existence and validity of the waiver would lie with BXA. *See generally, U.S.* v. *McGaughey*, 977 F.2d 167, 1071 (7th Cir. 1992), *cert. denied*, 507 U.S. 1019 (1993). Absent a valid waiver, the administration action in this matter is time-barred. 28 U.S.C. 2462; *see also, Henke* v. *U.S.*, 60 F.3d 795, 798 n.3 (Fed. Cir. 1995).

Section 2462 of Title 28 of the United States Code imposes a five-year statute of limitation on the commencement of enforcement proceedings brought by BXA under the Export Administration Act. *See, U.S.* v. *Core Laboratories, Inc.*, 759 F.2d 480, 481 (5th Cir. 1985). It is well-settled that an individual under investigation may expressly waive the statute of limitations defense in hopes that further discussion may result in a more favorable disposition of the case or prevent the Government from bringing an enforcement action. *See, U.S.* v. *Spector*, 55 F.3d 22, 24 (1st Cir. 1995) (interpreting criminal statute of limitation); *U.S.* v. *Del Percio*, 870 F.2d 1090, 1093 (6th Cir. 1989) (interpreting criminal statue of limitation). In order for the waiver of the statute of limitations to be valid, however, it must be knowingly and voluntarily made by the Respondent. *See, Spector*, 55 F.3d at 24; *U.S.* v. *Wild*, 551 F.2d 418, 423, (D.C. Cir. 1977), *cert. denied,* 431 U.S. 916 (1977). Moreover, where, as in this case, the waiver of the statute of limitations has been reduced to writing, traditional contract principles often apply. *See. Spector,* 55 F.3d 22; *Reich* v. *Eveready Flood Control Corp.*, No. 94 C 2331, 1995 U.S. Dist. Lexis 10397 (N.D. Ill., Jul. 25, 1995); *but see, McGaughey,* 997 F.2d at 1072 (ruling that the statute of limitations waivers are not contracts in cases where the federal government is collecting tax deficiencies and tax liability has been previously established).

For an enforceable agreement to exist between two parties, there must be mutual assent by the contracting parties on the essential terms and conditions of the subject about which they are contracting. *See, Reich*, 1995 U.S. Dist. Lexis 10397, at *7; *see also,* Reinstatement (Second) of Contracts § 17. The manifestation of mutual assent takes the form of an offer or proposal by one party followed by acceptance by the other party. Restatement (Second) of Contracts § 22., cmt. a. If a party, in anyway, changes or modifies the terms of an offer or proposal it constitutes a rejection of the original offer or proposal and becomes a counteroffer that must be accepted by the original offeror before an enforceable agreement is formed. Restatement (Second) of Contracts § 39, cmt. a. *See, Venture Assoc. Corp.* v. *Zenith Data Sys. Corp.*, 987 F.2d 429, 432 (7th Cir. 1993) (offeree's returning of proposed agreement with minor, non-substantive changes added in writing constituted a counteroffer); *United States Can Co.* v. *NLRB*, 984 F.2d 865, 869 (7th Cir. 1993) (striking out a single term of an offer creates a counteroffer, which the other party must accept or there is no contract). Once a party has rejected an offer, that party cannot afterwards revive the original offer by tendering acceptance of it. *Minneapolis & St. Louis Ry.* v. *Columbus Rolling Mill,* 119 U.S. 149, 151 (1886); *Shaffer* v. *BNP/Cooper Neff, Inc.*, Civil Action No. 98–71, 1998 U.S. Dist. Lexis 14013, at *14 (E.D. Pa., Sept. 4, 1998); *Hicks Road Corp.* v. *Marathon Oil Co.*, No. 94 V 3409, 1994 U.S. Dist. Lexis 9095, at *6 (N.D. Ill., Jul. 6, 1994).

In this case, the Respondent has established that a valid enforceable agreement with respect to the extension of the statute of limitations was never created between the parties. At best, the parties were still negotiating the terms of the statute of limitations waiver agreement. BXA counsel's attempt to create an enforceable agreement by retyping the first page of the February 16, 1999, proposed statute of limitation waiver agreement and affixing her signature to a signature page containing Respondent's counsel's signature taken from a previous draft agreement is improper. (*See,* Respondent Exhibit 7 & 8). This is especially true where Respondent's counsel was not initially consulted and was not given an opportunity to review the retyped agreement, and obtain approval from his client, MK Technology. (*See* Respondent Exhibit 9). The fact that the February 16, 1999 agreement did not ''materially modify'' the agreement that Respondent counsel signed on February 12, 1999 is of no consequence. Furthermore, once BXA counsel rejected the February 12, 1999 statute of limitation waiver agreement that was signed by Respondent's counsel, Ms. Kim could not later revive the offer by signing the agreement on February 17, 1999, a day after the statute of limitations period expired. (*See,* Respondent Exhibit 10).

Based on Respondent's evidence and BXA's failure to rebut or otherwise respond to the Motion for Summary Decision, the Undersigned has no choice but to find that the Respondent has established that there is no genuine issue of material fact that this matter is time barred by the applicable statute of limitations.

Order

Wherefore it is hereby ordered that the Respondent's Motion for Summary Decision be granted.

It is hereby further ordered that the above-captioned matter be *dismissed with prejudice* against the Bureau of Export Administrative refiling this case at a later date.

So ordered:

Dated this 20th day of October 1999, Baltimore, Maryland.

Harry J. Gardner,

Administrative Law Judge, United States Coast Guard.

[FR Doc. 99–32188 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

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

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

SUMMARY: On June 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers five producers/exporters of the subject merchandise. The period of review is July 1, 1997, through June 30, 1998. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of

Commerce (the Department) regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Siam Food Products Public Co., Ltd. (SFP); The Thai Pineapple Public Co., Ltd. (TIPCO); Siam Fruit Canning (1988) Co., Ltd. (SIFCO); Kuiburi Fruit Canning Co., Ltd. (KFC); and Vita Food Factory (1989) Ltd. (Vita). We also received review requests from Malee Sampran Public Co., Ltd. (Malee) and Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole). For the reason noted below, we are rescinding the review with respect to Malee and Dole. On June 8, 1999, the Department published the preliminary results of this review. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 64 FR 30476 (*Preliminary Results*). On July 8 and 15, 1999, we received case briefs and rebuttal briefs, respectively, from Maui Pineapple Co., Ltd. and the International Longshoremen's and Warehousemen's Union (jointly, the petitioners), TIPCO, and SFP.

Scope of Review

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

Partial Rescission of Antidumping Duty Administrative Review

On August 27, 1998, and October 30, 1998, Malee and Dole, respectively, timely filed to withdraw their requests for review. Because there were no other requests for review of either company, we have rescinded the review with respect to both Malee and Dole in accordance with 19 CFR 351.213(d)(1).

Fair Value Comparisons

We calculated export price (EP) and normal value (NV) based on the same methodology used in the preliminary results. We corrected clerical errors with respect to the calculation of SIFCO's normal value. *See* SIFCO's analysis memorandum dated December 6, 1999.

Cost of Production

We calculated the COP based on the same methodology used in the preliminary results. We corrected clerical errors with respect to SFP's and SIFCO's total manufacturing costs. *See* the respective companies' analysis memoranda dated December 6, 1999.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners and two of the respondents (SFP and TIPCO).

Comments on General Issues

Comment 1—Exchange Rate Methodology

SFP objects to the exchange rate methodology used in the calculation of the preliminary results, arguing that it deviates from the Department's standard methodology as described in Policy Bulletin 96.1 (Policy Bulletin). *See* 61 FR 9434 (March 8, 1996). Contending that this methodology had no precedent at the time of the devaluation of the Thai baht, SFP says it was impossible for the company to anticipate the exchange rate to be used in the preliminary results and, therefore, it could not adjust its prices accordingly. SFP argues that one of the stated objectives in the Policy Bulletin is that a measure of predictability must exist, and that its preliminary dumping margin would have been much lower had the Department applied its standard exchange rate methodology.

Moreover, SFP appears to argue that the Department applied a special averaging period in this review. It acknowledges that the Department used a similar methodology in the final determinations of three recent antidumping investigations involving South Korea,[1] but contends that the 40-percent drop in the value of the Korean won at the end of 1997 greatly exceeds the 18-percent fall of the Thai baht in July 1997. SFP believes that the drop in the baht is not large enough to be classified as ''precipitous'' nor merit special treatment in the margin calculation.

Furthermore, SFP contends that the legal basis for the special averaging period used in *Rubber from Korea, SSP from Korea* and *SSRW from Korea* applies only to investigations, that section 777A(d)(1)(B) of the Act limits the comparison periods of administrative reviews to the corresponding calendar month, and that the Department cited no authority from the statute, the regulations, or prior cases as a basis for the methodology applied in the preliminary results.

For these reasons, SFP argues that for the final results, the Department should not adopt the method used in the preliminary results, but should use either the normal 40-day moving average or actual daily rates.

The petitioners also object to the exchange rate methodology used in the preliminary results, and request that the Department use the methodology outlined in the Policy Bulletin when calculating the final results.

First, the petitioners reiterate the need for predictability in the exchange rate methodology. Second, they argue, the Department's decision to deviate from its ''normal'' methodology in the preliminary results was improper because the Department's threshold for finding a drop in the value of a foreign currency to be ''precipitous'' has been much higher in other cases. Specifically, the petitioners point to the Department's recent finding that the 20-percent decline in the value of the New Taiwan dollar over the course of a 12-month period—a decline of a similar magnitude to that of the baht—was not large enough to justify any special action. (*See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan,* 64 FR 30592 (June 8, 1999) (*SSSS from Taiwan*).)

The petitioners also argue that in the preliminary results, the Department focused on a very narrow time period when examining the decrease in the value of the currency, *i.e,* the Department found that the baht declined 18 percent over a one-day period. If studied from a longer time perspective, they contend that it becomes clear that the decline took the form of a steady progression rather than a precipitous drop and, as such, the Department has no reason to adopt a special methodology. For the same reason, the petitioners disagree with SFP's proposal that the Department consider using the actual daily exchange

[1] *See Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 64 FR 14865 (March 29, 1999) (*Rubber from Korea*), *Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444 (March 31, 1999) (*SSP from Korea*), and *Stainless Steel Round Wire from Korea,* 64 FR 17342 (April 9, 1999) (*SSRW from Korea*)

rates as an alternative to its 40-day moving average benchmark methodology. The petitioners believe that the only justification for using the actual daily exchange rates would be if the Department determined that the Thai inflation rate was significant during the POR and, therefore, that it would be appropriate to apply the significant inflation margin methodology (*see* the comment on significant inflation, below).

TIPCO rejects the assertion that the Department erroneously deviated from its established exchange rate methodology in the preliminary results. The company argues that the 18-percent fall in the value of the baht was indeed a ''precipitous decline'' because of the magnitude of the drop, the short time period over which it occurred, and the fact that the baht did not rebound in any significant way. TIPCO rejects the petitioners' comparison with *SSSS from Taiwan,* stating that the 20-percent decline in the New Taiwan dollar was gradual and took place over a prolonged period of time. The Department's decision not to treat the fall of the New Taiwan dollar as precipitous is, therefore, not relevant for the present case, TIPCO says.

TIPCO also defends the Department's use of a stationary average as the benchmark during the ''post-precipitous period.'' According to TIPCO, this is simply an application of a modified benchmark similar to what was used in *Rubber from Korea* and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664 (June 8, 1999). TIPCO believes that the Department correctly applied its exchange rate methodology as outlined in the Policy Bulletin. Although the Bulletin does not specify how the benchmark should be calculated after a precipitous decline of a currency, TIPCO argues that the use of a modified benchmark is fully consistent with the spirit of the Policy Bulletin.

Department's Position: Contrary to the arguments put forth by SFP and the petitioners, we believe that the methodology employed in the preliminary results was consistent with our exchange rate methodology used when a country's currency has experienced a ''precipitous drop.'' This methodology is outlined in Policy Bulletin 96.1, and in following our prescribed methodology, we ensured predictability in the exchange rates used in the preliminary results. We also note that we did not apply a special averaging period, as SFP has suggested. Furthermore, because we continue to find that the July 2, 1997, decline of the baht was ''precipitous and large'' within the meaning of the Policy Bulletin, we disagree with SFP's and the petitioners' suggestion that we should apply an exchange rate methodology using a 40-day moving average benchmark throughout the POR in the calculation of the final results of this review. However, as discussed below, we have modified our exchange rate methodology consistent with *Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 64 FR 56759 (October 21, 1999) (*Pipes and Tubes from Thailand*).

As stated in the preliminary results, 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. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Policy Bulletin; *Preliminary Results* 64 FR at 30480; and *Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands,* 64 FR 36841, 36843 (July 8, 1999).

As discussed in *Pipes and Tubes from Thailand* (64 FR at 56763), we continue to find that the drop of more than 18 percent in the dollar-baht exchange rate on July 2, 1997, from the previous day's rate, constitutes a ''large and precipitous'' decline. However, we do not find that the gradual decline of the baht that occurred over nearly seven months, from July 2, 1997, to January 31, 1998, qualifies as a ''large and precipitous'' drop for purposes of our exchange rate methodology.

In the preliminary results, we determined that, because a large and precipitous drop occurred on July 2, 1997, it was appropriate simply to begin on that day to use a new benchmark in order to avoid using daily rates from before the precipitous drop in calculating the benchmark for daily rates after the precipitous drop. Accordingly, for exchange rates between July 2 and August 27, 1997, for the preliminary results, we relied on the standard exchange rate model, but used as the benchmark rate a stationary average of the daily rates over this period. For these final results, however, we have changed the methodology applied to the period following July 2, 1997, using the methodology set forth in *Pipes and Tubes from Thailand.*

The gradual decline in the value of the baht over several months after July 2 was not so large and precipitous as to reasonably preclude the possibility that the exchange rate fluctuated from time to time during that period. Therefore, it is appropriate for the Department to use its standard methodology so as to ''ignore'' those fluctuations in accordance with section 773A of the Act. However, we also recognize that, following a large and precipitous decline in the value of a currency, a period may exist during which exchange rate expectations are revised, and it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop on July 2, 1997. Thus, we devised a simple test for identifying a point following a precipitous drop at which it is reasonable to think that exchange rate expectations have been sufficiently revised that it is appropriate to resume using the normal methodology. Beginning on July 2, 1997, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark.

Applying this methodology in the instant case, we used daily rates from July 2, 1997, through August 4, 1997. We then resumed the use of our normal methodology through the end of the POR, starting with a benchmark based on the average of the previous 20 reported daily rates on August 5.

With respect to the petitioners' comment regarding *SSSS from Taiwan,* we note that in that case, unlike in the instant case, we found that changes in the exchange rate were moderate, and that while the value of the New Taiwan dollar relative to the U.S. dollar declined steadily, the overall decline was less than 20 percent over the entire period of investigation. In the instant case, the value of the baht declined a comparable amount in one day. Such a large decline over an extremely short period of time leads us to determine that the decline in the baht was ''precipitous.''

Comment 2—Significant Inflation

Referring to comments they submitted to the Department on May 10, 1999, the petitioners maintain that the inflation rate in Thailand was significant during the POR. On this basis, they urge the Department to apply its ''significant inflation calculation methodology'' by requiring the respondents to report their costs on a monthly basis, and by making price comparisons within the same calendar month rather than within the 90/60-day contemporaneity window. The petitioners claim that during most months of the POR, the monthly inflation rate in Thailand exceeded the monthly rate (*i.e.,* 1.87 percent) which, when compounded over a 12-month period, would yield an annual inflation rate of 25 percent, the Department's standard threshold for finding significant inflation. As further evidence of significant inflation, the petitioners point to the sharp drop in the value of the baht during the POR and the 85-percent increase in the price of tin, an input product for the canned fruit industry.

SFP and TIPCO reject the petitioners' argument, contending that Thailand's inflation rate did not exceed the Department's standard threshold rate of 25 percent during the POR. These two respondents argue that the Department, therefore, has no reason to change the calculation methodology used in the preliminary results.[2]

Furthermore, SFP points out that in the preliminary determination in *Stainless Steel Sheet and Strip in Coils from South Korea,* 64 FR 137 (January 4, 1999), the Department rejected an inflation analysis similar to the one proposed by the petitioners in this review. Finally, SFP dismisses the petitioners' argument regarding the increase in tin prices as being overly simplistic. *Department's Position:* Generally, when the annual inflation rate in the country under investigation exceeds 25 percent, the Department considers the inflation to be significant and uses a modified methodology. *See, e.g.,* Import Administration Antidumping Manual, Chapter 8, Section 15 (January 1998). Based on this practice, in a May 28, 1999, memorandum, we rejected the petitioners' request that cost data be reported on a monthly basis because we found that the rate of inflation in Thailand during the POR was not at a level such that it would warrant a special calculation methodology (*see* May 28, 1999, memorandum addressing this issue). Accordingly, we did not require the respondents to report their costs on a monthly basis for purposes of the preliminary results. We have continued to apply our standard methodology for the final results of this review because we have not received any new facts which would lead us to change our preliminary findings.

All parties filing case briefs made other arguments on the calculation of COP in the presence of significant inflation, in the event the Department would find that there was significant inflation during the POR. However, these comments are now moot as we have not found that significant inflation existed during the POR.

Comment 3—Treatment of Certain Tax Certificate Revenues

SFP and TIPCO object to the Department's preliminary decision not to adjust for the value of certain tax certificate revenues in the calculation of the COP. The two respondents state that upon exportation they received the tax certificates as a refund of an internal Thai tax imposed on materials. They assert that in the past, the Court of International Trade (CIT) and the Department, on remand, have determined that similar tax certificate programs constitute refunds upon exportation within the meaning of the statute (*see Camargo Correa Metais, S.A.* v. *United States,* No. 98–152, Slip. Op. at 5 (CIT 1998) (*Camargo*)). SFP and TIPCO maintain that the tax certificates are a result of the two companies' export activities and that the Department should adjust the COP for the value of these certificates as taxes remitted or refunded at the time of exportation.

SFP and TIPCO note that the Department requires that there be a sufficient link between the refund and the cost of materials before a cost adjustment is permitted (*see, e.g., Stainless Steel Round Wire From India; Final Determination of Sales at Less Than Fair Value,* 64 FR 17319 (April 9, 1999) (*Round Wire from India*)). According to the two respondents, there is sufficient evidence on the record of this proceeding that the calculation of the value of the tax certificates is based on the cost of material inputs. They argue that the Department's preliminary finding in this review—that the tax certificates are not sufficiently linked to material costs—is inconsistent with its determinations in the investigation and prior reviews of this case in which an adjustment of the COP by the value of the tax certificates was allowed.

According to SFP and TIPCO, the Department's preliminary finding is also inconsistent with its analysis of the tax program in several countervailing duty proceedings. Specifically, they point to *Certain Apparel from Thailand: Preliminary Results of Countervailing Duty Administrative Review,* 62 FR 46475 (September 3, 1997), in which the Department found that all inputs for which the respondents received duty drawback were physically incorporated in the exported product. SFP and TIPCO also note that in past cases, the Department has verified that the calculation of the rebate is tied to material inputs. They argue that the Department cannot have it both ways: denying a cost adjustment in an antidumping proceeding because the refund is ''not related to cost of production'' while at the same time, in a countervailing duty proceeding, finding that the tax certificate program includes only physically incorporated inputs. On this basis, both respondents urge the Department to change its preliminary results and allow an adjustment of COP by the value of the tax certificates they received during the POR.

The petitioners respond that while the statute may allow an adjustment to the COP for internal taxes on raw materials that are refunded upon exportation, such authority does not relate to the refund situation in this review. They note that at verification, the Department found no evidence that the revenue from the tax certificates is tied to a duty drawback scheme. The petitioners point out that the Department also verified that the value of the tax certificates is based simply on a percentage of a company's export revenue. On this basis, the petitioners argue, the Department was correct in not allowing any adjustments for the tax certificates.

Regarding *Round Wire from India,* the petitioners argue that this determination squarely supports the Department's decision to reject an offset to cost and an increase in U.S. price because in

[2] SFP's and TIPCO's rebuttal of the petitioners' comments is largely a restatement of the arguments submitted in their joint May 14, 1999, letter to the Department. On May 26, 1999, the Department also received a letter from KFC, objecting to the petitioners' May 10, 1999, comments.

Round Wire from India, the Department found that the refunds were unrelated to the customs duties paid to purchase raw materials for the manufacture of the subject merchandise.

The petitioners also argue that the respondents' reliance on *Camargo* is misplaced. They state that the decision in *Camargo* was that a tax credit, which constitutes a refund, should be deducted from a respondent's constructed value (CV). However, as determined in *Round Wire from India*, the import duties at issue in that case were not refunded upon exportation because the refunds were not directly based upon import duties paid on raw materials. Rather, they were based on the f.o.b. export price. The petitioners state that the facts in the current review are similar to those in *Round Wire from India* and that the Department, therefore, should reject the respondent's proposed offset to cost.

With regard to TIPCO's duty drawback claim, the petitioners state that this respondent has not made any effort to satisfy the Department's long-standing two-pronged test for duty drawback adjustments. The petitioners note that in order to add the duty drawback to U.S. price, the Department requires that a company show that the import duty and the rebate are directly linked to one another and, also, that there were sufficient imports to account for the duty drawback received for the export of the manufactured product. The petitioners argue that TIPCO has failed to show a direct link between any import duties and the rebate amount and that the Department, therefore, was correct in rejecting the company's duty drawback claim.

Department's Position: In determining whether a respondent can reduce its reported cost of manufacture by the amount of tax rebates it receives, the Department requires that the respondent show there is a link between claimed rebates and its cost of manufacture. *See Round Wire from India*, 64 FR at 17321. We acknowledge that we had accepted the respondents' claimed adjustment in previous segments of this proceeding, and had also examined this program in the context of several countervailing duty reviews, finding a link in those instances. However, based on information concerning the tax rebate program gathered during the verification of another respondent, Vita, and placed on the record of the instant review, we found no link between the tax rebates and the respondents' cost of manufacture that would allow us to treat this factor as a cost adjustment. Instead, the information we obtained at verification showed that the tax rebate is linked not to the cost of manufacture, but to exports, at a rate determined by the government and applicable to all companies that export. Based on this information, we issued a supplemental questionnaire to TIPCO, asking the company to provide us with information that would establish the requisite link. TIPCO failed to provide us with specific documentary evidence establishing this link. Further, SFP has not submitted any evidence for the record that establishes such a link. Accordingly, for the preliminary results we changed our previous treatment of this tax rebate program and disallowed it as a cost adjustment.

Although TIPCO and SFP continue to hold that such a link can be established, neither respondent has submitted evidence which demonstrates that the tax rebates can be tied to its cost of manufacture in a way that would permit us to apply the rebates as cost offsets. In fact, TIPCO has stated that it ''does not import directly any raw materials and does not pay directly any import duties in connection with its raw material purchases.'' (*See* TIPCO submission of April 22, 1999, page 1.) Based on the information on the record that we obtained at verification showing that the tax rebate is linked to exports and not to the cost of manufacture, and absent any record information in the instant review showing that such a link exists, we have continued to disallow the respondents' reported cost adjustment for these final results. Additionally, given that TIPCO has not shown that a link exists between the rebate program and any import duties it paid, it has failed the first prong of the Department's two-prong test for duty drawback adjustments and, thus, we have not made any adjustment to TIPCO's U.S. price.

Comment 4—Methodology for Allocating Fruit Costs

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

Regarding the specific cost allocation methodology to be used in place of the NRV methodology, these respondents argue that the Department should rely upon the weight-based fruit cost allocations submitted in their questionnaire responses. SFP and TIPCO maintain that their allocation methodologies are consistent with those reported by certain mandatory respondents in the original investigation and which were later adopted by the Department in the remand proceedings stemming from the less-than-fair-value investigation.

The petitioners reject the respondents' argument that NRV is not allowable in this case because of the CIT's decision in *TIPCO*. They support the Department's position that an NRV allocation methodology is both lawful and correct in order to allocate joint costs properly. The petitioners also state that the CIT decision is being reviewed by the CAFC and argue that the Department should, therefore, continue to use the NRV methodology.

Department's Position: Consistent with past segments of this proceeding, we have continued to allocate raw fruit costs incurred by the respondents using an NRV methodology which reasonably reflects the qualitative differences that exist between the joint raw materials used to produce CPF and other pineapple products, *e.g.,* pineapple juice. *See Preliminary Results,* 64 FR at 30478. We disagree with SFP's and TIPCO's contention that a weight-based methodology would be appropriate. As we stated in the final determination of the underlying investigation of this case, ''[w]e believe * * * that allocating the cost of pineapple evenly over the weight is not supportable. Using weight alone as the allocation criteria sets up the illogical supposition that a load of shells, cores, and ends costs just as much as an equal weight of trimmed and cored pineapple cylinders. Significantly, the use of physical weighting for allocation of joint costs, *i.e.,* in this case the cost of pineapple fruit, may have no relationship to the revenue-producing power of the individual products.'' *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29560 (June 5, 1995) (*Final Determination*). Because the parts of the pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts equally by using a weight-based allocation methodology. Instead, as we

detailed in our *Preliminary Results,* we have used an NRV methodology for allocating fruit costs. This methodology compares historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding and also includes data for markets where allegations of dumping have not been lodged. *Id.* Because NRV is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal, we believe this methodology takes into account the qualitative differences between pineapple parts in the production process.

Furthermore, on July 28, 1999, the CAFC, while not ruling on the merits of the NRV methodology, gave deference to the Department in selecting and developing proper methodologies. *See the Thai Pineapple Public Co.* v. *United States,* 187 F. 3d 1362, 1366–67 (Fed. Cir., July 28, 1999) (*Thai Pineapple*). In this ruling, the CAFC reversed the CIT's decision in *TIPCO* to remand the case to the Department for recalculation of the antidumping duty margins using either a weight-based or a non-output price-based cost allocation methodology, and instead held that the Department's rejection of the respondents' weight-based methodology, in favor of the allocation methodology employed by the respondents in their books and records, was reasonable and supported by substantial evidence. *See Thai Pineapple* at 1367.

With respect to the respondents' reliance on *IPSCO,* the Department has consistently held throughout this proceeding that *IPSCO* is not controlling in this case. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7398 (February 13, 1998). In *Thai Pineapple,* the CAFC recognized that there are important differences between *IPSCO* and the present case. The CAFC held that:

> [P]ineapple fruit is not a homogeneous raw material like the raw material used to make the pipe in [*IPSCO*], and the production process is entirely different for the various pineapple products produced. The whole pineapple must be reduced to its various components—cored cylinders, cores, shells and ends—prior to entering the production processes for canned pineapple fruit and juice. Although the raw material was purchased as a whole, for a set price per unit of weight, the parts of the pineapple differ in their usefulness and value.

Thai Pineapple at 1369. On this basis, the CAFC concluded that the CIT improperly held that *IPSCO* is controlling precedent in this case. The Department, therefore, rejects the respondents' argument that *IPSCO* would prevent us from applying our NRV methodology in this case.

Comment on Company-Specific Issue

Comment 5—Calculation of TIPCO's Interest Expense Ratio

TIPCO requests that the Department recalculate the company's interest expense ratio for purposes of the final results of this review. In the preliminary results, the Department calculated this ratio by first subtracting TIPCO's interest income from its total interest expense, using data from the company's consolidated financial statements. Next, the Department divided the resulting net interest expense by the total cost of goods sold and applied this ratio to the cost of manufacturing. TIPCO argues that, in addition to interest income, the Department should also subtract dividend income that the company received during the POR from an associated company. TIPCO believes that this additional offset is justified because the associated company is not consolidated with TIPCO and, moreover, the dividend income is short-term in nature because TIPCO is not required to maintain its holdings in the associated company for any specific length of time.

The petitioners argue that, under the Department's practice, dividend income is not an allowable offset to interest expenses, which may be reduced only by interest income earned on short-term investments of working capital. The petitioners contend that in previous cases, the Department has not allowed companies to offset their financial expenses with income earned on investments such as dividend income (*see Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6305 (February 9, 1999) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review,* 56 FR 31734 (July 11, 1991)).

Department's Position: We agree with the petitioners. As stated in the above-mentioned cases, the Department includes only short-term interest income as an offset to interest expenses. This practice was upheld by the CIT in *Gulf States Tube Division of Quanex Corp.* v. *United States,* 981 F. Supp. 630 (CIT 1997) and *NTN Bearing Corp.* v. *United States,* 905 F. Supp. 1083, 1097 (CIT 1995) in which the CIT held that, to qualify for an offset, interest income must be related to the ''ordinary operations of the company.'' As the Department stated in the *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72252 (December 31, 1998), it allows a company to offset its financial expense with the short-term interest income earned on working capital accounts maintained to support its daily cash requirements (*e.g.,* payroll, suppliers, etc.). However, the Department does not allow a company to offset its financial expense with the income earned from investment activities (*e.g.,* long-term interest income, capital gains, dividend income).

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/exporter	Margin (percent)
TIPCO	9.87
SFP	3.25
Vita	17.53
KFC	3.57
SIFCO	3.32

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

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate

will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

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

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32223 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 1999, the Department of Commerce (the Department) published preliminary results of an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand. This review covers Thai Benkan Corporation (TBC), a manufacturer/exporter of this merchandise to the United States, during the period July 1, 1997, through June 30, 1998. We preliminarily determined that sales of the subject merchandise have been made below normal value. We gave parties an opportunity to comment on our preliminary results. No comments were submitted to the Department. Additionally, we have changed our exchange rate methodology for a portion of the period covered by this review. However, this modification has not affected our results. Consequently, our preliminary results remain unchanged. We will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4114 or 482–3814, respectively.

THE APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), as amended, 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 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department published in the **Federal Register** an antidumping duty order on pipe fittings from Thailand (57 FR 29702). On July 30, 1998, the respondent requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 1997, through June 30, 1998. We published a notice of initiation of the review on August 27, 1998, (63 FR 45796). On September 15, 1998, the Department sent an antidumping questionnaire to TBC. The Department received questionnaire responses in October and November of 1998.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of preliminary results if it determines that it is not practicable to complete the review within the statutory time limit. On March 10, 1999, the Department published notice of extension of time limit for the preliminary results of this case (64 FR 11824). On May 7, 1999, we issued a supplemental questionnaire and received a response to that questionnaire on May 27, 1999. On August 6, 1999, (64 FR 42902), the Department published preliminary results of the administrative review. We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. The review covers TBC and the period of review (POR) July 1, 1997, through June 30, 1998.

Currency Conversion

Effective July 2, 1997, the Thai government ended its restriction on the movement of the dollar-baht exchange rate, thereby allowing the rate to be determined by supply and demand. Our analysis of Federal Reserve exchange rate data shows that the value of the Thai baht in relation to the U.S. dollar fell on July 2, 1997, by about 18 percent from the previous day and did not rebound significantly in a short period of time. We have already concluded in another proceeding involving Thailand that this drop constitutes a ''precipitous and large'' decline for purposes of our exchange rate methodology. For a more detailed discussion of the methodology used for periods of ''precipitous and