs prior to the initial split-off requires an allocation to the final products. *See Management Accountant's Handbook* at 11:1. CPF and juice result from a joint production process because they both rely on the use of a single raw material, pineapple fruit. From the time when the fruit is purchased or grown until the fruit is processed in the Ginaca machine (which separates the fruit into its various parts), CPF and juice share the joint raw material, labor, and overhead costs. (After the Ginaca machine separates the fruit (*i.e.,* the ''split-off point''), the cored pineapple cylinders are processed into CPF, and the remaining portions of the pineapple (*i.e.,* the shells, cores and ends) are processed separately in order to extract pineapple juice.) Since all costs up to the split-off point are joint costs, and since, as discussed above, there are qualitative differences in the different parts of the pineapple, all such costs (including labor and overhead) must be allocated in a manner that reflects those differences. Accordingly, it would be inappropriate to allocate the labor and overhead costs on a weight basis, as urged by TIPCO. Instead, for these final results we continue to allocate these costs on the basis of NRV ratios, since such an allocation reasonably reflects qualitative differences that exist between the joint raw materials used to produce CPF and juice.

Cost Issues—TPC

Comment 1: Calculation of Average Cost for POR

TPC argues that the Department should have calculated a separate cost of production for each fiscal year for which sales in the comparison market were compared to costs (*i.e.,* 1994, 1995, and 1996), rather than calculating a single average cost for the POR on the basis of 1995 and 1996 data. TPC contends that the calculation of a single average cost for the POR is not required by statute, and maintains that the Department has calculated separate fiscal year costs in other cases where the use of a single average cost would have created a distortion. TPC argues that calculation of separate fiscal year costs is necessary in this case in order to account for substantial increases in the cost of fresh pineapple and interest expenses from year to year. According to TPC, the calculation of a single average cost for the POR in the *Preliminary Results* distorted the price-cost comparison in such a way that sales early in the period appear to be below cost, while sales late in the period appear to have high profit margins. TPC further claims that this result was exacerbated because the Department did not include 1994 cost data in the calculation of the single average POR cost. TPC argues that a distortion also arises because its merchandise is held in inventory, so that, for instance, sales in early 1995 are made out of inventory produced in 1994. According to TPC, prices are determined based on the cost of inventory, and therefore a comparison of sales in early 1995 to average costs in 1995 would create a distortion. TPC argues that, instead, the Department should assign fiscal year costs to sales taking into account the average inventory period for each product.

The petitioner responds that it would be contrary to law and the Department's practice to rely on costs outside the POR. The petitioner points out that in the underlying investigation, the Department explicitly determined to use costs for the POI and not costs for the period before the POI, and that in the investigation the Department rejected arguments similar to those made by TPC in this review. According to the petitioner, the Department generally does not analyze the holding period in determining the appropriate reporting period for cost information, and TPC has offered no new arguments beyond those raised by the respondents in the underlying investigation. The petitioner further argues that the prevailing market conditions during the period reflected steady prices despite increasing costs, so that there is no evidence that a distortion arises from the comparison of prices to an average POR cost.

DOC Position: We disagree with TPC. The Department's normal methodology with respect to the averaging of costs is to calculate a single weighted-average cost for the entire period of investigation or review, except in unusual cases where there are substantial changes in cost, *e.g.,* cases involving high-inflation economies. *See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 37014, 37024 (July 10, 1997); *see also Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes and Tubes From Taiwan,* 57 FR 53705 (November 12, 1992). This methodology is reasonable and in accordance with law, and has been consistently followed regardless of whether the costs of production inputs during the period were higher or lower than the costs in other periods. *See, e.g., Final Determination of Sales at Less than Fair Value: Stainless SteelBar From Spain,* 59 FR 66931 (December 28, 1994)(the Department declined to accept the petitioner's argument that the appropriate cost period was that period prior to the period of investigation, which reflected higher costs).

The Department believes that, absent strong evidence to the contrary, the cost structure during the POR (or period of investigation) is representative and can be used to calculate an estimate of the cost of production of that foreign like product in the ordinary course of business. Thus, although the statute grants the Department latitude in determining the appropriate cost reporting period, the Department has consistently required and used the per-unit weighted-average costs incurred during the POR.

The Department has departed from its normal practice of using POR weighted-average costs in certain rare situations where cost and price averages calculated over the entire period did not permit an appropriate comparison. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From Taiwan,* 62 FR 51442, 51444 (October 1, 1997); *Final Determination of Sales at Less*

Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan, 51 FR 39680, 39682 (October 30, 1986); *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 58 FR 15467, 15476 (March 23, 1993). However, we find that the pineapple industry did not experience significant price movements over the POR, and therefore we continue to believe that the costs incurred during the POR are reasonably representative of TPC's cost experience and the most relevant data to analyze whether current sales permit recovery of costs.

As for the ''significant'' increase in the cost of the raw material input that TPC claims to have experienced during the POR, we note that as with all commodities, price fluctuations in the raw pineapple are to be expected, as prices are dependent upon the supply and demand of that commodity. TPC has not identified, and we do not know of, any past case where the Department has abandoned its normal POR cost methodology on the basis of a fluctuation in the price of raw material inputs. Further, TPC's assertion that the cost of pineapple fruit increased substantially during the POR is misleading. While TPC is correct that the average cost of pineapple fruit was higher at the end of the POR than it was at the beginning of the POR, the average monthly costs fluctuated both upward and downward throughout the POR. Moreover, in its brief, TPC understates the 1994 average cost of pineapple fruit, relying on an average cost of pineapple for 1994 that included costs for nine months before the earliest 1994 sale it was required to report.

We are also unpersuaded by TPC's argument that its interest expenses increased substantially over the period, thus warranting calculation of separate costs for each fiscal year. The increase in interest rates noted by TPC is greatest when comparing the average interest expenses for 1994 to those for 1995. However, the interest expense ratio reported by TPC for 1995 is not, on its face, aberrational, whereas the interest expense ratio for 1994 (which TPC has treated as proprietary, and therefore cannot be disclosed in this notice), is strikingly low. *See* TPC case brief at 7.

As for TPC's additional argument that the average POR cost relied upon in the *Preliminary Results* is distorted by the exclusion of 1994 fiscal year costs from the average, we note that the Department's practice is to base its cost calculation on fiscal years overlapping the POR. No part of the TPC 1994 fiscal year overlaps the POR. Although third-country market sales in the last three months of 1994 might serve as a comparison basis for U.S. sales at the beginning of the POR under the Department's 90/60 day window for matching, we are unpersuaded that this is a sufficient reason to depart from the Department's practice. We have therefore continued to base the calculation of the weighted-average cost for the POR on 1995 and 1996 costs.

In sum, we find no compelling reason to depart from the Department's normal practice and to calculate separate costs for each fiscal year. We have continued to rely on a single weighted-average cost for the POR, based on 1995 and 1996 costs.

Cost Issues—SFP

Comment 1: Adjustment to Direct Labor and Overhead

SFP states that the Department inadvertently included a direct labor and overhead adjustment in its calculation of SFP's COP and CV. SFP argues that the adjustment would have been appropriate if the Department had used SFP's unadjusted costs, as reflected in its normal accounting records; but since the Department accepted SFP's revised allocation of labor and overhead costs, the adjustment is not necessary.

The petitioner claims that SFP is mistaken in claiming that the Department included the direct labor and overhead adjustment in the calculation of COP and CV for the preliminary results.

DOC Position: We agree with the respondent. The direct labor and overhead adjustment was included in the Department's calculation of SFP's cost of manufacturing used in the preliminary results. This can be confirmed by adding the materials, labor and overhead amounts shown in the cost calculation memo and comparing them to the cost of manufacturing also reported in that memo. Further, since the Department accepted SFP's revised allocation of labor and overhead costs, the adjustment in question was not necessary. We have revised labor and overhead costs accordingly for these final results.

Comment 2: Adjustments to Year-End Physical Inventory

SFP claims that the Department incorrectly included SFP's year-end inventory count adjustments in the calculation of COP and CV. SFP argues that these adjustments were recorded to correct for errors that occurred in tracking CPF inventory movement from production to semi-finished goods inventory, and then to finished goods inventory and sales. According to SFP, the Department's use of actual production quantities in its cost calculations has already accounted for a portion of its year-end adjustments, and the remaining adjustments are irrelevant to the cost of manufacturing since these adjustments are related to post-production inventory movement. SFP argues that in the alternative, if the year-end adjustments are included, the Department should use SFP's original, uncorrected production figures as the starting point for the calculation of unit costs.

The petitioner argues that SFP's original production figures contained errors and therefore should not be used for unit cost calculations. The petitioner further argues that SFP's year-end adjustments were not reflected in its submitted cost data, and that the Department therefore correctly revised SFP's production costs to include the adjustments.

DOC Position: We agree with the petitioner. The submitted cost data did not include any of SFP's year-end inventory adjustments, and the inventory tracking errors involved costs that arose throughout the POR. SFP accumulated these costs and reported them in the inventory amount on its balance sheet. These costs were not reflected on SFP's income statement until the end of 1996, when year-end adjustments were applied, nor were they included in the reported costs. Therefore, we have continued to include the year-end adjustments in our cost calculations for the final results. In applying the adjustments, we have pro-rated the total amount between the first six months of 1996 and the last six months of 1996 on the basis of production quantities.

Comment 3: Appropriate Period for G&A and Interest Expenses

SFP argues that the Department incorrectly calculated G&A and interest expenses. According to SFP, the Department's long-standing policy is to calculate G&A expenses from the audited financial statements which most closely correspond to the POR. SFP had two sets of financial statements during the POR, reflecting the fact that SFP changed its fiscal period to the calendar year at the end of 1995. The first set of financial statements covered the period October 1994 through September 1995, and the second set covers the last three months of 1995 (the ''stub'' year). In the preliminary results, the Department based G&A and interest expenses on the first of these financial statements only.

SFP argues that the Department should have also included in its calculation the expenses shown in SFP's stub year 1995 financial statements. SFP argues that in *Steel Products from Canada* the Department included expenses from a period of less than a full year in its G&A and interest expense calculations. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 13815, 13829–30 (March 28, 1996).

The petitioner argues that the Department followed its normal practice when it calculated SFP's G&A expenses using the audited financial statements for the fiscal year ending in September 1995. The petitioner claims that the Department's use of full year annual data to calculate SFP's G&A expenses was consistent with the methodology used in *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from Thailand*, 60 FR 22557, 22560–61 (May 8, 1995), where the Department stated that because of their nature as period costs, and due to the irregular manner in which many companies record G&A expenses, the Department generally looks to a full-year period in computing G&A expenses for COP and CV.

DOC Position: We agree with SFP. While stub year 1995 encompasses only three months, it represents an audited fiscal period (thus properly reflecting all costs related to this period), and falls entirely within our POR. We have therefore recalculated SFP's G&A and interest expense rates for these final results using both the audited financial statements for the year ending September 30, 1995, as well as the audited financial statements for the ''stub year'' ending December 31, 1995.

Comment 4—Movement Charges in G&A Expenses

SFP claims that the Department improperly included ocean freight charges in the calculation of G&A expenses. SFP argues that these charges are direct selling expenses, not G&A expenses. SFP further argues that all of its sales during the POR were made on an FOB Thailand basis, so that any ocean freight expenses are unrelated to subject merchandise.

The petitioner argues that the Department properly included ocean freight charges in the calculation of G&A expenses. The petitioner claims that SFP classifies these costs as G&A expenses in its accounting system and thus they should be included in the G&A expense calculation.

DOC Position: We agree with SFP. Ocean freight charges are properly classified as a movement expense and thus should not be included in the calculation of G&A expenses. Accordingly, we have corrected the G&A expense calculation for these final results by excluding the ocean freight charges.

Cost Issues—TIPCO

Comment 1: Foreign Exchange Gains and Losses on Accounts Receivable

TIPCO claims that the Department erred when it removed foreign exchange gains from the calculation of G&A expenses. TIPCO contends that a portion of the excluded exchange gains were related to loans and purchase transactions and therefore should be allowed as an offset to TIPCO's G&A expenses. TIPCO also argues that the remaining exchange gains are akin to gains on financing activity and thus should be treated in a manner similar to interest income on short-term financial assets. Therefore, TIPCO argues, the Department should apply the remaining exchange gains as an offset to interest expenses.

The petitioner argues that the Department properly followed its stated policy when it excluded foreign exchange gains earned on accounts receivable from the calculation of TIPCO's G&A expenses. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30364 (June 14, 1996). The petitioner also notes that it is Department practice to exclude foreign exchange gains on accounts receivable from the calculation of net interest expenses. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Silicomanganese from Venezuela,* 59 FR 55436, 55440 (November 7, 1994). The petitioner claims that TIPCO did not provide any information or explanation in support of its claim that exchange gains on accounts receivable were related to financing activities and, therefore, these amounts should be excluded from the calculations of TIPCO's G&A expenses and net interest expenses for the final results.

DOC Position: We agree with the petitioner. It is Department practice to include foreign exchange gains and losses on financial assets and liabilities in our COP and CV calculations, provided that the gains and losses are related to the company's production. Since the foreign exchange gains and losses incurred on accounts receivable are related to the sales function, rather than to production, these amounts should not be included in the calculations of COP and CV. Accordingly, we have excluded these amounts from G&A expenses and net interest expenses for the final results. However, we have included foreign exchange gains and losses incurred on loans in the calculation of COP and CV, as TIPCO demonstrated that these gains and losses were related to the company's financing activities.

Comment 2: Calculation of Profit for CV

TIPCO argues that the Department failed to include packing in the revenue and cost components of the CV profit calculation. According to TIPCO, the profit realized on sales must be allocated over the entire cost experience, and packing is a component of cost of goods sold.

The petitioner argues that the Department was correct in excluding packing from the profit calculation for TIPCO, because the home market net price and COP net price calculated by the Department did not include packing.

DOC Position: We agree with the petitioner. In the *Preliminary Results*, we calculated the profit rate in the margin program exclusive of packing. Therefore, the profit rate is correctly applied to a cost of manufacturing and general expense amount exclusive of packing. Accordingly, we have not revised the profit calculation for these final results.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period January 11, 1995, through June 30, 1996:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd	12.85
The Thai Pineapple Public Company, Ltd	27.85
Thai Pineapple Canning Industry Corp., Ltd	21.54

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. As discussed above, because the number of transactions involved in this review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates. With respect to both EP and CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject

merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a) of the Act: (1) The cash deposit rate for SFP, TIPCO, and TPC will be the rate established above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation, the cash deposit will continue to be the company-specific rate published in the final determination of the LTFV investigation; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 24.64 percent, the ''all others'' rate established in the LTFV investigation.

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

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

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3763 Filed 2–12–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Wednesday, March 4, 1998, and Thursday, March 5, 1998, from 9 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on March 4 and 5, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland in the Administration Building in Lecture Room A.

Agenda

- Welcome and Overview
- Issues Update and Briefings
- Pending Computer Security Legislation Updates
- CIO Briefings
- Information Security Briefing
- Privacy/Health Care Briefing
- Systems Certification Briefing
- Discussion
- Pending Business
- Public Participation
- Agenda Development for June Meeting
- Wrap-Up

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than February 23, 1998. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: February 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020698C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT), Groundfish Advisory Subpanel (GAP), Scientific and Statistical Committee Salmon Subcommittee, Scientific and Statistical Committee Economic Subcommittee, Scientific and Statistical Committee Groundfish Subcommittee, and the full Scientific and Statistical Committee (SSC) will hold meetings which are open to the public.

DATES: The meetings will be held on March 2–5, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Doubletree Hotel Portland Downtown, 310 SW Lincoln, Portland, OR 97201; telephone: (503) 221–0450.