GIPSA's decision to approve and adopt the GAC 2100 as the new official moisture meter does not mean that the Agency endorses or recommends this instrument for unofficial purposes over other similar instruments that are not approved for the official system. The Agency's selection of this instrument was based on GIPSA's unique operational needs. Other instrument models may be as suitable or more suitable for a commercial entity's needs.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 2, 1998.

David R. Shipman,

Acting Administrator.

[FR Doc. 98–9417 Filed 4–8–98; 8:45 am]

BILLING CODE 3410–EN–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME Friday, April 17, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 6, 1998 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointment for Texas
VI. State Advisory Committee Reports
- ''Race Relations in Rural Western Kansas Towns'' (Kansas)
- ''Focus on Affirmative Action'' (Minnesota)

VII. 1993 Los Angeles Racial and Ethnic Tensions Hearing Executive Summary
VIII. 1996 Los Angeles Racial and Ethnic Tensions Hearing Report
IX. Future Agenda Items
11:00 a.m. Briefing on Schools and Religion Project

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

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–9474 Filed 4–6–98; 4:51 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

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

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

SUMMARY: In response to requests by four producers/exporters of subject merchandise and by the petitioners,[1] the Department of Commerce is conducting an administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers seven producers/exporters of the subject merchandise. The period of review is July 1, 1996, through June 30, 1997.

We preliminarily determine that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0650 or (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 are to the regulations provided in 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

[1] Maui Pineapple Co. Ltd. and the International Longshoremen's and Warehousemen's Union.

Background

On July 18, 1995, we published in the **Federal Register** the antidumping duty order on canned pineapple fruit from Thailand (60 FR 36775). On July 21, 1997, we published in the **Federal Register** the notice of Opportunity to Request an Administrative Review of this order, covering the period July 1, 1996, through June 30, 1997 (62 FR 38973). On July 31, 1997, the petitioners requested a review of 26 producers/exporters of canned pineapple fruit (CPF), in accordance with 19 CFR 351.213(b)(1). On August 22, 1997, the petitioners withdrew their request for review for all companies except: (1) The Prachuab Fruit Canning Co. Ltd. (Prachuab); (2) Vita Food Factory (1989) Co. Ltd. (Vita); and (3) Siam Fruit Canning (1988) Co. Ltd. (SIFCO).

On July 31, 1997, the following producers/exporters of canned pineapple fruit requested a review in accordance with 19 CFR 351.213(b)(2): (1) Siam Food Products Public Co. Ltd. (SFP); (2) Thai Pineapple Canning Industry (TPC); (3) The Thai Pineapple Public Co. Ltd. (TIPCO); (4) Malee Sampran Factory Public Co. Ltd. (Malee); and (5) Dole Food Company Inc., Dole Packaged Foods Company and Dole Thailand Ltd. (collectively, Dole).

On August 28, 1997, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 1996, through June 30, 1997 (62 FR 45621).

Partial Rescission of Antidumping Duty Administrative Review

On October 6, 1997, Dole withdrew its request for a review. Because there was no other request for a review of Dole, and because Dole's letter withdrawing its request for a review was timely filed, we are rescinding the review with respect to Dole in accordance with 19 CFR 351.213(d)(1).

Scope of the Review

The product covered by this review is canned pineapple fruit. For purposes of the 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 for customs purposes, our written description of the scope is dispositive.

Duty Absorption

On February 12, 1998, the petitioners requested that the Department investigate the extent to which duty absorption has occurred in this review. Section 351.213(j)(1) of our regulations provides that we will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation. Because the petitioners' request was untimely filed, we have not investigated the occurrence of duty absorption in this review.

Use of Facts Available

We have determined Vita's antidumping rate based on the facts available because this respondent failed to participate fully in, and has significantly impeded, this review. On January 8, 1998, counsel for Vita notified us that it had withdrawn its representation of, and entry of appearance on behalf of, this company. On January 9, 1998, we contacted Vita to determine whether the company planned to continue as a respondent in this review. Vita notified the Department on January 12, 1998, that it planned to continue in this review.

On January 20, 1998, we notified Vita that we had not received its response to our January 2, 1998, supplemental section A questionnaire. Vita notified the Department on January 22, 1998, that it had no knowledge of the supplemental section A questionnaire. Because we initially issued the supplemental section A questionnaire to counsel for Vita prior to its withdrawal as Vita's representative, we sent another copy of the questionnaire directly to Vita on January 27, 1998, and granted Vita additional time, until February 4, 1998, to respond. We also provided Vita with instructions on how to file submissions with the Department, instructions for serving such submissions to interested parties, and an interested parties list for this review. On the same date, we also sent a supplemental questionnaire for sections B and C directly to Vita by certified mail.

The record shows that on February 5, 1998, we again informed Vita that we had not received its response to the supplemental questionnaire for section A. At the same time, we reminded Vita of the February 6, 1998, deadline for its response to section D of the questionnaire (which we issued directly to the company on January 13, 1998), and its February 11, 1998, deadline for its response to the supplemental questionnaire for sections B and C. We have not received responses to any of these information requests.

Because Vita did not respond to our requests for information, without which we are unable to perform an analysis of its pricing practices, we preliminarily determine that the use of facts available is appropriate, in accordance with section 776(a) of the Act. Specifically, by failing to respond to section D of the questionnaire, Vita has precluded the Department from conducting an analysis to determine whether its comparison-market (Germany) sales prices were below the cost of production (COP) in substantial quantities. In addition, by not responding to the supplemental questionnaires, Vita has failed to provide information regarding its selling practices in the United States and Germany. Accordingly, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make inferences adverse to the interests of Vita because it failed to cooperate to the best of its ability.

Where we must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Due to Vita's failure to cooperate, we have preliminarily assigned to Vita as adverse facts available a rate of 55.77 percent, the highest rate calculated for any respondent during any segment of this proceeding. This rate was calculated for a respondent in the less-than-fair-value (LTFV) investigation.

Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value. See H.R. Doc. 316, vol. 1, at 870 (1994).

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

Fair Value Comparisons

We compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales[2] of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the

[2] For all companies except Prachuab and TPC, we matched U.S. and comparison market sales using invoice date as the date of sale for both markets. Our use of other dates as the date of sale for Prachuab and TPC is discussed in the company-specific sections of this notice.

merchandise sold in the United States to constructed value (CV).

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir. 1998) (CEMEX). In that case, based on the pre-URAA version of the Act, the Court ruled that the Department may not resort immediately to CV as the basis for foreign market value (now normal value) when we find home market sales of the identical or most similar merchandise to be outside the ordinary course of trade. This issue 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 disregarded pursuant to the cost test. See Section 771(15) of the Act. Consequently, pursuant to this court decision, we have reconsidered our practice and have determined that, where we find comparison market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade, it would be inappropriate to resort directly to CV as the basis for NV. Instead, we will compare other sales of similar merchandise to the U.S. sales, if such other sales exist and are otherwise appropriate. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison.

Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all comparison market sales of the foreign like product that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no comparison market sales of identical merchandise made in the ordinary course of trade, we compared U.S. sales to comparison market sales of the most similar foreign like product made in the ordinary course of trade, based on characteristics listed above. Thus, we have implemented the Court's decision in CEMEX.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. We determined the EP or CEP for each company as follows.

TPC

During the POR, TPC made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by TPC to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by TPC's affiliated U.S. reseller, Mitsubishi International Corporation (MIC), after importation of the subject merchandise into the United States. EP and CEP were based on the packed FOB, CIF, or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, for CEP sales we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit costs, warranty expenses), and indirect selling expenses incurred by MIC in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Consistent with our findings in the first period of review,[3] we have based TPC's date of sale on the contract date for EP transactions and on the invoice date for CEP transactions. Although TPC suggested in its questionnaire response that invoice date was the appropriate date of sale for EP as well as CEP transactions, it did not provide evidence of any changes in the material terms of sale (price and quantity) between the contract date and invoice date for EP transactions.

TIPCO

We calculated an EP for all of TIPCO's sales because the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Sales through TMC involved direct shipment from TIPCO to the unaffiliated customer, without any merchandise entering TMC's physical inventory. Further, TMC's involvement in the sales process for indirect sales was limited to that of a processor of sales documentation. We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expenses (brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling.

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. SFP has one employee located in the United States who communicates with U.S. customers regarding SFP's U.S. sales. However, the information on record indicates that SFP's Bangkok office is responsible for confirming orders, issuing the invoice direct to the customer, and for arranging for shipment to the U.S. port. Accordingly, we have preliminarily determined that the activity performed by SFP's U.S. employee does not rise above the level of a processor of paperwork and communications link.

We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for discounts. We also made deductions for foreign inland movement expenses and for international freight in accordance with section 772(c)(2)(A) of the Act.

Malee

We calculated an EP for all of Malee's sales because the merchandise was sold either directly by Malee or indirectly through its U.S. affiliate, Icon Foods LLC (Icon), to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. Sales through Icon involved direct shipment from Malee to the unaffiliated customer, without any merchandise entering Icon's physical inventory. Further, Icon's involvement in the sales process for indirect sales was limited to

[3] See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple fruit From Thailand, 63 FR 7392, 7394 (February 13, 1998) (Final Results).

that of a processor of sales documentation. We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign movement expenses (brokerage and handling and inland freight to the port of exportation), international freight, marine insurance and U.S. customs duties.

Prachuab

We calculated an EP for all of Prachuab's sales because the merchandise was sold directly by Prachuab to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for foreign movement expenses (including inland freight and containerization charges) and international freight in accordance with section 772(c)(2)(A) of the Act. We based Prachuab's date of sale on shipment date because the information on the record indicates that: (1) Prachuab's date of shipment occurs within 3–5 days of its date of invoice and (2) Prachuab records its sales based on date of shipment.

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed, FOB price to unaffiliated purchasers for exportation to the United States. We made deductions from the starting price for foreign inland movement expenses in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee, the quantity of foreign like product each respondent sold in the exporting country did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than five percent of the quantity of its sales to the U.S. market. See section 773(a)(1) of the Act. For these respondents, in accordance with section 773(a)(1)(B)(ii) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest third-country market, *i.e.*, Germany for TPC and SFP, Finland for TIPCO, and Japan for Prachuab and SIFCO.

For Malee, the quantity of foreign like product sold in Thailand did permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1)(B) of the Act, because the quantity of Malee's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Accordingly, we have based NV on Malee's sales in Thailand.

B. Cost of Production Analysis

Based on timely allegations filed by the petitioners, we initiated COP investigations of Vita, Prachuab and SIFCO, to determine whether sales were made at prices below the COP. See Memoranda from Case Analysts to Richard W. Moreland, dated January 12, 1998 (Vita), January 27, 1998 (Prachuab) and February 27, 1998 (SIFCO). In addition, because we disregarded below-cost sales in the last completed review of TPC, TIPCO and SFP,[4] and in the last completed segment of the proceeding involving Malee (*i.e.*, the less-than-fair-value investigation), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by TPC, TIPCO, SFP, Malee, Vita, Prachuab and SIFCO in the comparison market.

We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

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

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. See section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (*i.e.*, pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29561 (June 5, 1995)), and Final Results, 63 FR 7392, 7398.[5] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology. Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on a net realizable value (NRV) methodology. Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for Malee. Because Malee already allocates

[4] See Final Results, 63 FR 7392 (February 13, 1998).

[5] The Court of International Trade (CIT) ruled in favor of the respondents who challenged the Department's position that joint production costs cannot be reasonably allocated to canned pineapple on the basis of weight. The Thai Pineapple Public Co. Ltd., et al. v. United States, Slip Op. 96–182 (CIT November 8, 1996). That decision is currently being reviewed by the Court of Appeals for the Federal Circuit.

fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records, we have not required Malee to recalculate its reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

Prachuab

While Prachuab provided its historical NRV data as requested, it calculated its variable fruit costs using POR-specific NRV data. Therefore, we have recalculated Prachuab's fruit costs using the historical five-year NRV data indicated above.

SIFCO

SIFCO used a weight-based methodology to calculate its variable fruit costs. Therefore, we have recalculated SIFCO's fruit costs using the historical five-year NRV data from SIFCO's February 20, 1998 submission.

In addition, we noted that SIFCO's databases contained missing values for packing expenses. Therefore, for sales to the United States and for sales to Japan, we used per-unit packing expenses provided in SIFCO's February 12, 1998 submission. SIFCO used a weight-based methodology.

SFP

SFP's reported fruit costs were based on NRV data for the 1992–95 period. Further, the NRV ratio was based on a ratio of standard cases of solid products to standard cases of juice products, which is distortive because the weighting factors used to derive standard cases of solid and juice products are not equivalent. Therefore, we have recalculated SFP's fruit costs using the 1990–94 NRV ratio that was verified in the previous review.

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

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

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

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to normal value for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to normal value following the same methodology. Company-specific adjustments are described below.

TPC

We based third-country market prices on the packed, ex-factory, or delivered prices to unaffiliated purchasers in Germany. We adjusted for the following movement expenses: inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, and international freight. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, warranties and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranties). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.*, we added expenses for letters of credit and bank charges incurred by TPC in Thailand). We offset commission expenses in the manner described above. We denied TPC's claimed CEP offset for the reasons stated in the *Level of Trade* section below.

TPC claimed that because there were frequent changes in the material terms of sale between the contract date and the invoice date with respect to comparison market sales, the invoice date was the appropriate comparison market date of sale. We agree that TPC has demonstrated that invoice date is the appropriate date of sale in the comparison market, based on such changes to the material terms of sale. However, as noted in the *Export Price and Constructed Export Price* section above, contrary to our findings in the first review, TPC incorrectly claimed that invoice date was the appropriate date of sale for both EP and CEP transactions, and reported comparison market sales made 90 days before the earliest invoice date of U.S. sales. Because we have determined that contract date, not invoice date, is the

appropriate date of sale for EP transactions, we have matched such sales to comparison market sales based on U.S. contract date. Since the contract date precedes the invoice date, we do not have all comparison market sales made 90 days before the contract date of the first U.S. sale. Accordingly, we resorted to constructed value where we were unable to match EP sales to contemporaneous comparison market sales (*i.e.*, those sales made during the same month, 90 days before, or 60 days after, the contract date of the U.S. sale).

TIPCO

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

SFP

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

Malee

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, advertising expenses and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions). No other adjustments to NV were claimed or allowed.

Prachuab

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Japan. We adjusted for the following movement expenses: foreign inland freight, containerization charges, and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions). As with Prachuab's U.S. sales, we based the date of sale of Prachuab's comparison market sales on shipment date.

SIFCO

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

D. Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP or CEP to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of manufacturing (COM) of the product sold in the United States, plus amounts for general expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the Calculation of COP section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate general expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (*i.e.*, we added letter of credit expenses and bank charges for TPC). We also made adjustments, where applicable, for the commission offset in the manner described above.

Level of Trade/CEP Offset

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

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

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

functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Our level-of-trade analysis for each respondent is described below.

TPC

During the POR, TPC made sales through multiple channels of distribution in both the U.S. and German markets. In the United States, TPC made both direct sales to unaffiliated customers and sales through its affiliated U.S. reseller MIC. In Germany, TPC made both direct sales and indirect sales through an affiliated reseller in the Netherlands, Princes Foods B.V. (Princes). We compared the selling activities performed by TPC for EP sales to the activities performed by TPC and MIC for CEP sales (after excluding those selling activities related to the expenses deducted under section 772(d) of the Act), and found them to be both limited in scope and essentially identical. The functions that TPC performed on both direct and indirect sales were limited to negotiation of prices, processing of purchase orders, and invoicing. Therefore, we find that there is a single level of trade in the United States for both EP and CEP sales.

Similarly, we compared the selling functions and activities performed by TPC for direct sales to Germany to the functions and activities performed by TPC and Princes for indirect sales to Germany. These activities were also limited to negotiating prices with German customers, invoicing those customers, and making limited sales calls. In essence, the only difference in selling activity between TPC's direct and indirect sales to Germany is that indirect sales involved the issuance of an additional invoice among affiliated parties, and this difference does not establish a significantly more advanced marketing stage. Therefore, we have considered TPC's direct and indirect sales to Germany as being at a single level of trade. Because the selling functions performed for TPC's sales in the two markets are essentially the same, irrespective of channel of distribution, we find that all of TPC's sales were made at a single level of trade. Therefore, no level of trade adjustment or CEP offset is warranted in the calculation of TPC's dumping margin.

Malee

Malee reported that all of its sales made to the United States were to importer/distributors and involved minimal selling functions on the part of Malee. Malee claimed two different levels of trade for its sales in the home market: (1) factory-direct sales involving minimal selling functions, and which are at a level of trade identical to the EP level of trade; and (2) sales through Malee Supply (1994) Co. Ltd. (Malee Supply), an affiliated reseller.

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

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Accordingly, we matched Malee's U.S. sales to direct sales made in the home market. Because we were able to match all U.S. sales in this manner to sales made at the same level of trade, without resorting to home market sales made through the other level of trade, we did not reach the issue of whether a level-of-trade adjustment was appropriate under the facts of this case.

SFP, TIPCO, Prachuab and SIFCO

In this review, SFP, TIPCO, Prachuab and SIFCO claimed that all of their sales were made through a similar channel of distribution (direct sales to customers in export markets) and involved identical selling functions, irrespective of market. In examining these selling functions, we found that sales activities were limited to negotiation of prices, processing of purchase orders/contracts, invoicing, and collection of payment; there was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market. Therefore, for these four respondents we have preliminarily found that there is a single (and identical) level of trade in each market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. 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. In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period July 1, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd.	0.59
The Thai Pineapple Public Company, Ltd.	5.24
Thai Pineapple Canning Industry Corp., Ltd.	4.78
Malee Sampran Factory Public Company Ltd.	1.01
The Prachuab Fruit Canning Co. Ltd.	10.96
Siam Fruit Canning (1988) Co. Ltd.	14.19
Vita Food Factory (1989) Co. Ltd.	55.77

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within thirty days of publication. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate

entries. Individual differences between EP/CEP and NV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

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

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

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: April 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–9435 Filed 4–8–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–803]

Industrial Nitrocellulose from Germany; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of industrial nitrocellulose from Germany.

SUMMARY: In response to a request from the petitioner, Hercules Incorporated, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from Germany. The period of review is July 1, 1996 through June 30, 1997. This review covers imports of industrial nitrocellulose from one producer, Wolff Walsrode AG.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Zev Primor, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195, and 482–4114, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28271) the antidumping duty order on industrial nitrocellulose (INC) from Germany. On July 21, 1997, the Department published in the **Federal Register** (62 FR 38973) a notice of opportunity to request an administrative review of this antidumping duty order. On July 30, 1997, in accordance with 19 CFR 351.213(b), the petitioner and domestic producer of the subject merchandise, Hercules Incorporated, requested that the Department conduct an administrative review of Wolff Walsrode AG's (WWAG's) imports of subject merchandise to the United States. We published the notice of initiation of this review on August 28, 1997 (62 FR 45621).

Verification

As provided in section 782(i)(3) of the Act, we verified the data provided by the respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Scope of the Review

Imports covered by this review are shipments of INC from Germany. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which as a nitrogen content of greater than 12.2 percent. INC is currently classified under Harmonized Tariff Schedule (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage. The review period is July 1, 1996 through June 30, 1997.

Product Comparisons

We calculated monthly, weighted-average, normal values (NVs). Where possible, we compared U.S. sales to sales of identical merchandise in Germany. When identical merchandise