

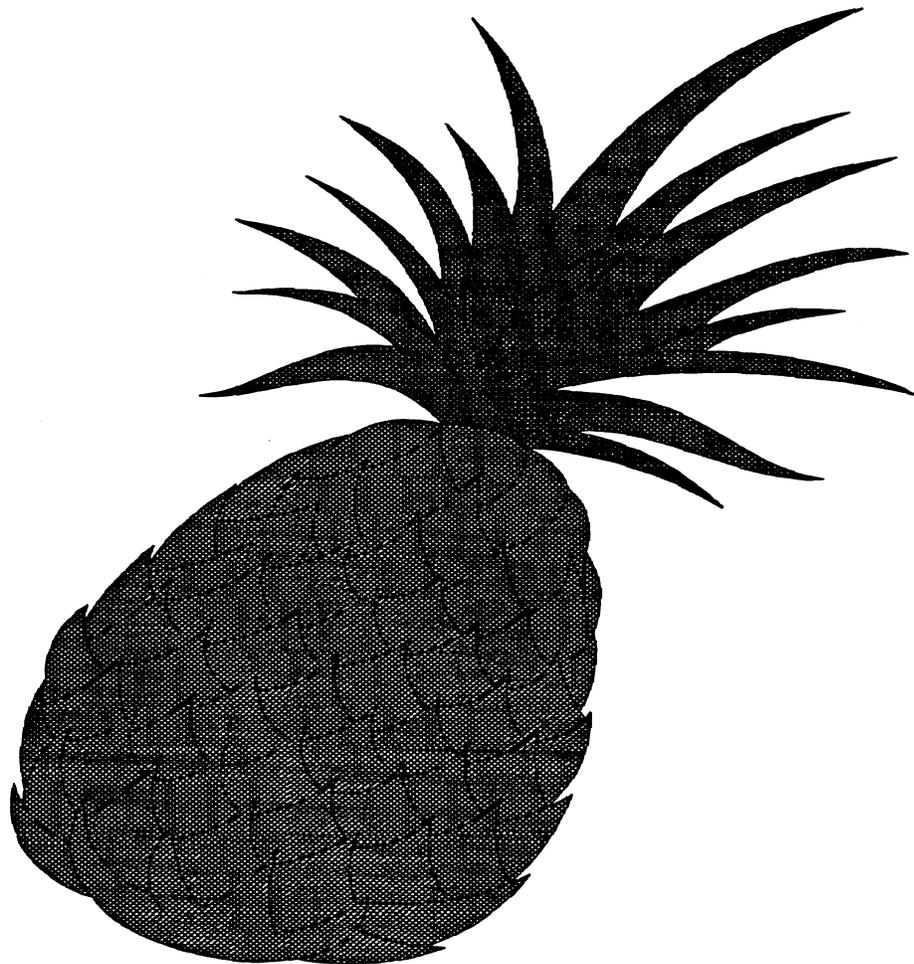
Canned Pineapple Fruit from Thailand

Investigation No. 731-TA-706 (Final)

Publication 2907

July 1995

U.S. International Trade Commission



Washington, DC 20436

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I
DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-706 (Final)

CANNED PINEAPPLE FRUIT FROM THAILAND

Determination

On the basis of the record¹ developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Thailand of canned pineapple fruit,² provided for in subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 11, 1995, following a preliminary determination by the Department of Commerce that imports of canned pineapple from Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)).³ Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 1, 1995 (60 F.R. 6290). The hearing was held in Washington, DC, on June 1, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² For purposes of this investigation, canned pineapple fruit is defined as pineapple 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 (heavy) syrup added.

³ The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act ("URAA"). This investigation, thus, remains subject to the substantive and procedural rules of the pre-existing law. See P.L. 103-465, approved Dec. 8, 1994, 108 Stat. 4809, at § 291.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we unanimously determine that an industry in the United States is materially injured by reason of imports of canned pineapple fruit from Thailand that are sold in the United States at less than fair value ("LTFV").¹

I. THE LIKE PRODUCT AND THE DOMESTIC INDUSTRY

In determining whether an industry in the United States is materially injured by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."² In turn, the Act defines "like product" as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."³

The Commission's decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁴ No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Generally, the Commission requires clear dividing lines among possible like products and disregards minor variations.⁵

Canned pineapple fruit is a shelf-stable food sold in several forms, including slices (rings), spears, chunks, tidbits and crushed.⁶ In the preliminary investigation, the

¹ Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act ("URAA"). See P.L. 103 - 465, approved Dec. 8, 1994, 108 Stat. 4809, at § 291. Thus, this investigation is conducted pursuant to the substantive and procedural rules of the law as it existed prior to the URAA. Accordingly, all references to the statute contained herein are to the statute as it existed prior to the URAA.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

⁴ See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("[E]very like product determination 'must be made on the particular record at issue' and the 'unique facts of each case.'"). In analyzing like product issues, the Commission generally considers six factors, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and (6) where appropriate, price. See Aramide Maatschappij V.O.F. v. United States, Slip Op. 95-113 at 4 (Ct. Int'l Trade June 19, 1995); Calabrian Corp. v. United States, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992).

⁵ Torrington, 747 F. Supp. at 748-49.

⁶ Confidential Report ("CR") at I-4; Public Report ("PR") at II-4. The Department of Commerce defined the scope of this investigation as follows:
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.

60 Fed. Reg. 29553 (June 5, 1995). HTS 2008.20.0010 covers canned pineapple fruit packed in beet or cane sugar-based (heavy) syrup; HTS 2008.20.0090 covers canned pineapple fruit packed without added sugar (i.e., juice-packed). Id.

Commission did not include fresh, whole or fresh-chilled pineapple in the like product.⁷ After examining the more complete record compiled in this final investigation, we again decline to include these other forms of pineapple in the like product.⁸ While there are similarities (e.g., in uses and general physical characteristics) between the fresh forms of pineapple and canned pineapple, the record demonstrates that there are significantly more differences. In particular, the presence of the naturally occurring enzyme, bromelain, in the fresh forms of pineapple limits their use in certain applications.⁹

Petitioner Maui Pineapple Company Ltd. ("Maui"), the only domestic producer that produces all three forms of pineapple, distinguishes between canned pineapple, on the one hand, and fresh and fresh-chilled pineapple on the other hand, based principally on differences in perishability, end uses, cost, sanitation and customer preferences.¹⁰ Questionnaire responses from purchasers and importers also indicate that, based primarily on differences in perishability, enzyme content, price, and individual preferences, the fresh forms of pineapple are not perceived to be practical substitutes for canned pineapple.¹¹

Canned pineapple, fresh pineapple and fresh-chilled pineapple all are sold through retail groceries.¹² Canned pineapple, however, is sold in the dry goods sections of grocery stores, while fresh and fresh-chilled pineapple are sold in the produce sections.¹³ A relatively small percentage of canned pineapple also is sold in the institutional distribution channel (e.g., to industrial users who use pineapple fruit as an ingredient in other products), but fresh pineapple is not sold in this channel of distribution.¹⁴

⁷ Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Preliminary), USITC Pub. No. 2798 (July 1994) ("Preliminary Determination") at I-6-7. Commissioner Rohr based his finding of a like product consisting of canned pineapple on an application of the semi-finished product analysis discussed below. Preliminary Determination, USITC Pub. 2798 at I-6, n. 11 and n. 37. Commissioner Crawford determined that the like product consisted of canned pineapple fruit, fresh pineapple and fresh-chilled pineapple. Preliminary Determination, USITC Pub. 2798 at I-8, n. 36.

⁸ Based on the substantial additional information gathered in this final investigation, discussed below, Commissioner Crawford concurs in this like product definition.

⁹ CR at I-9; PR at II-6; Petitioners' Posthearing Brief at Appendix 4; Questionnaire Response of Dole Food Company at 25; Questionnaire Response of Del Monte at 25. For example, only canned pineapple can be used in gelatin molds because bromelain will prevent gelatin desserts made with fresh pineapple fruit from setting. CR at I-9, n. 19; PR at II-6. Moreover, cottage cheese, sour cream and other dairy products will be adversely affected if they are mixed with fresh pineapple more than a few moments before serving. *Id.* For this reason, only canned pineapple is used in the commercial preparations of these products.

¹⁰ Petitioners' Prehearing Brief at 8-9.

¹¹ CR at I-10; PR at II-6. Among the 19 importers responding to the Commission's questionnaires, 18 reported that there was no or limited substitutability between canned pineapple and fresh pineapple based on differences in perishability, price, and individual preferences. CR at I-9-10; PR at II-6. Further, 21 of the 33 responding purchasers similarly indicated that differences in perishability and price limited substitutability between canned pineapple and fresh pineapple. CR at I-10; PR at II-6. In addition, marketing studies submitted by both petitioners and Dole Food Company ("Dole") indicate that there is limited substitution in the market between canned pineapple and the fresh forms of pineapple. *See* Petitioners' Posthearing Brief at Appendix 4; Dole Posthearing Brief at Appendix B-2, pages 26-28.

¹² CR at I-10; PR at II-6.

¹³ CR at I-10-11; PR at II-7. Retail grocers treat these departments as separate divisions and profit centers, consisting of separate personnel, vendor sales offices, marketing, and retail placement. CR at I-10; PR at II-7.

¹⁴ CR at I-10, n. 23; PR at II-7. All three types of pineapple are sold through food service channels (e.g., restaurants), although Maui sells fresh-chilled pineapple only in Hawaii. CR at I-10, I-12; PR at II-7-8.

Because the fresh products are perishable, transportation and warehousing are very different for fresh and canned pineapple products. Unlike canned pineapple, the fresh product must be shipped expeditiously to market and often in refrigerated containers or trucks.¹⁵ Similarly, the fresh forms of pineapple can be warehoused for only a few days, while canned pineapple can be stored for several months or longer.¹⁶

Pineapple destined for market in all three forms generally are grown in the same fields, cultivated in the same way, and harvested by substantially the same workers.¹⁷ Pineapples may be grown differently, however, depending on principal end use.¹⁸ Harvesting techniques also differ slightly and there is different dedicated machinery for harvesting fresh pineapple.¹⁹ Following harvest, fresh pineapple is not subject to any further processing.²⁰ Pineapples destined for both the fresh-chilled and canned markets are sent to the cannery, where their shells are removed, both ends are cut off, and they are cored.²¹ Canned pineapple fruit then undergoes extensive further processing.²²

Hawaii Agricultural Statistical Service price data indicate that there are significant price differences between fresh-market pineapple and processed pineapple. The average price received by shippers of fresh market pineapple in 1994 was \$0.48 per kilogram, while growers of processing pineapples received \$0.12 per kilogram.²³ Prices at the retail level, as reported by Maui, averaged about \$0.89 per 20 ounce can for canned pineapple as compared to \$2.99 per fresh whole fruit for its Jet Fresh product sold on the West Coast and \$3.99 for the same product sold on the East Coast.²⁴

Based on the record evidence, we find a clear dividing line between the fresh forms of pineapple and canned pineapple. We therefore define the like product to be domestic

¹⁵ CR at I-11; PR at II-7. Fresh pineapple is conveyed to end-markets almost exclusively by air freight or refrigerated transport, while canned pineapple fruit is delivered by surface transport. Id.

¹⁶ CR at I-11; PR at II-7.

¹⁷ CR at I-6-7; PR at II-5.

¹⁸ Pineapples intended for processing are grown to maximize the total amount of fruit, while those destined for fresh-market sales are grown to a proper appearance, shape and weight for this market (e.g. three to four pounds). CR at I-7; PR at II-5.

¹⁹ CR at I-6-7; PR at II-5. Pineapple destined for the fresh market is harvested first, conveyed by machinery dedicated to fresh market pineapples (with smaller booms) into individual packing trays to prevent bruising, immediately transported to a packing shed, and packed in fiber boxes. Also, the crowns of pineapple destined for the fresh market are not removed. Id. Pineapple destined for the fresh-chilled and canned markets are conveyed by hand to different (larger) booms into the back of the truck along with the crowns, which are separated on the truck and placed aside. Id.

²⁰ CR at I-8; PR at II-5.

²¹ CR at I-8; PR at II-5. Fresh-chilled pineapple then is placed in either plastic or vacuum sealed packaging and readied for shipment. CR at I-5; PR at II-4.

²² CR at I-8-9; PR at II-5-6. The fruit cylinder for canned pineapple (i.e., the peeled and cored fruit) is inspected by hand and all defects or eyes are removed, whereupon it is sliced, chopped or crushed. The fruit is combined with pineapple juice or heavy syrup and packaged into airtight steel cans (which petitioner Maui also manufactures). Canned pineapple is cooked in the cans to approximately 211 degrees fahrenheit for 11 minutes. This heat treatment (or pasteurization) neutralizes the enzyme bromelain and greatly alters the perishability of canned pineapple, imparting a significantly longer shelf life. While canned pineapple has a shelf life of three to four years, fresh-chilled pineapple has a shelf life of three to four weeks (with refrigeration) and fresh pineapple is edible for about one to two weeks. CR at I-5-6; PR at II-4.

²³ CR at I-11; PR at II-7.

²⁴ CR at I-11; PR at II-7. On a net fruit basis, one fresh pineapple compares to a 20 ounce can of canned pineapple. Id.

canned pineapple fruit.²⁵ Accordingly, the domestic industry consists of all domestic producers of canned pineapple fruit. Petitioner Maui accounts for virtually all domestic canned pineapple production.²⁶

In investigations involving processed agricultural products, the Commission may include growers of a raw agricultural product within the domestic industry producing the processed agricultural product if certain statutory criteria are satisfied.²⁷ In the preliminary investigation, we did not include pineapple growers in the domestic industry because record evidence suggested that canned pineapple is not produced from whole pineapple through a single continuous line of production.²⁸ Based on the information obtained in this final investigation, we continue to decline to include pineapple growers in the domestic industry

²⁵ In the preliminary determination, we indicated that we would consider the appropriateness of applying a vertical, or "semifinished product," like product analysis in the final investigation. Preliminary Determination, USITC Pub. 2798 at I-6, n. 11 and n. 37. In such an analysis, we examine: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. Certain Cased Pencils from the People's Republic of China, Inv. No. 731-TA-669 (Final), USITC Pub. 2837 (December 1994) at I-6-7 n. 14.

As the discussion above indicates, we have relied principally on a traditional like product analysis in this investigation. Nevertheless, because the production process for fresh pineapple, fresh-chilled pineapple and canned pineapple could be viewed as a continuum, with fresh pineapple at the "unprocessed" stage and canned pineapple at the "most processed" stage, the vertical like product analysis simultaneously may be applied. See e.g., Manganese Metal from the People's Republic of China, Inv. No. 731-TA-724 (Preliminary), USITC Pub 2844 (December 1994) at I-6. Under such an analysis, we also would determine that canned pineapple fruit is the appropriate like product. Substantial quantities of products other than canned pineapple are made from fresh pineapples; based on perishability and bromelain content, the physical characteristics and functions of canned pineapple and fresh pineapple differ significantly; based on differences in market prices, the processing of fresh pineapples into canned pineapple fruit adds significant value; and the further production process for canned pineapple appears to be relatively substantial. See e.g., CR at I-4 n. 10 and Appendix D; PR at II-4; Petitioners' Posthearing Brief at Appendix 4; Letters from Petitioner to Investigator dated July 11, 1994 and to Staff Attorney dated July 12, 1994.

²⁶ During the period of investigation, there were two domestic producers of canned pineapple fruit, petitioner Maui and the Puerto Rico Land Authority ("PRLA"). The PRLA, which did not respond to the Commission's questionnaire, accounted for less than five percent of domestic production. CR at I-13; PR at II-7. Accordingly all industry related data in this investigation derive from Maui.

²⁷ The Commission will include the growers/producers of a raw agricultural product within the domestic industry producing the processed agricultural product if (1) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors. 19 U.S.C. § 1677(4)(E)(i). The processed product is considered to be processed from a raw product through a single continuous line of production if: (1) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and (2) the processed agricultural product is produced substantially or completely from the raw product. 19 U.S.C. § 1677(4)(E)(ii).

²⁸ Preliminary Determination, USITC Pub. 2798 at I-9-10.

producing canned pineapple, as the raw agricultural product is not substantially or completely devoted to the production of the processed agricultural product.²⁹

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured by reason of LTFV imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.³⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.³¹ No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³²

The three-tiered structure of the U.S. canned pineapple market is a pertinent condition of competition. The first tier, composed of the two national brands (Dole and Del Monte), is the highest priced.³³ The second tier is composed of private labels, which typically are the store brands of grocery retailers.³⁴ This private label tier is subdivided into first and second private label subtiers.³⁵ Regional brands, which constitute the third tier, are the lowest quality and, for sales to retail grocers, generally are priced below the first private labels to remain competitive.³⁶ Retail grocers reported that the average expected price premiums in the canned pineapple fruit market are 15 percent for national brands over first private labels, 15 percent for first private labels over second private labels, and 12 percent for first private labels over regional brands.³⁷

Aside from Dole's imports from Thailand, most imports from Thailand are sold in the third tier.³⁸ This three-tiered market structure exists in all three channels of distribution

²⁹ Specifically, according to information from the Hawaiian Agricultural Statistics Service, in 1994, roughly 64.4 percent of harvested pineapple (by weight) was processed in some manner. CR at I-4 n. 10; PR at II-4. Moreover, the record indicates that, on a fresh weight basis, juice and juice concentrate accounts for a substantial portion of pineapple that is produced and processed. CR at I-4, n. 10; PR at II-4; Petition at Appendix 1; Petitioners' Postconference Brief at Appendix A; Letters from Petitioner to Investigator dated July 11, 1994 and to Staff Attorney dated July 12. The House and Senate Committee Reports to the Omnibus Trade and Competitiveness Act of 1988 confirm that Congress did not intend for the raw agricultural product to be included in an investigation with a processed product where a significant amount of the raw product is devoted to production of several different processed products. H.R. Rep. 40, Part I, 100th Cong., 1st Sess. 121 (1987); S. Rep. 71, 100th Cong., 1st Sess. 109 (1987); see Tart Cherry Juice and Juice Concentrate from Germany and Yugoslavia, Invs. Nos. 731-TA-512 and 513 (Preliminary), USITC Pub. 2378 (May 1991).

³⁰ 19 U.S.C. § 1677(7)(C)(iii).

³¹ Id.

³² Id. No party suggested the existence of a business cycle unique to this industry, nor does the record suggest the existence of a distinctive business cycle.

³³ CR at I-16-20, 48; PR at II-9. All canned pineapple sold in the first tier is imported. Id.

³⁴ Id.

³⁵ Id. First private label products represent a value alternative to the national brands (of the same or better quality), with a price 10 to 15 percent below the national brand price. CR at I-19; PR at II-9. Maui is the largest supplier of private first label canned pineapple fruit in the United States. CR at I-12; PR at II-8. Second private label product is lower quality than first label and is priced below first private label product. CR at I-16-20, 48; PR at II-10; Transcript of the Public Conference (June 5, 1994) at 29, 30.

³⁶ CR at I-16-20, 48; PR at II-10.

³⁷ CR at I-54; PR at II-23.

³⁸ CR at I-20; PR at II-10.

for canned pineapple fruit (retail, food service and industrial).³⁹ These market tiers establish the framework within which the U.S. industry was operating during the period examined.

Another condition of competition unique to this industry is that pineapple production occurs in four-year cycles. Once planted, a crop will yield its first harvest in 18 months, and a second harvest 12 months thereafter. The domestic producer's annual harvest estimates range from 180,000 to 210,000 tons, depending on the acreage planted.⁴⁰ Once a crop is planted, the domestic producer's ability to respond to changes in demand for canned pineapple fruit or in alternative sources of supply is limited. Where there is an increase in imports of canned pineapple fruit but a decrease in market demand, a producer cannot feasibly reduce the size of its plantings or its investment in those plantings. The producer's options include reducing its pineapple harvest by leaving ripe pineapple in the fields, or increasing its inventories of the finished product. We note that Maui's 1992 record harvest was more than 10 percent above its estimate for that year, and occurred at the same time as imports of Thai product increased by more than 40 percent over 1991 levels.⁴¹ We took this condition of competition into account in our analysis of domestic production and inventory data.

Finally, we note that a portion of Maui's sales are to the U.S. Government and subject to "Buy America" requirements for which only Maui qualifies.⁴² The record reflects, however, that the bulk of these sales must be at market prices.⁴³

During the period of investigation, apparent U.S. consumption and domestic shipments of canned pineapple fruit declined both by volume and, to a greater degree, by value.⁴⁴ On a percentage basis, however, the decline in the volume of shipments was of a much greater magnitude than the decline in apparent consumption during this period.⁴⁵ Consequently, domestic market share, in terms of volume, declined from 1992 to 1994.⁴⁶ Domestic market share as measured by value showed little variation over the period of investigation.⁴⁷

The volume of domestic production of canned pineapple fruit decreased from 1992 to 1993, but increased from 1993 to 1994.⁴⁸ Since average-of-period capacity remained constant

³⁹ CR at I-17-18; PR at II-9. Advertising and marketing of the products also differ depending on the tier in which they are sold. National brands are the most frequently advertised, and often are perceived by customers as being the highest quality. Private first label store brands are heavily marketed by the stores in terms of displays, store advertisements, and often are displayed prominently on the shelves. The regional brands are characterized by little advertising, frequently are substituted for one another on the shelf, and often receive the least desirable shelf placement. CR at I-18-19; PR at II-9.

⁴⁰ Public Hearing Transcript at 49.

⁴¹ See CR at I-25; PR at II-12; Petitioners' Posthearing Brief at Appendix 2; Preliminary Determination, USITC Pub. 2798 at I-16.

⁴² CR at I-57; PR at II-24.

⁴³ CR at I-57; PR at II-24; Verification Report 21.8.

⁴⁴ CR at I-14-15, Table 1, and I-25, Table 3; PR at II-8. Because the domestic industry data cover only one producer, the condition of the industry must be discussed in general terms to avoid disclosing business proprietary information.

⁴⁵ CR at I-25-27 & Table 3; PR at II-12. By volume, domestic shipments declined by roughly * * * percent, while apparent consumption declined by * * * percent during the period of investigation. CR at I-25, Table 3; PR at II-12.

⁴⁶ CR at I-47, Table 13; PR at II-20.

⁴⁷ Id.

⁴⁸ CR at I-25, Table 3; PR at II-12. Maui reported that its 1992 production of canned pineapple fruit was above normal as it processed the abundant fresh pineapple harvest for that year. CR at I-27 and Table 3; PR at II-12. By contrast, Maui reduced production by * * * percent in 1993, leaving roughly (continued...)

throughout the period of investigation, capacity utilization fell from 1992 to 1993 before increasing in 1994.⁴⁹

End-of-period inventories of canned pineapple fruit declined from 1992 to 1993 and increased substantially in 1994.⁵⁰ Inventories as a percentage of total U.S. producer shipments decreased from 1992 to 1993, before increasing in 1994.⁵¹

From 1992 to 1994, the number of production and related workers producing canned pineapple fruit, the number of hours worked, and total compensation declined.⁵² Hourly wages increased during this same period and productivity improved.⁵³

The domestic industry's financial performance deteriorated significantly from 1992 to 1994. From 1992 to 1993, net sales by value declined significantly.⁵⁴ The adverse effects of cutbacks in production were reflected in higher cost of goods sold (COGS), resulting in reduced gross profits and higher operating losses from 1992 to 1993.⁵⁵ Much of the increase in COGS was due to higher unit costs because of Maui's decision to reduce its production and hence its capacity utilization, although there also were increases in various costs over which Maui had no control, including ocean, rail and truck freight rates.⁵⁶

From 1993 to 1994, Maui reduced costs through elimination of jobs, salary and overtime reductions, and early retirements.⁵⁷ In addition, Maui worked with its vendors, suppliers and other business associates to reduce costs.⁵⁸ These efforts resulted in a reduction in COGS both in absolute terms and as a ratio to net sales.⁵⁹ Further declines in the value of net sales, however, meant that Maui continued to incur significant operating losses in 1994.⁶⁰

The deterioration in the domestic industry's financial performance was accompanied by continually declining capital expenditures, which fell especially sharply from 1993 to 1994.^{61 62}

⁴⁸ (...continued)

20,000 tons of pineapple unharvested, because the prices for canned pineapple fruit did not justify the incremental costs of harvesting, processing, and carrying the product in inventory. Maui was contractually obligated to purchase fruit from two private growers, so the 20,000 ton reduction had to occur on Maui's plantation. CR at I-27; PR at II-12.

⁴⁹ CR at I-26-27; PR at II-12. As reported by Maui, its capacity utilization rates declined from * * * percent in 1992 to * * * percent in 1994. CR at I-27; PR at II-12. If Maui's capacity is based on its reported 1992 production, which apparently represented the highest total production in company history, Maui's capacity utilization rate declined from * * * percent in 1992 to * * * percent in 1994. Transcript of the In Camera Hearing (June 1, 1995) ("In Camera Hearing Transcript") at 177-78.

⁵⁰ CR at I-27; PR at II-12. Maui's end-of-period inventories declined from * * * cases in 1992 to * * * cases in 1993 and rose to * * * cases in 1994. CR at I-25, Table 3; PR at II-12. Maui reported that its optimum inventory level is * * * . CR at I-27; PR at II-12.

⁵¹ CR at I-25, Table 3; PR at II-12.

⁵² CR at I-29, Table 4; PR at II-13.

⁵³ CR at I-29, Table 4; PR at II-13.

⁵⁴ CR at I-32, Table 6; PR at II-14. Specifically, net sales declined by * * * percent by volume and by * * * percent by value from 1992 to 1994. Id.

⁵⁵ Id. Maui experienced operating losses of * * * in 1992, * * * in 1993 and * * * in 1994. Id.

⁵⁶ CR at I-34-35; PR at II-14.

⁵⁷ CR at I-28-29 & Table 4, I-33, I-35-36, Table 6; PR at II-13.

⁵⁸ Id.

⁵⁹ CR at I-32, Table 6; PR at II-14. As a ratio to net sales, COGS rose from * * * percent in 1992 to * * * percent in 1993, and declined to * * * percent in 1994. Id.

⁶⁰ CR at I-34; PR at I-14.

⁶¹ CR at I-37-38, Table 8; Pr at II-15. Capital expenditures declined from * * * in 1992 to * * * in 1994. Id.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In final antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports that Commerce has determined are sold at LTFV.⁶³ The Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of the U.S. production operations.⁶⁴ Although the Commission may consider alternative causes of injury,⁶⁵ it may not weigh causes.^{66 67 68 69} The Commission also may consider whether factors other than the LTFV imports have made

⁶² (...continued)

⁶² Based on the foregoing, Commissioner Rohr and Commissioner Newquist find that the domestic industry is experiencing material injury.

⁶³ 19 U.S.C. § 1673d(b).

⁶⁴ 19 U.S.C. § 1677(7)(B)(i).

⁶⁵ 19 U.S.C. § 1677(7)(B)(ii).

⁶⁶ E.g., Citrusuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

⁶⁷ For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 at I-14 n. 68 (May 1994).

⁶⁸ Commissioner Rohr and Commissioner Newquist further note that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrusuco Paulista, 704 F. Supp. at 1101.

⁶⁹ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of LTFV imports, not by reason of LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 74. Rather, it is to determine whether any injury "by reason of" the LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

the industry more susceptible to the effects of the LTFV imports.⁷⁰ For the reasons discussed below, we find that the domestic canned pineapple fruit industry is materially injured by reason of LTFV imports from Thailand.

By quantity, imports of canned pineapple fruit from Thailand declined from roughly 12.8 million cases in 1992 to 11.3 million cases in 1994.⁷¹ The market share of imports from Thailand measured in terms of quantity also decreased from 1992 to 1994, but was substantial throughout the period of investigation at greater than 40 percent of apparent consumption.⁷² For each year of the period of investigation, imports from Thailand constituted a much greater share of the U.S. market than domestic product (at roughly three times Maui's share) and represented the largest single source of canned pineapple fruit in the U.S. market.⁷³ Because imports from Thailand retained a large share of a declining U.S. market throughout the period of investigation, we find the volume of LTFV imports to be significant, notwithstanding the declines in volume and market share.^{74 75}

Our analysis of the effects of LTFV imports on domestic prices takes into account the stratified structure of the domestic canned pineapple market, and the differing product grades. National brands command an average 10-15 percent price premium over first private label brands (including Maui).⁷⁶ First private label brands are generally priced 15 percent above second private label brands and 12 percent above regional label brands.⁷⁷ Respondents

⁷⁰ Iwatsu Electric Co. Ltd. v. United States, 758 F. Supp. 1506, 1512 (Ct. Int'l Trade 1991) ("the woes of the domestic industry were exacerbated by LTFV imports") (emphasis deleted).

⁷¹ CR at I-14-15, Table 1 & I-45, Table 12; PR at II-19. The bulk of this decline occurred from 1993 to 1994. Id. Reflecting a decline in unit values from \$10.71 per case to \$8.50 per case, the aggregate value of imports from Thailand declined by 29.7 percent from 1992 to 1994.

⁷² We note that imports from Thailand increased significantly from 1991 to 1992. Although this increase was coincident with Dole's cessation of domestic production of canned pineapple, Preliminary Determination, USITC Pub. 2798 at I-16, the increase was not entirely attributable to increased shipments of Thai product by Dole to the United States. Throughout the period of investigation imports from Thailand remained substantially above the levels for previous years. Id.

⁷³ Id.

⁷⁴ Neither an increase in imports nor increased market share is required for an affirmative determination. Under the statute:

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise or any increase in the volume, either in absolute terms or relative to production or consumption in the United States, is significant.

19 U.S.C. § 1677(7)(C)(i) (emphasis added). Thus, it is the significance of the volume or market share of imports for the particular industry that is critical. USX Corp. v. United States, 655 F. Supp. 487, 490 (Ct. Int'l Trade 1987); Iwatsu Electric Co. Ltd., 758 F. Supp. at 1513-14; see also Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan, Inv. No. 731-TA-658 (Preliminary), USITC Pub. 2678 (Sept. 1993) at 19, n. 78.

⁷⁵ Commissioner Crawford notes that the significance of the volume of imports cannot be made in a vacuum. She makes her finding of the significance of volume in the context of the price and impact effects of these imports. For the reasons discussed below, she finds that the volume of imports is significant in this investigation.

⁷⁶ CR at I-54; PR at II-23. Thus, if prices for national brand products remain flat or decline, Maui either must forgo price increases or reduce its prices (as the case may be) in order not to lose sales volume.

⁷⁷ Id.

contend there is little inter-tier price competition.⁷⁸ The record, however, indicates the contrary. Specifically, 18 out of 20 retail grocery purchasers reported that price changes in one tier will influence the volume of sales in other tiers.⁷⁹ Thus, Maui's sales can be affected from above or below by changes in prices of national and regional labels. Furthermore, more than 20 percent of subject imports also compete in the same tier as Maui.⁸⁰

We also note that subject imports generally are substitutable for domestic product. Respondents argue that Maui is relatively insulated from competition because of its quality and "100 percent Hawaiian" label.⁸¹ The record indicates that although quality and customer preferences for specific brands play a role in purchasing decisions, these factors are by no means dispositive in this market. For example, customer preference for brand loyalty is typically greater among the national brands, i.e., Thai product and non-subject imports, yet retail purchasers rated the quality of Maui's product highest.⁸²

Further, it does not appear that quality differences between the subject imports and domestic product are very significant. All canned pineapple fruit is periodically qualified by retailers in "cuttings", and the quality of all subject imports was rated above average by purchasers.⁸³ We also note that retail grocers generally display the national brand, private label, and regional brand products together on the same shelves.⁸⁴ Several purchasers noted that quality differences were small and may not be noticeable to their customers.⁸⁵

In sum, the record demonstrates that although quality is of some importance, its relative importance to purchasers is balanced against the price of canned pineapple in the market. As price differences between canned pineapple sold in the different tiers increase, the importance of quality differences diminishes.⁸⁶

The Commission collected pricing data on four varieties of canned pineapple fruit, which were segregated according to market tier and channel of distribution.⁸⁷ The data show fairly widespread underselling by subject imports other than subject imports sold in the

⁷⁸ CR at I-21; PR at II-10.

⁷⁹ CR at I-54; PR at II-23. A total of 21 of the 29 responding purchasers indicated that pricing in any one tier influenced the volume of sales in the other tier. Transcript of the Public Hearing (June 1, 1995) ("Public Hearing Transcript") at 30. One third of reporting retailers also indicated that, at some time during the period of investigation, they sought lower prices from their first label suppliers in response to price declines by the national brands. CR at I-54; PR at II-23. These retailers did not indicate whether the national brand prices to which they referred were for subject or nonsubject imports. Nevertheless, Dole, which accounts for an estimated 43 percent of the national brand tier, prices its national brand product without regard to country of origin. CR at I-19; PR at II-9.

⁸⁰ CR at I-17-18, Table 2; PR at II-9.

⁸¹ CR at I-21; PR at II-10.

⁸² CR at I-52, I-55-56; PR at II-22.

⁸³ CR at I-52; PR at II-22.

⁸⁴ Memorandum EC-S-070 (June 26, 1995) at 20.

⁸⁵ Memorandum EC-S-070 (June 26, 1995) at 18-19. Information obtained from a 1995 independent marketing survey supplied by Dole provides further insight into actual and perceived quality differences among national, private label and regional brands and on overall competition among these items. In that marketing survey, * * *. CR at I-56; PR at II-24; Dole Posthearing Brief at Appendix B.2, pp. 36-41. Finally, significant quantities of canned pineapple fruit from Maui and LTFV imports also compete in sales to the food service sector, which generally is less demanding than the retail market in terms of product quality. CR at I-56-57; PR at II-24; Memorandum EC-S-070 (June 26, 1995) at 21.

⁸⁶ CR at I-54; PR at II-23.

⁸⁷ CR at I-57-58; PR at II-24-25.

national brand tier.^{88 89} Given the tiered structure of this market, we would expect to see underselling by subject imports in the second private label and regional tiers. However, the margins of underselling by the subject imports in these tiers increased over the period examined and generally were much larger than the expected price differentials reported by retail grocers. For example, in sales to retail grocers, subject imports in the first private label, second private label and regional brands undersold Maui's first private label by more than 15 percent in 44 out of 66 comparisons.⁹⁰ In sales to the food services channel, all subject imports -- including subject imports sold in the national brand tier -- undersold Maui's first private label in 43 out of 48 comparisons.⁹¹ In 24 of those comparisons, the margin exceeded 20 percent.⁹²

Canned pineapple fruit prices generally declined during the period of investigation. For the most popular retail variety of canned pineapple fruit, both domestic prices and prices for subject imports (other than national brands) fell from 1992 to 1994.⁹³ Pricing comparisons for the other varieties also showed domestic prices to be lower in 1994 than in 1992.^{94 95} In addition, prices for all products, including the national brands, declined

⁸⁸ CR at I-60-71, Tables 14-18; PR at II-25-26. Our pricing analysis here is based on average quarterly prices and total quarterly sales, as urged by respondents. CR at I-59; PR at II-25; see Posthearing Brief of the Thai Food Processors' Association and the Government of Thailand at Exhibit 2. These prices do not reflect some discounts by Maui and Dole, but they are representative of a greater proportion of sales in the market during the period examined than are the prices based on largest quarterly sales. *Id.* We note, however, that largest quarterly sale prices also show similar price and underselling trends. See CR at Appendix F; PR at Appendix F.

⁸⁹ Commissioner Crawford does not place great weight on underselling price comparisons in determining the impact of subject imports on the domestic like product where these comparisons show persistent and consistent high margins of overselling or underselling. In these instances, the prices being compared might well reflect quality, reputation, or other nonprice differences, making these comparisons less useful in assessing price effects.

⁹⁰ CR at I-60-71, Tables 14-18; PR at II-25-26.

⁹¹ CR at I-64, Table 18; PR at II-25-26.

⁹² *Id.*

⁹³ CR at I-60, Table 14, I-65, Figure 7, I-68; PR at II-25.

⁹⁴ CR at I-60-71, Tables 15-18; PR at II-25-26.

⁹⁵ To evaluate the effects of the dumping on domestic prices, Commissioner Crawford analyses supply and demand factors in the canned pineapple fruit market and compares actual domestic prices with what prices would have been if subject imports had been priced fairly. In these investigations, the dumping margins for Thai subject imports range from 1.73 to 51.62 percent. The low end margin is assigned to Dole, which imports less than one quarter of all subject imports. Thus, prices for most subject imports would have risen by a significant amount if they had been priced fairly. The ability of domestic producers to have raised prices under these circumstances depends on competitive conditions in the market for canned pineapple fruit involving both supply- and demand-side considerations.

A significant factor in determining what the effects of higher subject import prices would have been on domestic prices is the overall demand elasticity for canned pineapple fruit in the U.S. market. This elasticity is determined primarily by consumer preferences for this end-product. As discussed elsewhere in this opinion, consumer demand for canned pineapple fruit does not change very much with changes in price. In sum, the canned pineapple fruit market is characterized by a relatively low elasticity of demand.

Even in a market characterized by relatively low demand elasticity, the composition of overall demand can be sensitive to the relative prices of the alternative sources of the product, *i.e.*, subject imports, domestic product and nonsubject imports. In this investigation, there is both intra- and inter-market tier price competition. This is especially relevant given the concentration of subject imports and domestic like product in somewhat different market tiers. If subject imports had been fairly priced, they

(continued...)

significantly in the more price-sensitive food service channel of distribution.⁹⁶ Based on the price trends and the pricing comparisons, we conclude that subject imports, which significantly undersold domestic product, had the effect of depressing and/or suppressing prices of the like product to a significant degree.

As discussed above, LTFV imports from Thailand were present in the U.S. market in substantial volumes throughout the period of investigation.⁹⁷ The significance of this volume

⁹⁵ (...continued)

would have become more expensive relative to both intra-tier and inter-tier domestic products and nonsubject imports. In such case, there would have been a shift in the composition in demand toward the relatively less expensive products. The magnitude of this shift depends on the substitutability of subject imports for products from alternative sources. As has been discussed elsewhere, subject imports and the domestic like product are good substitutes, despite the concentration of sales into different market tiers. Nonsubject imports are also good substitutes for subject imports and the domestic like product. Because they are good substitutes, many purchasers that would have been unwilling to pay a higher price for the subject imports would have attempted to switch to the relatively less expensive domestic and nonsubject import products.

Whether domestic producers would have been able to increase prices if subject imports had been priced fairly is also affected by supply-side considerations, including the amount of available domestic capacity, domestic inventories, and the level of competition in the market. The information in the record indicates a somewhat high level of domestic supply elasticity. Reported available production capacity was high, although I note that the domestic industry would not have been available to increase production very rapidly, due to the long plant cycle and other considerations. However, the domestic industry could have supplied some of the increase in demand by shipping from inventory and to a limited extent by diverting the small level of exports to the domestic market. Nonsubject imports would also have captured some market share from subject imports. However, I do not find that domestic and nonsubject supply increases would have been sufficient to completely replace those subject imports with higher dumping margins. Given the low demand elasticity, even a small change in overall supply to the market could have caused significant price effects.

Another supply-side factor is the degree of competition in this industry. Although the domestic industry consists of only one producer, nonsubject imports are readily available from several sources. Nonsubject imports have had a significant and increasing presence in the canned pineapple fruit market over the period of investigation. Thus, there appears to be some price discipline in the market that would have prevented the domestic industry from exercising market power. Such price discipline, however, would not have prevented price increases due to reductions in overall supply to the market. On balance, the domestic industry could have significantly raised prices, if subject imports had been traded fairly.

In sum, the dumping margins for the subject imports, the low demand elasticity, the price relationships between tiers, the level of substitutability, the supply elasticity of domestic industry, and the level of competition would have allowed a significant price increase, had subject imports been fairly traded. Accordingly, Commissioner Crawford finds that subject imports had significant price effects on the domestic industry.

⁹⁶ CR at I-64-65, Table 18; PR at II-26. In this channel of distribution, price often is more important than brand and quality because final consumers do not see the brand name or container and the pineapple often is mixed with other ingredients. CR at I-56-57; PR at II-24; Memorandum EC-S-070 (June 26, 1995) at 21. Reflecting the nature of competition in that channel of distribution, national brands undersold domestic private first label product in more than half of the price comparisons for this channel of distribution. See CR at I-67, Figure 9; PR at II-26. It also appears that prices both for the national brands and for domestic private label in this channel were influenced (if not led) by prices for subject imports. Subject import prices declined sooner than did prices for either the national brands or the domestic product, with prices both for the national brands and for the domestic product roughly tracking the overall decline in subject import prices. *Id.*

⁹⁷ Respondents argued that imports from Indonesia increased substantially during the period of investigation and that negative price and volume effects experienced by Maui can be attributed to these (continued...)

and market share is amplified by the nature of the canned pineapple market, in which consumers are unwilling to purchase significantly more of the product even if the price declines, and consumers view the imported and like product as good substitutes.⁹⁸ In such circumstances, the impact of import volumes and penetration is magnified in the marketplace.⁹⁹

We also note that Petitioner's numerous lost-sales and lost-revenue allegations largely were confirmed.^{100 101} The large volume of LTFV imports coupled with this price depression and suppression had a significant adverse impact on the domestic industry, particularly through the decrease in net sales which contributed to substantial operating losses.¹⁰²

⁹⁷ (...continued)

imports. Prehearing Brief of the Thai Food Processors' Association and the Government of Thailand at 22-24; Prehearing Brief of the Association of Food Industries Pineapple Group at 18-20; Prehearing Brief of Dole Food Company at 7-8. Imports from Indonesia, however, constituted a small share of the U.S. market during the period of investigation, particularly in relation to LTFV imports from Thailand. CR at I-15, Table 1; PR at II-8; Official Trade Statistics of U.S. Department of Commerce. Measured in terms of market share, imports from Thailand were roughly eight times larger than imports from Indonesia in 1994, when imports from Indonesia were at their peak. *Id.*

⁹⁸ See Memorandum EC-S-070 (June 26, 1995) at 8-9, 24-25. Because the majority of canned pineapple is used in recipes that require the unique taste of pineapple (e.g., as compared to other types of fruit), in the aggregate purchasers are not likely to be very sensitive to changes in the price of canned pineapple and would continue to demand fairly constant quantities over a considerably wide range of prices. *Id.* at 24-25.

⁹⁹ We also note that the market penetration of canned pineapple fruit from Thailand decreased at a slower rate than the decline in U.S. market share. *Compare* I-44, I-25, Table 3; PR at II-12.

¹⁰⁰ CR at I-72-82; PR at II-28. Further, Maui lost the sales and revenue to LTFV imports across market tiers and product grades. *See* CR at I-72-82; PR at II-28; Maui Questionnaire Response at Attachment V.C.

¹⁰¹ Commissioner Crawford typically does not rely on anecdotal evidence of lost sales and revenues indicating that competition from the subject imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching her determinations.

¹⁰² In her analysis of material injury by reason of subject imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been had imports been fairly traded. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development as required by 19 U.S.C. § 1677(7)(C)(iii). These factors either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices and sales is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from this impact.

As noted earlier, Commissioner Crawford finds that the domestic industry would have been able to increase its prices significantly, had subject imports been priced fairly. In this investigation, she further finds that the quantity sold by domestic industry would have increased to satisfy demand from consumers not willing to pay higher prices for subject imports, had they been fairly traded. Although supply constraints would have prevented the domestic industry and nonsubject import sources from increasing the quantity of its production and sales to fully replace any demand that would have shifted from subject imports, the domestic industry nonetheless would have captured a significant amount of additional sales. With significant increases in both prices and the quantity sold, the domestic industry clearly would have been materially better off if the subject imports had been fairly traded, and she finds that the volume of imports is thus significant. Accordingly, Commissioner Crawford concludes that there is material injury to the domestic industry by reason of the LTFV imports of canned pineapple fruit from Thailand.

This impact can be seen through an analysis of Maui's financial performance throughout the period of investigation. To the extent that Maui's unit production costs increased earlier in the period of investigation, this increase was a result of the fact that Maui's production and shipment volumes declined, inventories grew, and capacity utilization declined, as Maui was unable to sell its product.¹⁰³ Maui's relatively improved financial condition at the end of the period of investigation resulted from reduced unit costs associated in part with cuts in total compensation and the number of production workers.¹⁰⁴ Even with these lowered COGS and SG&A expenses, Maui sustained a substantial operating loss in 1994, as prices and revenues declined. Indeed, the decrease in Maui's operating losses from 1993 to 1994 was the result of its cost reductions, not an improvement in either the volume or value of net sales, both of which declined substantially.¹⁰⁵ The significant price-depressing and -suppressing effects of subject imports, together with their large market share, contributed to Maui's large continuing operating losses in 1994.¹⁰⁶

CONCLUSION

In light of the foregoing, we determine that the domestic industry producing canned pineapple fruit is materially injured by reason of the LTFV imports from Thailand.

¹⁰³ CR at I-36; PR at II-14.

¹⁰⁴ CR at I-28-29 & Table 4, I-33, I-35-36, Table 6; PR at II-13. Respondents have argued that Maui's poor financial performance during the period of investigation can be attributed to Maui's internal cost structure. See e.g., Prehearing Brief of the Thai Food Processors' Association and the Government of Thailand at 64-68; In Camera Hearing Transcript at 166-176. In particular, respondents claim that Maui was burdened by uncompetitive operating costs in connection with its high agricultural labor wages and the 1992 bumper crop. Id. The record reflects, however, that Maui's direct labor costs are not a significant portion of its overall costs. CR at Appendix D; PR at Appendix D. Moreover, as discussed above, Maui reduced these costs during the period of investigation.

With respect to the 1992 harvest, we note that, historically there does not appear to be a correlation between the size of Maui's annual harvest and its profitability. See Maui Questionnaire Response at Attachment IV-14; Petitioners' Posthearing Brief at Appendix 2. Moreover, Maui generally benefits from its captive production of fresh pineapples through efficiencies in fruit yield, fruit quality and delivery schedules. Public Hearing Transcript at 141-145. Further, even if Maui was adversely affected by its internal costs during the period of investigation, under the statute, we must determine whether the domestic industry is injured by reason of subject LTFV imports. 19 U.S.C. § 1673d(b); see also Iwatsu Electric Co. Ltd., 758 F. Supp. at 1518 ("importers take the domestic industry as they find it").

¹⁰⁵ CR at I-31-32, Tables 5 & 6; PR at II-13.

¹⁰⁶ In her analysis of material injury, Commissioner Crawford determines whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the LTFV imports had been priced fairly. If the imports from Thailand had not been dumped, it is likely that they would have been priced out of the U.S. market. Because the domestic product and the LTFV imports appear to be good substitutes, particularly in the private label and regional tiers of the U.S. market, purchasers would have reduced their purchases of the subject imports, and demand for the domestic product would have increased significantly. In a market characterized by significant excess production capacity and competition between the domestic product and fairly traded imports, the domestic industry would not have been able to increase its prices significantly.

However, the domestic industry would have been able to increase significantly the quantity of its production and sales, and thus its revenues, if the LTFV imports had been fairly priced. Therefore, the domestic industry would have been materially better off if the subject imports had been priced fairly. Accordingly, Commissioner Crawford concludes that the domestic industry is materially injured by reason of the LTFV imports of canned pineapple fruit from Thailand.

PART II
INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

This investigation results from a petition filed by Maui Pineapple Company, Ltd., Kahului, HI, and the International Longshoremen's and Warehousemen's Union, on June 8, 1994, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of canned pineapple fruit¹ from Thailand.² Information relating to the background of the investigation is provided below.³

<i>Date</i>	<i>Action</i>
June 8, 1994	Petition filed with Commerce and the Commission; institution of Commission's preliminary investigation
July 5, 1994	Commerce's notice of initiation
July 24, 1994	Commission's preliminary determination
January 11, 1995	Institution of Commission's final investigation (60 F.R. 6290, Feb. 1, 1995)
May 26, 1995	Commerce's final determination (60 F.R. 29553, June 5, 1995) ⁴
June 1, 1995	Commission's hearing ⁵
June 29, 1995	Commission's vote
July 10, 1995	Commission's determination transmitted to Commerce

THE PRODUCT

The imported product subject to this investigation is canned pineapple fruit defined as pineapple 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 (heavy) syrup added. This section presents information on both imported and domestically produced canned pineapple fruit, as well as information related to the Commission's "domestic like product" determination.⁶ In this final investigation, petitioner and exporter respondents argued that the appropriate domestic like product consists of all grades, product forms, and container sizes of canned

¹ For purposes of this investigation, canned pineapple fruit is defined as pineapple 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 (heavy) syrup added. Canned pineapple fruit is provided for in subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States with a 1995 most-favored-nation tariff rate of 0.52¢ per kilogram, applicable to imports from Thailand. The *ad valorem* equivalent of this specific rate of duty was 0.8 percent for imports of canned pineapple fruit from Thailand during 1994.

² A summary of the data collected in the investigation is presented in app. A. Data concerning canned pineapple fruit, all pineapple, fresh pineapple, and fresh-chilled pineapple are presented in tables A-1, A-2, A-3, and A-4, respectively.

³ *Federal Register* notices cited in the tabulation are presented in app. B.

⁴ Commerce calculated LTFV margins to be as follows: Dole, 1.73 percent; TIPCO, 38.68 percent; SAICO, 51.16 percent; Malee, 41.74 percent; and all others, 24.64 percent.

⁵ A list of participants at the hearing is presented in app. C.

⁶ The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and, where appropriate, (6) price.

pineapple fruit.⁷ The importer respondents argued that there is a considerable overlap between canned pineapple fruit, fresh pineapple, and fresh-chilled pineapple with respect to several domestic like product factors.⁸

Physical Characteristics and Uses

Canned pineapple fruit is the shelf-stable⁹ food sealed in airtight cans prepared from mature fresh, or previously canned, pineapple from which the peel and core have been removed.¹⁰ The principal styles sold in the U.S. market include slices, spears, tidbits, chunks, and crushed. In addition, canned pineapple fruit is packed in either pineapple juice or with added sweeteners, the latter often referred to as heavy syrup. There are four possible grade standards (7 CFR 52.1719) for canned pineapple fruit sold in the United States: U.S. Grade A (fancy), U.S. Grade B (choice), U.S. Grade C (standard), and Substandard. The grading criteria include color, uniformity of size and shape, defects, character, flavor and odor, and tartness. Canned pineapple fruit is typically sold in 20 ounce (oz.), 15 to 15.5 oz., and 8 oz. cans at the retail level and 1 gallon (number 10) cans at the food service level.

In addition to canned pineapple fruit, pineapple is also sold in its fresh state without any further processing. Fresh pineapples are usually shipped whole inclusive of the shell and crown and must be consumed within two to four weeks of harvesting. In contrast to canned pineapple fruit, fresh pineapple fruit has separate grading standards (7 CFR 51.1485), which are based mainly on the outward physical appearance of the shell and crown. A small share of fresh pineapples is processed into fresh-chilled pineapple. Fresh-chilled pineapple is defined as fresh pineapple that is peeled, cored, and packaged in either plastic packaging or vacuum pack.

The cultivated, commercial pineapple (*Ananas comosus*) is a member of the Bromeliaceae family, members of which are native to tropical and subtropical South America with one exception that is native to the west coast of Africa.¹¹ Each pineapple is actually a composite fruit composed of from 100 to 200 individual berry-like fruitlets. Each "eye" of the pineapple is a separate fruitlet, having been derived from an individual flower and surrounding parts, and fused on a central core that is a continuation of the plant stem.¹² The average mature pineapple measures about 20.5 centimeters (cm) long and 14.5 cm in mid-diameter, and weighs about 2.2 kilograms.

Pineapple fruit is commonly consumed alone as a dessert or a side-dish, but is also used as an ingredient in fruit salads, fruit cocktail, other types of salads, on pizzas, and in sauces. In addition, canned pineapple fruit is used as a garnish for various drinks, meats, and baked entrees, or it can be used in the preparation of cakes, breads, and various other desserts.

⁷ Petitioner's prehearing brief, pp. 1-14; Willkie Farr & Gallagher's posthearing brief, ex. 12.

⁸ Harris & Ellsworth's prehearing brief, p. 29.

⁹ Canned pineapple fruit has a three to four year shelf-life.

¹⁰ On a fresh-weight basis, processed pineapple accounted for 64.4 percent of total pineapple production during 1994, of which *** percent was used in the production of canned pineapple fruit and *** used in the production of other processed pineapple, e.g., fresh-chilled pineapple and pineapple juice and concentrate (1994 Hawaiian Pineapples Annual Survey and ***).

¹¹ United Fresh Fruit and Vegetable Association, *Fresh Fruit & Vegetable Facts & Pointers-Pineapples*, Feb. 1970, p. 1.

¹² J.L. Collins, *The Pineapple*, Interscience Publishers Inc. (New York: 1960), p. 55.

Use of Common Manufacturing Facilities and Production Employees

Commercial pineapples in the United States are grown from crowns, gathered at harvest from the top of the fruit. A pineapple plant requires approximately 18 to 22 months (depending on location and planting material) from planting to produce its first fruit, often referred to as the plant crop. The flowering of the pineapple plant may be "forced" or regulated using an ethylating gas or agent, which will concentrate the maturation of the fruit suitable for harvesting in a particular field. This procedure allows the grower to plan for continuous harvesting throughout the year, thus eliminating the seasonality element inherent in raw fruit production.¹³ About a year after the plant crop is harvested, the plant will produce a second crop, called the first ratoon. If the field is in good condition, a third crop, called the second ratoon, may be produced. After the final harvest, the field is "knocked down," where the remaining vegetative material is either cleared or plowed under the surface, and prepared for a new crop of pineapples to be replanted.

Pineapples may be grown differently depending on the principal end use intended for the crop. Growers of pineapples intended mostly for processing are attempting to maximize the total amount of fruit, while a grower interested mainly in fresh-market sales is trying to maximize the amount of fruit that matures in the 3 to 4 pound weight-range and is of a proper shape. Furthermore, if the fresh grower has no juicing facilities, the grower is more likely to harvest only the plant crop and the first ratoon, as the second ratoon will have a higher percentage of pineapples that are not suitable for the fresh market.

Domestic growers employ a harvesting method for processing pineapples which uses approximately 14 people to simultaneously hand-harvest several rows of pineapples while walking behind a boom that conveys the picked pineapples into the hold of a large truck.¹⁴ The crowns of the pineapples are removed at this stage for use in future plantings. As pineapples in a field do not all ripen at the same time, several rounds of harvesting are made through each field. Once harvested, the fruit is transported to the processing plant as soon as possible.

U.S. producers use different dedicated machinery for the purpose of harvesting fresh-market pineapples. The harvester for fresh-market pineapples is similar in appearance to the processing pineapple harvester; however, the fresh-market harvester is smaller and may involve workers on the truck end of the boom hand placing the pineapples into trays to prevent damage to the fruit. In addition, fresh fruit operations in Hawaii have permanent harvesting crews that are trained to select the proper fruit color and size depending on market orders, while harvesters of pineapple fruit for canning are mostly seasonal workers that require much less training than fresh fruit workers.¹⁵ The fruit is then immediately transported to a packing facility dedicated solely for the handling of fresh-market fruit, where the pineapples are treated to meet phytosanitary requirements, sorted by weight and color, and packed in cartons for shipment.

At the canning operation, each pineapple is washed and graded for size at the processing plant to determine to which group of packing lines the fruit will be sent.¹⁶ The pineapple is then sent through a "ginaca" machine to remove the shell, cut off the ends of the pineapple, and remove the fibrous core before sending the prime fruit cylinder to the canned pineapple fruit production area. The rest of the pineapple is sent to be crushed into juice and/or processed into livestock feed. Meanwhile, the fruit cylinder is inspected and hand trimmed to remove any defects or eyes. The fruit is then cut into slices, chunks, tidbits, or crushed pieces or is crushed into juice depending on

¹³ Conference transcript, pp. 13-14.

¹⁴ Conference transcript, pp. 75-76.

¹⁵ Petitioner's postconference brief, June 8, 1995, app. 4, p. 12.

¹⁶ Conference transcript, pp. 14-15.

which processing line the fruit was sent to. After being cut, the fruit is packed into cans¹⁷ with either sugar syrup or pineapple juice saved from the coring and slicing process being added based upon a specific formula. The cans are then sealed and cooked at 211 degrees Fahrenheit for 11 minutes in a pasteurization process, which imparts the three-to-four-year shelf life of canned pineapple fruit. The cans are then cooled and put into inventory to await labelling when an order is placed.

Interchangeability and Customer and Producer Perceptions of the Product

Fresh and fresh-chilled pineapple can be substituted for canned pineapple fruit for certain uses; nonetheless, fresh and fresh-chilled pineapples are highly perishable and are perceived by many consumers to be difficult to prepare relative to canned pineapple fruit. In addition, the enzyme bromelain, contained in fresh pineapple,¹⁸ restricts the uses of fresh pineapple relative to canned pineapple fruit.¹⁹ Petitioner argues that fresh and fresh-chilled pineapples are only roughly interchangeable with canned pineapple fruit because of the differences in taste, texture, aroma, and perishability.^{20 21} Respondents note that canned pineapple fruit may be substitutable for fresh and fresh-chilled pineapple when perishability is not a factor.²² Maui reported that the interchangeability of canned and fresh pineapple is limited due to differences in customer preferences, appearance, convenience, perishability, cost, labor, refrigeration, spoilage, sanitation, and end uses. Among the 19 responding importers, 18 reported that there was no or limited substitutability between canned and fresh pineapple. The primary reasons given were pricing, individual preferences, and perishability. The majority of purchasers reported that canned pineapple fruit was not substitutable with fresh and fresh-chilled pineapple. Of the 33 responding purchasers, 21 reported that differences in perishability and pricing limited the substitutability of fresh and fresh-chilled pineapple with canned pineapple fruit.

Canned pineapple fruit competes to a degree with other canned fruit products on price, perceived nutritional value, and taste; however, no other products act as a direct substitute. Its unique taste, texture, and coloration do not allow for direct replacement by another canned fruit product.

Channels of Distribution

In the U.S. market, sales of fresh, fresh-chilled, and canned pineapple fruit are made primarily through two channels of distribution: retail grocery and food service channels. A small

¹⁷ These cans are manufactured by the petitioners at its canned pineapple fruit plant.

¹⁸ The pasteurization process eliminates bromelain from canned pineapple fruit.

¹⁹ Bromelain will prevent gelatin desserts made with fresh pineapple fruit from setting. In addition, cottage cheese, sour cream, and other dairy products will be adversely affected if they are mixed with fresh pineapple more than a few moments before serving.

²⁰ Petitioner's prehearing brief, pp. 3-8.

²¹ Petitioner cites to two marketing studies to corroborate its position of limited substitutability between fresh and canned pineapple. In a study conducted by Haug International, consumers were asked if the grocery store didn't have fresh pineapple, would they buy canned pineapple fruit, buy other fresh fruits, or go to another store to buy fresh pineapple. Forty-three percent reported that they would buy other fresh fruits, 35 percent stated they would go to another store to purchase fresh pineapple, and 19 percent noted that they would buy canned pineapple fruit. Another marketing study by Simmons Market Research shows different demographic profiles for the typical consumer of fresh pineapple versus the consumer of canned pineapple fruit (Petitioner's posthearing brief, app. 4).

²² Willkie Farr & Gallagher's posthearing brief, ex. 12; Harris & Ellsworth's prehearing brief, p. 29.

percentage of sales of canned pineapple fruit is made through the industrial channel.²³ Although the majority of pineapple fruit is sold in the retail grocery channel, fresh and fresh-chilled pineapples are sold through produce departments whereas canned is sold through dry grocery departments. These two departments are distinct divisions within the grocery channel with each department often having separate profit centers, marketing divisions, vendor sales forces, warehousing and storage, and retail placement. Because the fresh products are perishable, transportation and warehousing are very different among the products. The fresh products must be moved quickly by air cargo or shipped in refrigerated containers or trucks, and warehoused for just a few days, while the canned products are always shipped by surface transportation and are stored for several months before entering the grocery stores. Maui also reports that all of its sales of fresh-chilled pineapples are to restaurants, hotels, and supermarkets located on the island of Maui.²⁴ For a detailed description of the channels of distribution for canned pineapple fruit, see the "Shipments by Channels of Distribution" section.

Price

Hawaii Agricultural Statistics Service price data indicate that there are significant price differences between fresh-market and processing pineapples. The average price in 1994 received by shippers²⁵ of fresh-market pineapples was \$0.48 per kilogram, while growers²⁶ of processing pineapples received \$0.12 per kilogram.²⁷ Prices at the retail establishment, as reported by Maui, averaged about \$*** per 20 oz. can for canned pineapple fruit as compared to \$*** per fresh whole fruit for its Jet Fresh brand on the West Coast and \$*** per fruit on the East Coast.²⁸

THE U.S. MARKET

U.S. Producers

Maui

Maui Pineapple Company, Ltd., a wholly owned subsidiary of Maui Land and Pineapple Company, Inc.,²⁹ accounted for virtually all U.S. production of canned pineapple fruit during the period for which data were collected. Maui's pineapple operations are fully integrated, consisting of two company-operated plantations on Maui, a cannery in Kahului, a can plant, and several warehouse facilities. About 75 percent of the fruit processed during 1994 was cultivated on company-operated plantations, with the remainder being purchased from independent growers, a substantial portion of

²³ Fresh and fresh-chilled pineapples are not sold in the industrial channel.

²⁴ Conference transcript, p. 75.

²⁵ Price estimate reflects the value at wholesale establishments for Hawaiian sales and at the shippers' dock for mainland and foreign sales.

²⁶ Price estimate reflects the value of the fresh fruit delivered to the processing plant door based on average contract prices of independent growers.

²⁷ *Hawaii Pineapples, Annual Summary*, Hawaii Agricultural Statistics Service, Hawaii Department of Agriculture, Honolulu, HI, Feb. 21, 1995.

²⁸ Fresh-chilled is similarly priced to its Jet Fresh brand at \$*** per package. In terms of edible fruit, one fresh pineapple is comparable to one 20 oz. can of pineapple.

²⁹ In addition to its pineapple operations, Maui Land and Pineapple Company, Inc. operates Kapalua Land Company, Ltd., which is a developer of a resort community in West Maui.

which was from Wailuku Agribusiness Company, Inc.³⁰ Maui, which produces a full line of canned pineapple products, including all can sizes and product forms, is the largest supplier of private label canned pineapple products in the United States. Maui sells canned pineapple fruit principally to grocery chains, wholesale grocers, food processors, and wholesalers serving both retail and food service outlets. In addition to canned pineapple fruit, Maui produces juice, juice concentrates, and packaged fresh-chilled pineapple³¹ at its cannery in Kahului. Maui also sells fresh pineapples to the U.S. mainland under its Jet Fresh fruit program.³²

Puerto Rico Land Authority

Puerto Rico Land Authority (PRLA), of San Truce, PR, accounting for *** percent of U.S. production of canned pineapple fruit during 1994, produces canned pineapple and juice products under the "Lotus" brand name. ***.

U.S. Importers

Questionnaires were sent to 47 firms named in the petition and in the Customs Net Import File as importing canned pineapple fruit from Thailand. Thirty-eight responded to the Commission's request for information, accounting for approximately 85 percent of U.S. imports from Thailand during 1994. ***. Other large importers supply their independent labels with canned pineapple fruit from Thailand. ***. Several importers are food wholesalers that import canned pineapple fruit for the food service channel (e.g., restaurant chains and hospitals). Another importer, ***, imports canned pineapple fruit from Thailand for use in its production of canned fruit cocktail.

Apparent U.S. Consumption

As indicated in table 1 and figure 1, total U.S. consumption of canned pineapple fruit, by quantity, *** percent during 1992-94. In terms of value, total reported U.S. consumption *** percent during the same period. ***.

Table 1

Canned pineapple fruit: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 1992-94

* * * * *

Figure 1

Canned pineapple fruit: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 1992-94

* * * * *

³⁰ During 1993, Wailuku Agribusiness announced a 3-year phase-out of its operations, reportedly resulting from reduced demand and the low fresh fruit price.

³¹ Maui sells its packaged fresh-chilled pineapples only to restaurants, hotels, and supermarkets located on the island of Maui (conference transcript, p. 75).

³² Maui's sales of fresh pineapple are *** of its total pineapple sales.

Petitioner and importers generally agree that consumption of canned pineapple fruit has remained relatively constant during the period for which data were collected and that there have been no principal factors affecting changes in demand. In response to the question in the Commission's questionnaire concerning demand for canned pineapple fruit, only 2 of the 38 responding importers reported that demand had increased since 1992. One importer noted that its sales have increased but did so primarily as a result of active promotion and not because of any significant changes in the market. Three importers reported that customers' preferences for healthier juice-packed pineapple have resulted in fewer sales of canned pineapple packed in heavy syrup, but that sales of canned pineapple fruit as a whole have remained fairly constant.

Shipments by Channels of Distribution

In the U.S. market, sales of canned pineapple fruit are made through three channels of distribution: retail grocery, food service, and industrial. The majority of canned pineapple fruit is sold in the retail grocery channel. As indicated in table 2, *** percent by quantity of canned pineapple fruit produced in the United States and 58.1 percent of the subject imports from Thailand were sold to retail grocery stores in 1994. Sales in the retail channel can be made either directly to the grocery store chains or through retail wholesalers or club or warehouse stores. Canned pineapple fruit is sold in 20 oz. (by far the most popular), 15.25 oz., and 8 oz. cans in four product forms: slices, chunks, tidbits, and crushed, each of which is available packed in pineapple juice or heavy syrup. All of these forms are priced equally for equivalent size cans in the retail sector.³³

Table 2

Canned pineapple fruit: U.S. shipments of U.S. producers and U.S. shipments of U.S. importers of Thai product, by types, 1992-94

* * * * *

Canned pineapple fruit is sold in the retail channel via a three-tier market structure. The first tier is composed of the national brands, Dole and Del Monte. Dole and Del Monte are priced higher because of their brand recognition, large advertising budgets, and perceived higher quality. Of the two national brands, Dole is the more significant player, with an estimated 43-percent share of the total U.S. canned pineapple fruit market. Del Monte's share is estimated to be about 17 percent.³⁴ Dole is the only national brand to source product from Thailand. As indicated in table 2, ***.

The second tier is composed of the private labels, which are typically the store brands of grocery retailers (e.g., Townhouse, Giant, America's Choice). This tier consists of two categories: the first private label (by far the larger category) and second private label. The purpose of the first private label is to offer a value alternative to the national brand, provide the retailer with greater profit margins, and offer a quality equal to the national brand. To remain competitive in this market, private labels must remain 10 to 15 percent below the national brands in price.³⁵ Maui is the largest supplier of first private labels in the United States.³⁶ As indicated in table 2, *** percent of

³³ Conference transcript, pp. 27-28.

³⁴ Conference transcript, p. 29.

³⁵ Conference transcript, p. 31.

³⁶ In a survey of 50 top grocery store chains, Maui supplied 75.6 percent of first private label sales during 1993, while 19.7 percent and 4.7 percent of the first private labels were sourced from Thailand and the Philippines, respectively. Thirty-four of the 50 grocery chains sourced their first private labels from Maui (Petitioner's postconference brief, app. 4).

Maui's shipments in the retail sector during 1994 were to the first private label market. These shipments *** during 1992-94.

Second private labels are also store brands, but are considered to be lower-quality "price warriors," are always priced below first private labels, and exist purely on price.³⁷ ***. Shipments made by Maui and U.S. importers from Thailand in this channel *** between 1992 and 1994 (table 2).

The third tier is composed of regional brands (e.g., Geisha, Libby, Three Diamond, Empress, Nature's Farm). These brands pay slotting fees to retail chains to get their products positioned on grocery shelves for a time period of usually between 6 months and 1 year. Regional brands are responsible for their own promotion and if they do not sell well, retail chains replace them with other brands. The slotting deals are usually dependent on which brand will offer the retail chain the best fee. These brands are sometimes referred to as "musical chair" brands because their brands and suppliers change so frequently. The third tier products must maintain a price position below that of the first private labels to remain competitive and are predominantly Thai in origin.³⁸ U.S. shipments of imports from Thailand in this category increased slightly in quantity during 1992-94 (table 2). Maui reported ***.

Because of the pricing structure, petitioner argues that pricing changes in one tier greatly affect pricing in the other tiers. Because imports from Thailand are prominent in both the first and third tiers, petitioner notes that vertical price competition has adversely impacted its private label market. For example, if Dole lowers its national brand price and Maui does not follow, Maui loses its private label price advantage and buyers at the distribution level as well as the retail grocery shoppers will switch to the national brand.³⁹ Petitioner also notes that 67 percent of responding purchasers reported that "pricing in one tier influences the volume of sales in other tiers."⁴⁰ In addition to the vertical competition, petitioner notes that it is subject to horizontal competition from imports from Thailand, i.e., competition for private label contracts. Maui notes that this competition has led, in some cases, to the loss of its exclusive private labels, but more commonly it has forced Maui to reportedly reduce prices to an injurious level in order to maintain its current private labels.⁴¹

Respondents argue that there is no evidence that imports from Thailand have caused material injury to Maui in any segment of the retail canned pineapple fruit market. They argue that the retail market is segmented among distinct tiers that are defined by different prices and customers, and Maui's sales of canned pineapple fruit are most heavily concentrated in market segments in which subject imports do not compete.⁴² Pointing to Maui's dominance in the private label sector, respondents argue that grocery chains overwhelmingly prefer the Hawaiian fancy grade product for their first label. Because Maui is the only producer of Hawaiian product, respondents argue that Maui's sales are largely insulated from competition from Thailand.⁴³ Respondents argue that in the private label tier, quality is particularly important because the product is being marketed under the store's name and not the manufacturer's. Because it is the store's reputation at stake, stores are allegedly more likely to require Hawaiian fancy grade as opposed to Thai choice grade.⁴⁴ ***.⁴⁵

³⁷ Conference transcript, p. 30.

³⁸ Conference transcript, p. 30.

³⁹ Conference transcript, p. 31.

⁴⁰ Petitioner's prehearing brief, p. 26.

⁴¹ ***.

⁴² Willkie Farr & Gallagher's prehearing brief, pp. 8-9.

⁴³ Willkie Farr & Gallagher's prehearing brief, pp. 3-4; Patton Boggs' prehearing brief, p. 12.

⁴⁴ Willkie Farr & Gallagher's prehearing brief, pp. 9-10.

⁴⁵ In-camera hearing transcript, p. 133.

In terms of competition from national brands, respondents argue that the majority of sales by the national brands are not subject imports. They note that *** of Dole's products and none of Del Monte's products are sourced from Thailand.⁴⁶ In terms of the third tier, respondents note that Maui does not market its products under any brand in this tier and that it has even refused to sell its product to buyers in this tier. Noting that imports from Indonesia have had significant growth in recent years, respondents also argue that the competitive price pressure in the third tier is largely from nonsubject countries.⁴⁷

The food service channel is composed of large institutional users such as hospitals, restaurant chains, and government purchasers. These customers typically buy in bulk, and the standard package for sale is the gallon can (106-108 oz.), which is commonly called "number 10." As in retail packs, food service canned pineapple is sold in all product forms and packed both in pineapple juice and heavy syrup. In food service, Maui tries to charge more for crushed and discount less for rings; however, customers reportedly often pressure Maui to sell all "number 10" cans at the same price.⁴⁸ ***. U.S. shipments made by importers from Thailand in the food service sector *** between 1992 and 1994 (table 2).

Maui argues that factors such as brand name and quality are less important in the food service channel because the ultimate end user never sees the container or brand he is consuming, thus causing this channel to be very price sensitive. Because the food service channel is more price competitive than the retail channel, petitioner argues that in this channel, Maui is particularly vulnerable to import competition from Thailand.⁴⁹

Respondents argue that the existence of price differences among the tiers in the food service sector is evidence that vertical segmentation occurs in this sector.⁵⁰ They argue that these sales are further segmented by the presence of the U.S. Government as a major purchaser. Since *** of Maui's sales in the food service sector are subject to Buy American restrictions, respondents argue that competition between Maui and Thai imports is further reduced.⁵¹ Furthermore, respondents assert that Indonesia has been particularly effective in capturing market share in the food service sector, reportedly increasing sales in this sector by 115 percent during 1992-94.⁵²

The industrial channel is primarily composed of processors, which make use of canned pineapple fruit in other finished products such as baked goods, ice cream, yogurts, and fruit cocktail. The primary industrial use of canned pineapple fruit is fruit cocktail, which according to FDA standards must have between 6 percent and 16 percent pineapple by weight. As in food service, canned pineapple fruit is sold in all forms in one gallon number 10 cans. As indicated in table 2, Maui's shipments to the relatively small industrial channel *** during 1992-94, while U.S. shipments of imports from Thailand declined during the same period. Of the seven importers that imported canned pineapple from Thailand for industrial purposes, *** are the largest. ***.

⁴⁶ Willkie Farr & Gallagher's prehearing brief, p. 9; Patton Boggs' prehearing brief, p. 9.

⁴⁷ Respondents' postconference brief, pp. 24-29.

⁴⁸ Conference transcript, p. 28.

⁴⁹ Conference transcript, p. 36.

⁵⁰ Willkie Farr & Gallagher's prehearing brief, p. 14. Respondents do note, however, that the delineation between the segments for the food service channel is not as sharp as in the retail channel.

⁵¹ Willkie Farr & Gallagher's prehearing brief, pp. 15-16.

⁵² Patton Boggs' prehearing brief, pp. 17-18.

**CONSIDERATION OF ALLEGED MATERIAL INJURY
TO AN INDUSTRY IN THE UNITED STATES**

U.S. Capacity, Production, Shipments, and Inventories

Data regarding U.S. capacity, production, shipments, and inventories are presented in table 3 and figures 2 and 3. Maui's average-of-period capacity ***.

Table 3

Canned pineapple fruit: U.S. capacity, production, shipments, and inventories, 1992-94

* * * * *

Figure 2

Canned pineapple fruit: U.S. capacity, production, and capacity utilization, 1992-94

* * * * *

Figure 3

Canned pineapple fruit: Shipments by Maui, by types, 1992-94

* * * * *

Maui's full production capability reported for canned pineapple fruit is based on operating *** hours per week, *** weeks per year. The cannery operates most of the year; however, over 50 percent of production volume occurs during the summer months, the peak growing season.⁵³

Maui's production *** from 1992 to 1993, but *** during 1994. Maui's production of canned pineapple fruit was above normal in 1992 largely as a result of favorable climatic conditions on the island and an excellent pineapple harvest.^{54 55} ***. Capacity utilization rates *** from *** percent in 1992 to *** percent in 1994. Douglas Schenk of Maui estimated that the standard capacity utilization rate for the canned pineapple industry is about 60 percent.⁵⁶

U.S. domestic shipments of canned pineapple fruit *** during 1992-94. Exports accounted for *** percent of Maui's total shipments by quantity during 1994; its primary export markets were ***.

End-of-period inventories ***. Maui reported that because 1992 inventories were particularly high, it was forced to let about 20,000 tons of pineapple rot during 1993 because the prices for canned pineapple fruit did not justify the incremental costs of harvesting, processing, and carrying the product in inventory.⁵⁷ Maui was under a contractual obligation to purchase fruit from two private growers, so the 20,000-ton reduction had to occur on Maui's plantations. ***.

* * * * *

⁵³ Conference transcript, p. 59.

⁵⁴ Conference transcript, p. 45.

⁵⁵ Maui's 1993 Annual Report notes that "the Company ended 1992 with a record production year."

⁵⁶ Hearing transcript, pp. 63-64.

⁵⁷ 20,000 tons of pineapple fruit should produce about 360,000 cases of canned pineapple (20 oz. cans) and 500,000 cases of single strength juice product (conference transcript, p. 48).

Employment, Wages, and Productivity

Maui's employment and productivity data are presented in table 4.⁵⁸ The number of production and related workers (PRWs) producing canned pineapple fruit and the number of hours worked by PRWs *** during 1992-94. ***.

Table 4

Average number of total employees and production and related workers in U.S. establishments wherein canned pineapple fruit is produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products, 1992-94

* * * * *

Financial Experience of Maui

Financial information was provided by the predominant U.S. producer⁵⁹ on its canned pineapple fruit operations in addition to its overall establishment operations. Maui's data, representing nearly *** percent of 1994 production of canned pineapple fruit, were verified by Commission staff, and changes resulting from the verification were incorporated in the report.

Overall Establishment Operations

Income-and-loss data on Maui's overall establishment operations are presented in table 5. In addition to the products under investigation, the U.S. producer indicated in its questionnaire response that it produces juice, concentrate, and fresh fruit. The facilities included in the overall establishment operations are ***. Maui's canned pineapple fruit net sales were *** percent of overall establishment net sales in 1994.

Table 5

Income-and-loss experience of Maui on the overall operations of its establishments wherein canned pineapple fruit is produced, fiscal years 1992-94

* * * * *

Operations on Canned Pineapple Fruit

Income-and-loss data for Maui's operations on canned pineapple fruit are presented in table 6 and figure 4. An official of Maui indicated that the ***.^{60 61} Also, attached to the questionnaire for the present investigation was a further explanation of the *** costs in 1993. This information is presented below:

* * * * *

⁵⁸ ***.

⁵⁹ Maui Pineapple Company, Ltd. Maui's fiscal close is Dec. 31.

⁶⁰ Telephone conversations on June 23 and July 5, 1994, with ***.

⁶¹ The cost of production for Maui's canned pineapple fruit operations is presented in app. D.

Table 6
Income-and-loss experience of Maui on its operations producing canned pineapple fruit, fiscal years 1992-94

* * * * *

Figure 4
Net sales, combined cost of goods sold and selling, general, and administrative expenses, and operating income of Maui on its operations producing canned pineapple fruit, 1992-94

* * * * *

The 1993 Annual Report indicates that the increased per-unit production costs from 1992 to 1993 were the result of lower production levels and higher than normal inventory adjustment, which was the primary reason for the increase in cost of sales in 1993 as compared to 1992.⁶² The 1994 cost of goods sold as presented in the questionnaire response shows a ***.

The 1993 Annual Report also indicates that shipping and selling costs, which include ocean, rail, and truck freight, along with warehousing and brokerage costs, were up from 1992 by 12 percent. This was the result of lower recovery of shipping costs from customers and higher warehousing and other holding costs because of high inventory levels. Also, ocean freight rates increased by about 3 percent. According to the annual report, aggressive measures were undertaken to reduce labor costs through job eliminations, job consolidations, early retirements, reduction of overtime, and salary reductions for some managers. Additional steps were taken to reduce costs by working with vendors, suppliers, and other business associates. The report also states that the increasing general and administrative expense in 1993 was largely attributed to charges to bad debt expense and to labor-related charges, some of which were the result of programs to reduce the company's workforce in an effort to decrease future costs.⁶³ The 1994 Annual Report indicated that shipping and selling expenses decreased by 17 percent because of lower case volume of sales and lower average mainland inventories in 1994.⁶⁴

Respondents argue that Maui's problems are related to the high cost of doing business in Hawaii, and that is the reason that other pineapple canning operations have ceased or have moved to the Far East. They allege that Maui is engaged in a labor-intensive agricultural industry on a resort island, where labor costs are among the highest in the world and that Maui is locked into a high-cost, vertically integrated fruit supply structure that prevents it from reducing fruit costs.⁶⁵ Dole argues that the much higher operating costs in Hawaii mean that the per-unit cost of production of canned pineapple fruit is *** percent higher in Hawaii than in Thailand and the Philippines, respectively. Dole adds that Maui does not enjoy any offsetting transportation cost advantage since the cost of transportation from Hawaii to the continental United States is generally similar to the cost of ocean transport from canneries in Asia. Dole concludes that Maui's cost structure should be similar to Dole's operation in Honolulu and that Dole found that the cost of operating its cannery there became too prohibitive to remain competitive.⁶⁶ Petitioner responds that Dole's cost structure cannot be compared to Maui's because of major differences in its company philosophy and production operations. Dole's cannery was located on a different island than its pineapple fields,

⁶² *Maui Land and Pineapple Company, Inc., 1993 Annual Report*, p. 22.

⁶³ *Maui Land and Pineapple Company, Inc., 1993 Annual Report*, pp. 4 and 22.

⁶⁴ *Maui Land and Pineapple Company, Inc., 1994 Annual Report*, p. 4.

⁶⁵ Willkie Farr & Gallagher's prehearing brief, pp. 57-72.

⁶⁶ Patton Boggs' prehearing brief, p. 19.

allegedly resulting in lower yields and higher canned pineapple fruit costs. Petitioner also notes that the island of Lanai, where Dole's plantations were located, was limited in fresh water and labor resources and that the cannery in Honolulu faced environmental problems. Maui concludes that it is an efficient operation that can be competitive in Hawaii and in fact was profitable throughout the 1970s and 1980s while other producers sank into unprofitability and abandoned canned pineapple fruit production in the United States.⁶⁷

According to Maui's 1993 Annual Report, the loss in 1993 was caused by a severe drop in revenue due to lower pricing and lower case volume, which were caused by a worldwide oversupply of canned pineapple. The annual report also indicated that the Federal Government's decision to purchase fewer pineapple products for its school lunch program reduced case sales.⁶⁸

Investment in Productive Facilities

The value of property, plant, and equipment (fixed assets) and total assets for Maui are presented in table 7. ***.

Table 7
Value of assets and return on assets of Maui on its operations producing canned pineapple fruit, as of the end of fiscal years 1992-94

* * * * *

Capital Expenditures

The capital expenditures reported by Maui are presented in table 8. Maui indicated that the ***.

Table 8
Capital expenditures by Maui on its canned pineapple fruit operations, fiscal years 1992-94

* * * * *

Research and Development Expenses

Maui's research and development expenditures are reported in table 9.

Table 9
Research and development expenses of Maui on its canned pineapple fruit operations, fiscal years 1992-94

* * * * *

⁶⁷ Hearing transcript, pp. 34-40.

⁶⁸ *Maui Land and Pineapple Company, Inc., 1993 Annual Report*, p. 4.

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of canned pineapple fruit from Thailand on their firms' growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product). Maui's response is shown in appendix E.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(i)). Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise is presented in the section of this report entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury." Information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Available information on U.S. inventories of the subject products; foreign producers' operations, including the potential for "product-shifting;" and any other threat indicators, if applicable; follows.

U.S. Importers' Inventories

End-of-period inventories of U.S. importers of canned pineapple fruit from Thailand are presented in table 10. Inventories of Thai canned pineapple fruit, which were significant relative to imports, fluctuated during the period for which data were collected.

Table 10
Canned pineapple fruit: End-of-period inventories of U.S. importers, by sources, 1992-94

* * * * *

U.S. Importers' Current Orders

All but two responding importers reported placing orders for Thai canned pineapple fruit after December 31, 1994. Excluding ***, these orders totaled 1.4 million cases. ***.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States

Thailand is the world's largest producer and exporter of canned pineapple fruit. According to industry sources, factors that have contributed to Thailand's prominence in this industry are the low cost of domestic fresh pineapples, the good quality of Thailand's canned pineapple products, a low degree of governmental intervention, relatively low labor costs, and the devaluation of the Thai currency in the late 1980s.⁶⁹

Of the 20 to 22 pineapple canneries located in Thailand, 14 provided the Commission with complete responses regarding their capacity, production, and shipment data. These 14 canneries

⁶⁹ Memo from the Foreign Agricultural Service, June 16, 1994.

accounted for over 86 percent of Thai exports to the United States during 1994. As indicated in table 11, reported capacity increased by 11 percent from 1992 to 1994. ***.

Production increased in 1993 but declined in 1994 below 1992 levels. End-of-period inventories increased by 88.4 percent during 1992-94. The increasing inventories reflect what appears to be an oversupply of canned pineapple fruit during 1993. Respondents note that due to favorable harvesting conditions, there was a surplus of fresh pineapples in Thailand during 1993. Since most canners purchase fresh pineapples on the open market, this surplus resulted in rapidly declining prices for fresh pineapples. Consequently, the Thai canners purchased higher volumes of fresh pineapple during the first half of 1993, but once aware of a surplus emerging in the canned pineapple fruit market, reportedly cut back purchases of fresh pineapple and also reduced production in late 1993 and early 1994. Respondents also note that a drought in late 1993 and decisions by a number of Thai farmers to abandon pineapple farming have resulted in a significant decline in the supply of fresh pineapple.⁷⁰

The dramatic price declines of fresh pineapple during 1993 persuaded the Thai Government to implement a price stabilization program which, in effect, subsidized farmers when the price of fresh pineapple fell below a certain level.⁷¹ The Government had no special direct or indirect price support programs dealing specifically with canned pineapple fruit during the period for which data were collected.

With shipments to the home market generally accounting for less than two percent of total shipments, Thai canners mostly process pineapple for export, with the United States, Germany, the Netherlands, and Japan as the primary markets. Petitioner argues that high tariffs in Europe and Japan place severe limits on the amount of exports Thailand can ship to these major markets and that as a result, Thai canners can easily divert sales from these markets to the relatively unrestricted U.S. market.⁷² Respondents note that the tariffs in Europe have been in place for at least 10 years and, consequently, there have been no recent market, tariff, or other changes with respect to Europe that have prompted Thai canners to divert exports to the United States. Furthermore, The EU Commission reportedly increased the 1995 GSP quota amount by 10 percent to allow more goods in under GSP rates.⁷³ Exports to the United States declined during 1992-94, and are projected to decline further in 1995 and 1996.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

U.S. imports of canned pineapple fruit are presented in table 12 and figure 5. The Commission sent importers' questionnaires to 47 firms believed to be importing canned pineapple from Thailand. Responses with usable data were received from 38 U.S. importers, which accounted for about 85 percent of the quantity of imports from Thailand in 1994 as reported in the official U.S.

⁷⁰ Respondents' postconference brief, part II.

⁷¹ In late 1992, fresh pineapple prices began to fall sharply, from almost 3.00 baht/kg in November to 1.30-1.50 baht/kg in February 1993. The Ministry of Commerce allocated 109 million baht (\$4.2 million) for the purpose of stabilizing prices paid to farmers. The price stabilization program was in effect from Feb. 23, 1993 through May 31, 1993. At that time, the Government subsidized farmers by paying an additional 0.15 baht/kg for every kilogram of fresh pineapple sold to any cannery, provided the price at the cannery was no more than 1.50 baht/kg. The amount of fresh pineapple subsidized by the Government was not permitted to exceed 727,404 tons.

⁷² Petitioner's prehearing brief, pp. 77-78.

⁷³ Willkie Farr & Gallagher's prehearing brief, pp. 85-86.

Table 11

Canned pineapple fruit: Thailand's capacity, production, inventories, capacity utilization, and shipments, 1992-94 and projected 1995-96¹

Item	1992	1993	1994	Projected--	
				1995	1996
	<i>Quantity (1,000 case equivalents²)</i>				
Capacity	39,653	43,662	43,990	39,570	40,731
Production	31,604	34,425	29,123	30,332	30,952
End-of-period inventories	3,521	6,935	6,633	5,796	6,298
Shipments:					
Home market	462	779	457	572	590
Exports to--					
The United States	11,594	10,098	9,788	9,615	9,113
All other markets	19,827	20,102	19,127	20,981	21,296
Total exports	31,421	30,200	28,915	30,596	30,409
Total shipments	31,883	30,979	29,372	31,168	30,999
	<i>Ratios and shares (percent)</i>				
Capacity utilization	79.7	78.8	66.2	76.7	76.0
Inventories to production	11.1	20.1	22.8	19.1	20.3
Inventories to all shipments	11.0	22.4	22.6	18.6	20.3
Share of total quantity of shipments:					
Home market	1.4	2.5	1.6	1.8	1.9
Exports to--					
The United States	36.4	32.6	33.3	30.8	29.4
All other markets	62.2	64.9	65.1	67.3	68.7

¹ The data in the table are for 14 producers, accounting for about 86 percent of Thai exports to the United States during 1994. According to the Thai Customs Department statistics, Thai exports of canned pineapple fruit to the United States were 13,607,000 cases in 1992, 12,914,000 cases in 1993, and 11,162,000 cases in 1994.

² One case equivalent equals 30 pounds of fruit net weight, exclusive of packaging.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 12
Canned pineapple fruit: U.S. imports, by sources,¹ 1992-94

Item	1992	1993	1994
<i>Quantity (1,000 case equivalents²)</i>			
Thailand	12,792	12,641	11,328
Other sources	11,759	11,534	12,276
Total	24,552	24,174	23,604
<i>Value (1,000 dollars)</i>			
Thailand	137,035	121,210	96,338
Other sources	123,703	121,534	113,149
Total	260,738	242,745	209,487
<i>Unit value (per case equivalent)</i>			
Thailand	\$10.71	\$9.59	\$8.50
Other sources	10.52	10.54	9.22
Average	10.62	10.04	8.88
<i>Share of total quantity (percent)</i>			
Thailand	52.1	52.3	48.0
Other sources	47.9	47.7	52.0
Total	100.0	100.0	100.0
<i>Share of total value (percent)</i>			
Thailand	52.6	49.9	46.0
Other sources	47.4	50.1	54.0
Total	100.0	100.0	100.0

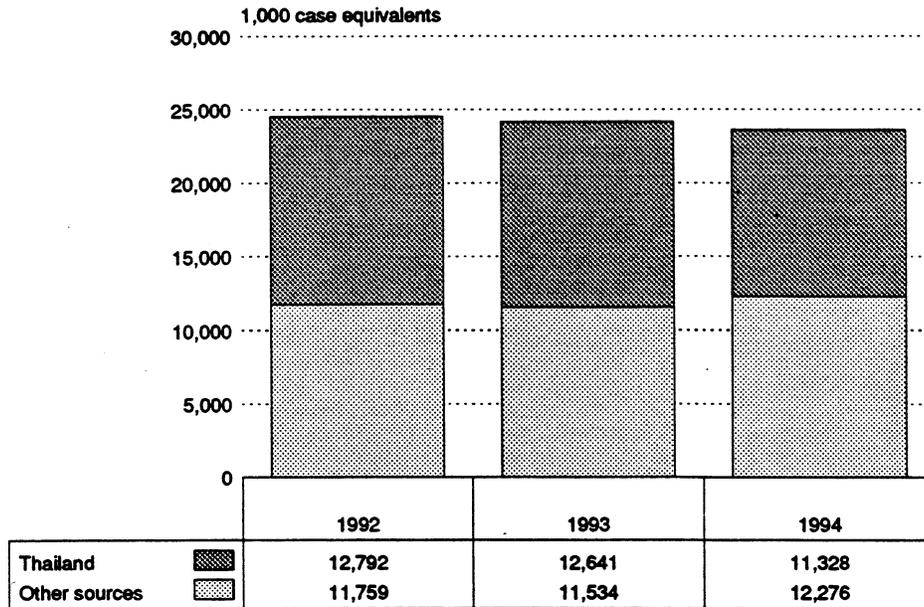
¹ Imports from Japan as reported in the official trade statistics were determined not to be canned pineapple fruit and thus were subtracted from the other sources category.

² One case equivalent equals 30 pounds of fruit net weight, exclusive of packaging.

Note.--Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Figure 5
Canned pineapple fruit: U.S. imports, by sources, 1992-94



Source: Table 12

import statistics. Since the HTS subheadings cover all of the subject merchandise,⁷⁴ data in this section regarding the quantity and value of U.S. imports of canned pineapple are based on official U.S. import statistics.

Imports of canned pineapple fruit from Thailand, by quantity, decreased by 11.4 percent during 1992-94. In terms of value, such imports fell by 29.7 percent. The additional decline of the value of imports from Thailand reflects the decline in unit values from \$10.71 per case in 1992 to \$8.50 per case in 1994.

Imports of canned pineapple fruit from other sources increased by 4.4 percent during 1992-94. Imports from Indonesia were the primary reason for this increase. Accounting for 7.6 percent of total imports during 1994, imports from Indonesia increased 48.2 percent during 1992-94. ***.

Market Penetration by the Subject Imports

Market shares based on the U.S. producer's shipments and U.S. imports are presented in table 13 and figure 6.

Table 13
Canned pineapple fruit: U.S. market shares, 1992-94

* * * * *

⁷⁴ Some product not subject to the Commission's investigation, i.e., pineapple packaged in aseptic crush or drums, is classified under these HTS subheadings. These products are estimated to account for less than 2 percent of imports in these subheadings.

Figure 6
Canned pineapple fruit: Shares of the quantity of U.S. consumption, by sources, 1992-94

* * * * *

Prices

Factors Affecting Pricing

Prices vary by can size, specifically the 20 oz., 15.25 oz., and 8-8.25 oz. sizes sold at the retail grocery level, and number 10 cans sold to food service customers and industrial users. Generally, for each of the three sizes of cans that are available at the retail level, the different forms of canned pineapple fruit (slices, chunks, tidbits, crushed) and pineapple packed in its own juice and in syrup are priced the same. In the food service market, suppliers may charge a premium for crushed and sliced forms.⁷⁵

Prices also vary by the tier in which the canned pineapple is sold. The retail market consists of three tiers, the national brands, private labels, and regional brands. The highest-priced are the national brands, Del Monte and Dole; *** of Dole's product is imported from Thailand. At the next level are the private labels. There are two levels of private labels, the higher-priced first private labels, which are dominated by Maui, and the lower-priced second private labels, which are supplied mainly by imports. A third tier consists of regional brands, which are supplied solely by imports. Retail grocery chains will not necessarily sell product in each of the three tiers, although most typically sell national brands and first private labels.

Similar pricing tiers exist within the food service market. Food service distributors may sell as many as five different labels priced at different points based on product quality. As in the retail market, the top tier is supplied by national brands. Maui sells product in the second and third pricing tiers. Maui argues that the food service market is even more price competitive than the retail market because the final consumers do not see the brand name or container of canned pineapple fruit and because quality is less important since the pineapple is often mixed with other ingredients.⁷⁶

Maui publishes price lists for retail sales and food service sales. About 40 percent of importers responding to the questionnaire, including Dole, publish price lists. These price lists usually serve as a starting point from which a variety of discounts are offered. They also serve as a guide to base shelf pricing at the retail level and base pricing to food service end users.

Price Discounts

Maui offers a number of different discounts from list price. Standard discounts include a cash discount of 2 percent for payment in 10 days, net 11 days. Other standard discounts include a label allowance, corporate allowance, sales and marketing allowance, swell allowance,⁷⁷ and direct shipping allowance. Additionally, Maui offers special promotional/merchandising allowances including a truckload allowance to encourage purchases of larger quantities, an "extraordinary merchandising allowance," and a "Hawaiian merchandise fund."

About half of the responding importers also reported using similar types of discounts including a cash discount, corporate allowance, label allowance, advertising allowance, and volume

⁷⁵ Conference transcript, p. 28. However, Maui often sells all forms at the same price because of pressure from its customers.

⁷⁶ Conference transcript, p. 36.

⁷⁷ The swell allowance is offered to retail customers and is intended to cover hidden damages and avoid the use of reclamation centers.

incentives. Dole typically offers the following discounts: ***. Dole reported that it promotes its national brand product primarily through merchandising programs offered through retailers such as advertising and end-aisle displays rather than by discounting shelf price.⁷⁸

Maui reported that published promotions are run four to five times per year. The biggest promotional period is in the fourth quarter, during the Thanksgiving and Christmas holidays. Other promotional periods include fall, Easter, and summer.

U.S. Inland Transportation Costs

Maui typically quotes its prices f.o.b. West Coast warehouse. Inland freight ranges from about *** percent of delivered price in the West to about *** percent of delivered price in the East. Maui arranges ocean transportation and inland freight direct to the customer or to consignment warehouses. ***. Direct shipments to the mainland typically take *** depending on the location of the customer while shipments from the warehouse take ***.

About one-third of importers quote prices mainly on an f.o.b. basis, about one-third (including Dole) quote prices on a delivered basis, and about one-third quote prices both on an f.o.b. and a delivered basis. Importers report that inland transportation costs range from 5 to 10 percent of the delivered price, and most arrange transportation to the customers. Dole ships from *** with lead times of ***. About two-thirds of other importers also maintain inventories in U.S. warehouses.

Product Comparisons

Canned pineapple fruit is differentiated on the basis of labeling, grades, taste, appearance, and advertising. In general, these characteristics follow the different tiers, with imported product from Thailand sold under the Dole brand name being higher-priced and sold to meet a higher standard than the imported Thai product sold in the second and third tiers, with the domestic product priced and marketed between these two.

Most canned pineapple fruit is classified as one of three USDA grades, fancy, choice, or standard.⁷⁹ Dole's brand name product is 100 percent fancy grade, while its sales for the private label market are about *** percent fancy grade and *** percent choice grade.⁸⁰ All other importers of the Thai product that completed the Commission's questionnaire reported sales of only choice and/or standard grade. About 80 percent of Maui's sales are of fancy grade product.⁸¹ ***. In terms of quality, purchasers rated Maui's product the highest followed by Dole brand, and then other Thai product.

The first private label products that Maui sells generally require products of equal or better quality than the national brands. Nearly every purchaser reported that they require suppliers to become prequalified with respect to the quality of their canned pineapple fruit. This process generally involves a "cutting" in which various cans of pineapple from different suppliers are compared based on such factors as appearance and taste. This process may take one week to several months.

The majority of responding importers reported that the U.S.-produced product and imported product from Thailand are not used interchangeably and that differences in quality between imports

⁷⁸ Patton Boggs' prehearing brief, p. 10.

⁷⁹ These grades are based on an evaluation of the following factors: color, uniformity of size and shape, defects, flavor and odor, and tartness. Canned pineapple fruit can also be graded as substandard. The grades are generally not labeled on the can.

⁸⁰ ***.

⁸¹ Conference transcript, p. 87.

and domestic product are a significant factor in their sales of canned pineapple fruit. Specific differences mentioned include the higher acid content, brighter color, and different flavor of the Hawaiian product, and that the Hawaiian product is generally graded fancy and considered to be a premium product while the imported products from Thailand are generally graded lower.

* * * * *

The products are also differentiated in terms of product labeling. Maui's product is identified on the lid of the can as "100 percent Hawaiian." In addition, about *** percent of its customers identify the product as Hawaiian on their labels. Also, private labels may advertise the fancy designation on the can.

Retail Market Competition⁸²

In 1993, Maui supplied 72 percent of the top 50 grocery chains' first private label purchases, importers of Thai product supplied 19 percent, and importers of Philippine product accounted for 9 percent.⁸³ Maui reported that at least 2 of the top 50 grocery chains switched from Maui to Thai imports for their first private labels during 1994 while no chains switched from imports to U.S.-produced pineapple for their first private labels.⁸⁴ Only 2 of the 50 chains sourced from both Maui and importers for their first private label during 1993.⁸⁵ First private label purchasers of U.S.-produced product generally source solely from Maui while first private label purchasers of imported product may use multiple suppliers for their imports. Most purchasers reported that they do not often change their private label source. Sixty-nine percent of retail grocers reportedly require fancy grade product for their first private label.

Retailers that purchased Hawaiian pineapple for their private label although Thai product was available at a lower price cited several reasons. Seven firms cited Hawaiian product, five cited quality, two cited reliability, one cited storage costs, and one cited lead time.

Retail grocers report that they typically expect first private labels to be priced 10 to 20 percent lower than national brands, with 15 percent the average expected difference cited by retailers.⁸⁶ The average expected price premium cited by retailers for first private labels over second private labels was 15 percent while 12 percent was the average price premium cited for first private labels over regional labels.⁸⁷

Eighteen of 20 retail purchasers reported that prices in one tier influence the volume in other tiers. Furthermore, 6 of 18 reported that at some time during 1992-94 national brands were priced lower than private labels. These firms reported that they sought lower prices from their private label suppliers and reduced their retail prices.

Advertising and marketing differences are more important in the retail sector than in the food service and industrial sectors. The national brands, including imports from Thailand under the Dole

⁸² The Commission received purchaser questionnaires from 24 retail buyers of canned pineapple fruit.

⁸³ Petitioner's posthearing brief, app. 5, p. 5.

⁸⁴ Petitioner's posthearing brief, app. 5, p. 1. ***.

⁸⁵ ***.

⁸⁶ Specifically, 1 retailer reported that the expected spread was less than 10 percent, 5 reported 10 percent, 5 reported 10 to 20 percent, 5 reported 20 percent, and 2 reported 20 percent or greater.

⁸⁷ Percents cited ranged from 5 to 30 percent for first private labels over second private labels, and from 5 to 25 percent for first private labels over regional brands. Additionally, specific purchasers' responses differed as to whether the expected price difference was larger for national brands, second private labels, or regional labels as compared to first private labels.

brand name, are the most advertised, and are often perceived by consumers as being the highest quality. The first private label store brands are heavily marketed by the stores in terms of displays and store advertisements, and are often displayed prominently on the shelf. Regional brands are characterized by little advertising, are constantly substituting for one another on the shelf, and often receive the least desirable shelf placement.

Ten retailers responding to the questionnaire reported that they currently purchase regional brands.⁸⁸ Nine of the 10 responding retailers reported that the decision of which regional brands to sell was based on price. Retailers also consider availability, supplier reputation, quality, and labeling.

Nineteen retailers reported that they purchased national brands. Eleven reported that their relative purchases of national brands and private labels had not changed, five reported that national brand purchases have increased, and two reported that their national brand purchases have decreased. Reasons cited for the increase in national brands were increased advertising by Dole, elimination of the retailer's private label, and flat private label sales due to growth of regional brands.

End user customer preferences limit substitution somewhat at the retail level. ***.

Food Service Market Competition⁸⁹

Quality considerations are less important in the food service sector where choice grade pineapple is used more often for first private labels than in the retail market. Only 20 percent of food service companies reported that they require fancy grade for their first private label. ***. Additionally, national brands and Maui (except for government sales) are much less significant in the food service market than in the retail market.

As in the retail market, most food service purchasers report that they do not often change their source for their private labels. Although a few reported changing suppliers during 1992-94, these purchasers only reported switching between import sources.

Nearly *** of Maui's food service shipments in 1994 were to the government.⁹⁰ The USDA, which accounted for most of Maui's government sales, purchases only U.S.-produced canned pineapple fruit for domestic feeding programs. The USDA reported that its suppliers cannot charge more than they charge in the commercial market or their bid will be rejected.⁹¹

Questionnaire Price Data

The Commission requested that Maui, importers of Thai product, and purchasers provide quarterly price data between January 1992 and December 1994 for the following four products:

Product 1: Canned pineapple; 20 oz. size; in chunks, sliced, crushed, or tidbits; in juice, light syrup, heavy syrup, or extra heavy syrup.

Product 2: Canned pineapple; 15-15.5 oz. size; in chunks, sliced, crushed, or tidbits; in juice, light syrup, heavy syrup, or extra heavy syrup.

⁸⁸ ***.

⁸⁹ The Commission received purchaser questionnaires from 12 food service companies which purchased canned pineapple fruit.

⁹⁰ ***.

⁹¹ ***.

Product 3: Canned pineapple; 8-8.25 oz. size; in chunks, sliced, crushed, tidbits; in juice, light syrup, heavy syrup, or extra heavy syrup.

Product 4: Canned pineapple; Number 10 size; for food service market; in chunks, sliced, crushed, or tidbits; in juice, light syrup, heavy syrup, or extra heavy syrup.

The price data were requested on a net f.o.b. basis for each responding firm's largest sale in each quarter and its total quarterly sales to all retailers (products 1-3) and food service customers (product 4). Firms were instructed to report separately for sales of national brands, first private labels, second private labels, and regional brands and for standard, choice, and fancy grades.⁹²

Reported pricing accounts for nearly 100 percent of Maui's 1992-94 shipments and approximately 72 percent of imports from Thailand during 1992-94. Twenty-ounce cans (product 1) and number 10 cans (product 4) accounted for the vast majority of sales by Maui and by importers of Thai product. In 1994, product 1 accounted for *** percent of Maui's total sales of products 1-4 and 56 percent of Thai importers' sales of these products, while product 4 accounted for *** percent of Maui's sales and 40 percent of Thai import sales.⁹³

U.S. producer and importer prices based on total quantities and total values sold in each quarter are shown in tables 14-18 and figures 7-9.^{94 95} Prices based on weighted-average largest sales are shown in appendix F and prices reported by purchasers are presented in appendix G.

Table 14

Weighted-average net f.o.b. prices and total quantities of product 1, reported by Maui and importers of Thai product, and margins of underselling/(overselling) relative to Maui's first private label sales, by quarters, 1992-94

* * * * *

Table 15

Weighted-average net f.o.b. prices and total quantities of product 1, reported by Maui and importers of Thai product, and margins of underselling/(overselling) relative to Maui's second private label sales, by quarters, 1992-94

* * * * *

⁹² Pricing for the different grades were combined in the tables as national brands and Maui's first private label generally consisted of fancy grades, and private labels and regional brands from Thailand were generally choice or standard grades.

⁹³ ***.

⁹⁴ Maui reported that it was not able to fully account for all discounts in its total quarterly values by can size. ***.

⁹⁵ Prices based on quarterly total quantities and total values are more representative of pricing in this investigation as each firm's largest sales quantities generally comprise a small percentage of total sales in each quarter. In addition, fluctuations in prices reported for the largest sale may reflect a change in which firm was the largest customer in a particular quarter rather than changes in overall prices for a particular product.

Table 16
 Weighted-average net f.o.b. prices and total quantities of product 2, reported by Maui and importers of Thai product, and margins of underselling/(overselling), by quarters, 1992-94

* * * * *

Table 17
 Weighted-average net f.o.b. prices and total quantities of product 3, reported by Maui and importers of Thai product, and margins of underselling/(overselling), by quarters, 1992-94

* * * * *

Table 18
 Weighted-average net f.o.b. prices and total quantities of product 4, reported by Maui and importers of Thai product, and margins of underselling/(overselling), by quarters, 1992-94

* * * * *

Figure 7
 Weighted-average net f.o.b. prices of product 1 reported by Maui and importers of Thai product, by quarters, Jan. 1992-Dec. 1994

* * * * *

Figure 8
 Weighted-average net f.o.b. prices of product 3 reported by Maui and importers of Thai product, by quarters, Jan. 1992-Dec. 1994

* * * * *

Figure 9
 Weighted-average net f.o.b. prices of product 4 reported by Maui and importers of Thai product, by quarters, Jan. 1992-Dec. 1994

* * * * *

Price trends⁹⁶

Overall prices for private labels and regional brands declined during 1992-94, with a greater decline in prices to the food service market than in prices to retailers. Maui's sales prices of product 1 for first private labels *** during 1992-94, its sales prices of product 2 ***, sales prices of product 3 ***, and its sales prices of product 4 ***.⁹⁷ Sales prices of Maui's second private label ***.

Prices of Thai regional brands and private labels of product 1 declined by *** percent during 1992-94. Regional brand prices of product 3 declined by *** percent during 1992-94. In the food

⁹⁶ The discussion of price trends and price comparisons refers to weighted-average pricing based on total quantities and total values of each product sold in each quarter as shown in tables 14-18.

⁹⁷ ***.

service market (product 4), Thai prices declined by *** percent for private labels and regional brands.

National brand prices of products 1 and 3, as reported by Dole, ***,⁹⁸ National brand sales of product 4 comprised a small percentage of total national brand sales. These prices ***.

Price comparisons

Most of the competition between U.S.-produced product and imported product from Thailand is between canned pineapple fruit sold in different marketing tiers. Maui's sales are concentrated in first private labels while sales of imports are mainly national brands, regional labels, and second private labels. In comparisons between product marketed in the same tier, the U.S.-produced product was generally priced higher than the imported product from Thailand. The price difference widened during 1992-94 as prices of the Thai product generally declined more than Maui's prices.

In general, reported prices of Thai second private labels and regional brands were similar to prices reported for Thai first private labels. Therefore, price comparisons between Maui's first private label and Thai second private labels and regional labels also showed increasing underselling during 1992-94. Price differences between Maui's first private label product and imported Thai private labels and regional brands for product 1 ranged from *** percent while for product 4 the price differences ranged from *** percent.

National brand prices ranged from *** percent higher than Maui's first private label prices of product 1 and *** percent higher than Maui's prices of product 3 during 1992-94. In the food service market, Dole's reported volumes were much smaller than in the retail market. Dole and Maui's prices of product 4 to the food service market ***.

Retail Price Data

Yearly average retail prices, per 20 oz. can, for the seven largest selling retail brands of canned pineapple fruit are shown in the following tabulation:⁹⁹

* * * * *

As shown in the tabulation, Dole brand prices *** while Del Monte brand prices ***. Private label prices, which do not distinguish between first and second private label or country of origin, ***, ***,¹⁰⁰

Exchange Rates

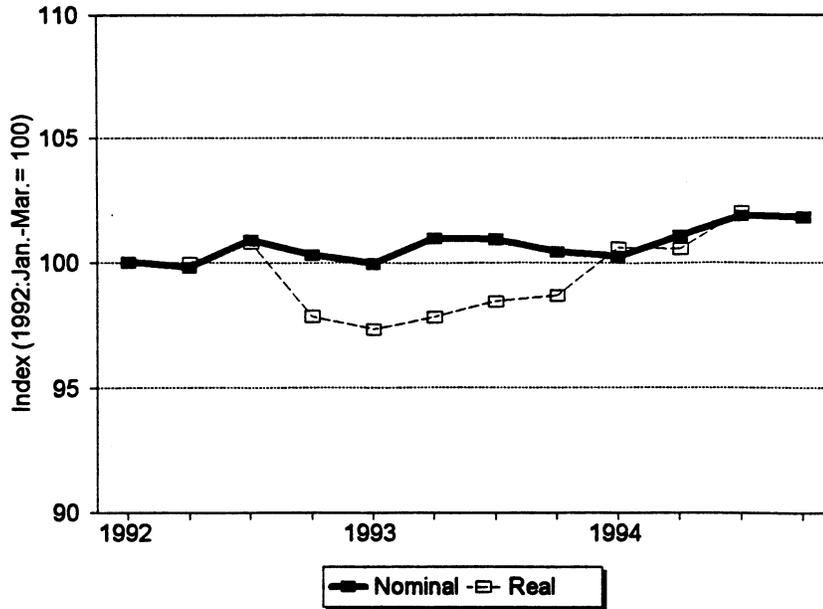
Quarterly exchange rates between the Thai baht and U.S. dollar reported by the International Monetary Fund for the period January 1992-December 1994 are shown in figure 10. The nominal value of the Thai baht and the real value of the Thai currency, when adjusted for movements in producer price indexes in the United States and Thailand, appreciated slightly, by less than 3 percent against the U.S. dollar.

⁹⁸ ***.

⁹⁹ These data are based on Infoscan reports prepared by A.C. Nielsen which are presented in the posthearing brief of Wilke Farr & Gallagher, ex. 4. The Infoscan reports show volumes and dollar sales of all canned pineapple fruit by brand. The data do not differentiate by can size.

¹⁰⁰ Wilkie Farr & Gallagher's posthearing brief, ex. 4, p. 1.

Figure 10
 Exchange rates: Indexes of nominal and real exchange rates of the Thai baht, by quarters, Jan. 1992-
 Dec. 1994



Source: International Monetary Fund, *International Financial Statistics*, Apr. 1995.

Lost Sales and Lost Revenues

Maui reported *** instances of lost revenues and *** instances of lost sales involving *** purchasers. ***. Alleged lost revenues totaled *** for *** cases and alleged lost sales totaled *** and *** cases. ***.¹⁰¹ The specific allegations are shown in table 19 and a discussion of each allegation follows.

* * * * *

Table 19
 Lost sale and lost revenue allegations reported by Maui

* * * * *

¹⁰¹ Maui stated that its prices must be 10 to 15 percent below the national brand prices and it therefore would have to lower its prices to this level to remain competitive. Conference transcript, p. 31.

APPENDIX A
SUMMARY DATA

Table A-1

Canned pineapple fruit: Summary data concerning the U.S. market, 1992-94

* * * * *

Table A-2

Pineapple: Summary data concerning the U.S. market, 1992-94

* * * * *

Table A-3

Pineapple sold as fresh: Summary data concerning the U.S. market, 1992-94

* * * * *

Table A-4

Fresh-chilled pineapple: Summary data concerning the U.S. market, 1992-94

* * * * *

APPENDIX B
FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-705 (Final)]**Canned Pineapple Fruit From Thailand**

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-706 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of canned pineapple fruit,¹ provided for in subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202-205-3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N.A.1).

SUPPLEMENTARY INFORMATION:**Background**

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of canned pineapple fruit from Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The

¹ For purposes of this investigation, canned pineapple fruit is defined as pineapple 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 (heavy) syrup added.

investigation was requested in a petition filed on June 8, 1994, by Maui Pineapple Company, Ltd., Kahului, HI, and the International Longshoremen's and Warehousemen's Union.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business**Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 18, 1995, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 1, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 19, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 23, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are

strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 25, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 9, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 9, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other 4 parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 23, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-2439 Filed 1-31-95; 8:45 am]

BILLING CODE 7020-02-P

being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act") (1994). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our affirmative preliminary determination and postponement of the final determination on January 4, 1995 (60 FR 2734, January 11, 1995) (*Preliminary Determination*), the following events have occurred:

On January 20, 1995, Maui Pineapple Company, Ltd. and the International Longshoremen's and Warehousemen's Union (the petitioners) alleged a ministerial error in the Department's preliminary determination calculations regarding Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively Dole). The error was found to constitute a significant ministerial error because the correction resulted in a difference between a dumping margin of *de minimis* and a margin greater than *de minimis*. See § 353.15(g)(4)(ii) of the Department's Proposed Regulations (57 FR 1131, January 10, 1992). An amended preliminary determination was issued on February 14, 1995 (60 FR 9820, February 22, 1995).

The four respondents in this investigation, Dole, The Thai Pineapple Public Co., Ltd. (TIPCO), Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO), and Malee Sampran Factory Public Co., Ltd. (Malee), submitted revisions to their responses, and/or revised computer tapes that corrected clerical errors discovered at verification in January, February, March and April 1995.

We conducted verifications of TIPCO, SAICO and Malee's sales and cost questionnaire responses in Thailand in February and March 1995. Verifications of Dole's sales and cost responses were conducted in Belgium, Thailand, Hong Kong, and the United States in January, February and March 1995.

Dole, TIPCO, SAICO, Malee and the petitioners submitted case briefs on April 26, 1995, and rebuttal briefs on May 3, 1995. At the request of both the petitioners and Dole, a public hearing was held on May 10, 1995.

Scope of the Investigation

The product covered by this investigation is canned pineapple fruit (CPF). For the purposes of this investigation, 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 the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1 through June 30, 1994, for TIPCO, SAICO and Malee; and January 2 through June 18, 1994, for Dole (see Memorandum from Gary Taverman to Barbara R. Stafford, dated August 18, 1994).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the third country market¹ to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire on file in Room B-099 of the main building of the Department of Commerce. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible. Where we were not able to match sales at the same level of trade, we made comparisons across levels of trade.

Based on the functional differences between Dole's U.S. and German customers, we continue to consider Dole's sales of CPF to be made at two distinct levels of trade in both the U.S. and German markets. (See *Preliminary Determination and Import Administration Policy Bulletin 92/1*, dated July 29, 1992.) The first level is comprised of sales to customers in the retail and food service sectors (Level I); the second is comprised of sales to customers in the industrial sector (Level II).

¹ Third country markets were used because none of the four respondents had a viable home market.

[A-540-813]

Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand

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

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Jennifer Katt, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0186 or 482-0498, respectively.

Final Determination

We determine that imports of canned pineapple fruit (CPF) from Thailand are

Fair Value Comparisons

To determine whether sales of CPF from Thailand to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

As stated in our preliminary determination, Dole has reported all of its U.S. sales of subject merchandise, including those of Philippine origin and re-sales of CPF Dole purchased from unrelated producers in Thailand. We have continued to exclude these sales by weighing the dumping margin for each Universal Product Code (UPC) category by both (1) the ratio of shipments of CPF from Thailand to the total volume shipped from both Thailand and the Philippines during the last seven accounting periods of 1993, and (2) the ratio of shipments of Dole-produced product to the total volume of Dole-produced and purchased product shipped to the United States during 1993, respectively. For further discussion, see the *Preliminary Determination* and Comment 8 in the "Interested Party Comments" section of this notice.

For those unreported U.S. sales by TIPCO, SAICO and Malee presented or discovered during verification, we are applying the average of all positive margins to the quantities sold as best information available (BIA). See Comment 2 below.

United States Price

For Dole, TIPCO, SAICO and Malee we calculated USP according to the methodology described in our preliminary determination, with the following company-specific exceptions:

A. Dole

1. We excluded all sales made to military commissaries from our calculation of USP because we determined that these sales do not represent the sale to the first unrelated purchaser. In this channel of trade, the first unrelated purchaser of CPF is a distributor for the U.S. military. This distributor takes title and physical possession of the merchandise before reselling it to military commissaries. Dole's sales to the distributor were included in our calculation of USP.

2. In the *Preliminary Determination* we stated that Dole would be required to report as U.S. sales, certain shipments pursuant to a long-term agreement negotiated prior to the POI. Because these shipments were not reported for the preliminary determination, we

applied as BIA, the average of all positive margins to one-half of the maximum quantity specified in the agreement to be purchased during 1994. Based on our findings at verification, we determined that Dole made no shipments pursuant to the contract during the POI. Therefore, Dole did not fail to report these sales and we have removed these sales from our margin calculation.

3. We recalculated direct selling expenses for the "warehouse club" channel of trade to reflect the allowance confirmed at verification.

4. We recalculated inventory carrying costs using a publicly available representative Thai baht borrowing rate for that period of time the merchandise was held in inventory in Thailand. For the period of time when the merchandise was shipped to and held in inventory in the United States, we used the short-term U.S. dollar borrowing rate confirmed at verification, because the title passed from the Thai producer to the U.S. parent at the time of shipment. For further discussion, see the *Concurrence Memorandum*, dated May 26, 1995, on file in Room B-099 of the main Commerce building (*Concurrence Memorandum*).

B. TIPCO

1. We reclassified reported rebates as discounts because it was determined that customers paid a reduced price, rather than receiving a refund of monies. See Comment 21 below.

2. We reclassified a certain expense reported as warranty expense as a discount. It was determined that a customer did not receive a reimbursement for the reported warranty claim, but rather paid a reduced price. See Comment 21 below.

3. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied TIPCO's borrowing rate for short-term loans during the POI denominated in baht.

C. SAICO

1. We did not reduce USP for export bill discounts because we determined that this expense was already captured in our imputed credit calculation. See Comment 29 below.

2. As in the preliminary determination, we included certain U.S. shipments of spoiled subject merchandise because we determined them to be POI sales. See Comment 28 below.

D. Malee

1. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied Malee's borrowing rate for short-term loans during the POI denominated in baht.

Foreign Market Value

As stated in our preliminary determination, we determined that the home market was not viable for any of the four respondents. In accordance with 19 CFR 353.49(b), we selected Germany as the third country market for all four respondents. We calculated FMV as noted in the "Price-to-Price" and "Price to Constructed Value (CV)" sections of this notice.

Cost of Production

Based on the petitioners' allegations, the Department found reasonable grounds to believe or suspect that sales in the comparison market were made at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether Dole, TIPCO, SAICO and Malee made third country sales during the POI at prices below their respective cost of productions (COP) within the meaning of section 773(b) of the Act. See memorandum from Richard W. Moreland to Barbara R. Stafford, dated October 21, 1994.

A. Calculation of COP

We calculated the COP based on the sum of each respondent's cost of materials, fabrication, general expenses, and third country packing in accordance with 19 CFR 353.51(c). We relied on the submitted COPs, except in the following company specific instances where the costs were not appropriately quantified or valued:

Dole

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs as described in Comment 7 below.

2. We increased fruit costs to include purchases of pineapple fruit on the last day of the POI, which had been excluded from the submitted fruit cost calculation.

3. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

4. We increased fixed overhead costs to remove a credit which was specifically related to non-subject merchandise.

5. We recalculated other materials costs to reflect the actual packing

medium which was used in each product. See Comment 17 below.

6. We adjusted fixed overhead and other materials costs for the respondent's incorrect calculation of the activity base used for these costs.

7. We recalculated general and administrative (G&A) expenses using the respondent's 1993 audited financial information. See Comment 18 below.

8. For those products where more than one COP value was reported, we calculated an average COP value for the product.

TIPCO

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs. See Comment 7 below.

2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

3. We recalculated TIPCO's G&A expense factor using the company's annual 1993 audited income statement. See Comment 22 below. As part of our calculation, we reduced 1993 G&A costs and increased cost of sales to account for the administrative costs reported as part of cost of manufacture in 1994. The 1993 selling expenses and reclassified administrative costs were approximated using information on the record.

4. We adjusted interest expense to reflect the adjustment to costs of sales discussed above.

5. For those products where more than one COP value was reported, we calculated an average COP value for the product.

SAICO

1. We recalculated SAICO's cost of pineapple fruit in the following manner: (a) We calculated SAICO's pineapple cost using the company's normal cost accounting methodology (see Comment 7 below); (b) we recalculated SAICO's plantation growing costs using the company's normal costing methodology with a modification for the allocation of overhead costs between subject and non-subject crops based on direct labor hours; and (c) we recalculated the cost of juice used as a packing medium.

2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

3. We recalculated SAICO's fixed overhead expense based on the amortization of 1993 shutdown costs over the POI.

4. We recalculated SAICO's G&A rate to account for the omission of board of director fees.

Malee

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs as described in Comment 7, below.

2. We adjusted fruit cost for the respondent's incorrect calculation of conversion factors.

3. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

4. We increased overhead by including the depreciation effect of foreign exchange losses incurred on purchases of machinery and removing a credit for a reimbursement.

5. We increased G&A expenses to include the G&A expenses of Malee's parent company, which is a holding company with no operations, and inventory write-downs.

6. We adjusted certain COM offsets to reflect amounts which are more directly related to production during the POI. (See the Concurrence Memorandum for a further discussion of all of these adjustments.)

7. For those products where more than one COP value was reported, we calculated an average COP value for the product.

B. Test of Third Country Sales Prices

After calculating COP, we tested whether, as required by section 773(b) of the Act, each respondent's third country sales of subject merchandise were made at prices below COP, over an extended period of time in substantial quantities, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a product specific basis, we compared the COP (net of selling expenses) to the reported third country prices, less any applicable movement charges, rebates, and direct and indirect selling expenses. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of a respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." If between ten and 90 percent of a respondent's sales of a given product were at prices equal to or greater than the COP, we discarded only the below-cost sales, provided sales of that product were also found to be made over an extended period of time. Where we found that more than 90

percent of a respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. See *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

C. Results of COP Test

We found that for certain types of CPF more than 90 percent of each respondent's third country sales were sold at below COP prices over an extended period of time. Because neither Dole, TIPCO, SAICO nor Malee provided any indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, for all U.S. sales left without a match to third country sales as a result of our application of the COP test we based FMV on CV, in accordance with section 773(b) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, general expenses and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we included: (1) For general expenses, the greater of a respondent's reported general expenses, adjusted as detailed in the "Calculation of COP" section above, or the statutory minimum of ten percent of the cost of manufacture; and (2) for profit, the

statutory minimum of eight percent of the sum of COM and general expenses because actual profit on third country sales for each respondent was less than eight percent. We recalculated each respondent's CV based on the methodology described in the calculation of COP above. In addition, for Malee, we recalculated interest expense using the company's 1993 consolidated financial statements.

Price-to-Price Comparisons

For those products for which there were an adequate number of sales at prices above the COP, we based FMV on third country prices. We calculated FMV according to the methodology described in our preliminary determination, with the following company-specific exceptions:

Dole

1. We excluded a single, small volume sale from the calculation of FMV because we determined this sale was outside the ordinary course of trade. See Comment 9 below.

2. We excluded certain sales from our calculation of FMV where Dole knew at the time of sale that the merchandise would be delivered to an ultimate location outside of Germany. For further discussion, see the Concurrence Memorandum.

3. We recalculated credit incurred on sales denominated in deutsche marks using a publicly available representative equivalent of the German prime rate for the POI as the short-term borrowing rate.

4. We recalculated inventory carrying costs using a publicly available representative baht borrowing rate for that period of time the merchandise was held in inventory in Thailand. For that period of time when the merchandise was shipped to and held in inventory in Europe, we used the short-term borrowing rate confirmed at verification. For further discussion, see the Concurrence Memorandum.

5. We used the date of the final determination for all missing payment dates in our calculation of imputed credit.

6. We corrected a clerical error regarding the calculation of pre-sale movement expenses. In addition, we reclassified all movement, import duty, and warehousing expenses associated with certain sales made prior to importation as post-sale expenses. See Comment 12 below.

TIPCO

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was

incurred. For sales denominated in U.S. dollars, the U.S. interest rate was based on TIPCO's dollar denominated short-term loans during the POI. For sales denominated in deutsche marks, we based the interest rate on a publicly available representative German short-term borrowing rate in effect during the POI.

2. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied TIPCO's actual baht denominated short-term borrowing rate for the POI.

SAICO

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. Because SAICO had no dollar denominated short-term borrowings during the POI, the U.S. interest rate was based on the average prime rate charged by the 25 largest U.S. banks on short-term business loans for the period January through June 1994.

2. We included one third country sale presented at the start of verification in our calculation of FMV because the quantity involved was insignificant and all the charges and adjustments associated with this sale were verified.

3. We excluded certain sales from our calculation of FMV where SAICO knew at the time of sale that the merchandise would be delivered to an ultimate location outside of Germany. For further discussion, see the Concurrence Memorandum.

Malee

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. Because all sales to the United States and Germany were made in U.S. dollars, the U.S. interest rate was based on Malee's actual weighted-average U.S. dollar denominated short-term borrowing rate in effect during the POI.

2. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. We applied Malee's actual baht denominated short-term borrowing rate for the POI.

Price-to-CV Comparisons

Where, for TIPCO, SAICO and Malee, we made CV to purchase price comparisons, we deducted from CV the weighted-average third country direct selling expenses and added the U.S. product specific direct selling expenses. We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2) as follows:

Where commissions were paid on some third country sales, we deducted from CV both (1) indirect selling expenses attributable to those sales on which commissions were not paid; and (2) commissions. The total deduction was capped by the amount of the commission paid on the U.S. sales in accordance with 19 CFR 353.56(b)(1) (1994). Where no commissions were paid on third country sales, in accordance with 19 CFR 353.56(b)(1), we deducted the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average indirect selling expenses paid on the third country sales. Finally, the amount of the commission paid on the U.S. sale was added to FMV in accordance with 19 CFR 353.56(a)(2).

Where we compared Dole's ESP transactions to CV, we made deductions for the weighted-average third country direct selling expenses. We also deducted from CV the weighted-average third country indirect selling expenses. This deduction was capped by the amount of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b) (1) and (2).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by Dole, TIPCO, SAICO and Malee by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

General Issues

Comment 1

TIPCO, SAICO and Malee argue that if inadequate above-cost sales of a given comparison market model are found as a result of the COP test, the Department should look for another similar model with adequate above-cost sales rather than go directly to CV. Although TIPCO, SAICO and Malee recognize that their arguments are at odds with the Department's Policy Bulletin 92/4, they argue that the Department's policy is flawed and should be changed for this final determination. TIPCO, SAICO and Malee assert that although the statutory definition of "such or similar merchandise" contained in section

771(16) of the Act does not include adequate sales above cost as a criterion of similar merchandise, it does not preclude the Department from making product matches with regard to cost considerations.

In addition, TIPCO, SAICO and Malee contend that, pursuant to *Koyo Seiko Co. v. United States*, 810 F. Supp. 1287, 1290 (CIT 1993), *rev'd on other grounds*, 36 F.3d 1565 (Fed. Cir. 1994), the Department must consider all potential model matches and avoid the use of CV whenever possible. Further, the respondents claim that considering COP in the matching procedure would not be burdensome to the Department because the only additional work would be in switching lines of computer code so that the product matching concordance is applied after, rather than before, the below-cost sales test. Finally, TIPCO, SAICO and Malee argue that the statute strongly favors the use of price-to-price comparisons whenever possible. Therefore, these respondents contend that the Department should base FMV on comparison market prices as long as there are above-cost sales of similar merchandise.

The petitioners argue that the Department's policy with respect to this issue is clear. Specifically, the Department has consistently determined that the statute does not require the exhaustion of all possible model matches before resorting to CV. Furthermore, they argue that the Department has been given broad discretion in making product matching decisions. Finally, the petitioners note that the Department's practice with respect to this issue has been upheld by the Court of International Trade (CIT). See *Zenith Electronics Corp. v. the United States*, 872 F. Supp. 992 (CIT 1994) (*Zenith*).

DOC Position

We agree with the petitioners. The Department's practice is to proceed directly to constructed value if the most similar match fails the cost test. Although section 773(a) of the Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) of the Act directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales are inadequate as the basis for FMV. See, e.g., *Final Determination of Sales at Less Than Fair Value: Stainless Steel Angle from Japan*, 60 FR 16608, 16616 (March 31, 1995), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty*

Administrative Review, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900, 10936 (February 28, 1995). Furthermore, the Department's practice on this issue was upheld in *Zenith* where the CIT rejected the argument, similarly made here by the respondents, that if any merchandise meeting one of the definitions of "such or similar" under section 771(16) of the Act survives the cost test, such merchandise would be used for price comparison purposes. See *Zenith*, 872 F. Supp. at 999. As the Court stated, once the product matches are established and the COP test is completed, the Department is not required to reexamine all of the undifferentiated product data in order to make new matches and price comparisons on the basis of whatever subset of lower-ranked such or similar merchandise survives the COP test. The respondents' reliance on *Koyo Seiko* therefore is misplaced. In that case the Court rejected the Department's resorting to CV when initial attempts at most similar model matches failed; the case did not involve resorting to CV due to failure to pass the COP test. See *Zenith*, 872 F. Supp. at 999n.8.

In this proceeding, therefore, the Department properly used CV for those product match comparisons that failed the COP analysis.

Comment 2

The petitioners contend that the Department should include in its calculation of USP the unreported U.S. sales to Puerto Rico made by TIPCO, SAICO and Malee that were presented at or discovered during verification. To derive the expenses associated with these sales, the petitioners argue that the Department should reduce the per unit value for each unreported sale by the highest charges and adjustments reported by each company in the U.S. sales listing. The petitioners contend that the highest deductions are appropriate because shipments to Puerto Rico pass through the Panama Canal thus incurring additional expenses. In addition, for TIPCO the petitioners contend that an additional deduction for certain expenses noted on the invoice is appropriate.

TIPCO, SAICO, and Malee argue that the Department should exclude the unreported Puerto Rican sales from the calculation of USP because these sales account for only an insignificant portion of total U.S. sales during the POI. In the event the Department determines inclusion of these sales is appropriate, TIPCO, SAICO and Malee argue that applying the highest deductions is

unwarranted. Malee asserts that the movement and selling expenses it reported for sales to Puerto Rico in its February 2, 1995, submission should be used as the best estimate of charges and expenses for the omitted sales. SAICO argues that Puerto Rican sales incur exactly the same average expenses as other U.S. sales with the same sales terms, thus the average charges and adjustments reported for U.S. sales with the same sales terms should be applied.

DOC Position

We agree with the petitioners that these Puerto Rican sales should be included in the calculation of USP because Puerto Rico is part of the Customs territory of the United States. However, we disagree with the petitioners that it is appropriate to apply the highest deductions to these sales. Based on our findings at verification, we conclude that the omission of these sales was inadvertent. Thus, we are applying the average of all positive margins for each company to each of the unreported Puerto Rican sales as BIA.

Comment 3

TIPCO, SAICO and Malee argue that the Department should calculate imputed credit costs using a weighted average short-term borrowing rate which reflects the currency in which the sale was invoiced. The respondents note that this methodology is consistent with the Department's policy expressed in the *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552 (February 27, 1995). Malee asserts that the Department should use either the dollar denominated short-term borrowing rate calculated at verification or apply a U.S. dollar short-term interest rate obtained from public information.

TIPCO argues that dollar denominated short-term borrowing rate presented in its case brief should be used to calculate the imputed credit expense for all U.S. dollar and deutsche mark denominated sales. SAICO had no dollar denominated short-term borrowings during the POI.

DOC Position

We agree with TIPCO and Malee, in part. We have applied the actual weighted-average dollar denominated short-term borrowing rates calculated for Malee and TIPCO to all U.S. and German sales invoiced in U.S. dollars. Because SAICO had no dollar denominated borrowings during the POI, we are applying, as a publicly available representative U.S. dollar short-term interest rate, the average

prime rate charged by the 25 largest U.S. banks on short-term business loans for the period January through June 1994.

We disagree, with TIPCO, however, that it is appropriate to apply a dollar rate to those German sales invoiced in deutsche marks. Because these German sales are deutsche mark-denominated transactions, it is appropriate to apply a deutsche mark-denominated short-term borrowing rate to determine the credit costs associated with these transactions. Because TIPCO had no deutsche mark-denominated borrowings during the POI, we have applied a publicly available representative German short-term borrowing rate for the POI.

Comment 4

SAICO, Malee, and the petitioners request that a number of corrections presented at, and found during, the sales verifications should be incorporated into the Department's calculations of the final margins.

DOC Position

All corrections listed in the respondents' and the petitioners' case briefs with respect to the sales were confirmed on-site at verification and were incorporated in the Department's calculation of the final margin.

Comment 5

TIPCO, SAICO, and Malee argue that a particular proprietary payment should be allowed as an adjustment to COP and CV. Alternatively, if the Department chooses to disallow these payments for purposes of computing costs, the three respondents claim that the payments should be treated as sales price adjustments.

The petitioners believe that no adjustment should be made for the payments because the Department did not verify that these payments were related in any way to the production of CPF.

DOC Position

Because of the business proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to allow the payments as an offset to the respondents' submitted COP and CV figures.

Comment 6

Each of the four respondents claims that providing accurate cost information is not the main purpose of its normal fruit cost allocation methodology; rather each company's allocation methodology was devised to achieve certain

managerial goals. The respondents argue that their normal allocation methodologies therefore result in the misallocation of fresh pineapple fruit costs and generate cost figures that bear no relationship to the actual costs incurred.

Consequently, each respondent submitted alternative fruit cost methodologies, based on the relative weight of fresh pineapple fruit in CPF and juice products, that result in a lower fruit cost being allocated to CPF. According to the respondents, use of a weight-based fruit cost allocation methodology is appropriate in the context of this antidumping proceeding because it is based on a non-distortive, neutral, physical criterion, *i.e.*, weight. Dole also argues that its submitted methodology is consistent with its treatment of other shared operating and overhead costs, which are allocated among products on the basis of weight. Furthermore, the respondents argue that use of a weight-based methodology is appropriate because the petitioners use such a methodology for tax purposes, elevating the practice to an acknowledged and accepted industry norm.

In addition to arguing that their normal fruit cost allocation methodologies are inappropriate, the respondents argue that use of a value-based methodology also would be inappropriate. One respondent, in particular, argues that although its normal allocation methodology is based on an estimate of relative sales value, such a methodology is inappropriate under general accounting principles. According to the respondents, *Cost Accounting: A Managerial Emphasis* (Horngren and Foster 1987) (*Cost Accounting*) indicates that use of value-based allocations is discouraged in a rate-regulated setting because "it is circular reasoning to use selling prices as a basis for determining a selling price." The respondents argue that if the Department uses its normal value-based allocation of pineapple fruit costs, dumping margins would fluctuate because of changes in juice and concentrate prices.

All four respondents argue that a value-based allocation is also legally impermissible under the precedent established in *IPSCO v. United States*, 965 F.2d 1056 (Fed. Cir. 1992). The respondents contend that in *IPSCO* the Court of Appeals for the Federal Circuit held that value-based allocations inappropriately shift costs actually incurred with respect to one co-product onto another co-product. Furthermore, Dole and Malee suggest that a value-based allocation, which would result in

values being assigned to the various parts of the pineapple (*i.e.*, the shell, the core, the ends, and the cylinder), is inappropriate because they themselves do not assign values to the various parts of the fruit and because pineapples are purchased in their entirety on a per-kilogram basis.

Finally, the respondents argue that a value-based methodology would provide a loophole for companies to manipulate dumping margins. According to the respondents, a company could reduce CPF prices in non-comparison markets or in the U.S. market, or could increase prices of non-subject merchandise, any of which actions would reduce the relative sales value of the subject merchandise, thereby resulting in a reduction of allocated costs. A reduction in allocated costs, according to respondents, would result in some comparison market models surviving a below-cost sales test or in a reduction of constructed value when comparison market models remain below cost.

The petitioners argue that Department precedent supports the use of the respondents' normal cost allocation methodologies for calculating COP and CV. *See, e.g., Final Determination of Sales at Less Than Fair Value Certain Hot-Rolled Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Korea*, 48 FR 37176 (July 9, 1993) (Department adjusted the submitted data to reflect information calculated under the respondent's normal accounting system). The petitioners contend that respondents' normal allocation methodologies have been accepted by the companies' auditors as reasonable and, in turn, have been used to produce audited financial statements which are relied upon by lenders, shareholders, and Thai tax authorities. Accordingly, the petitioners argue, the respondents' normal allocation methodologies must have some factual basis to them or they would not be accepted by these parties.

With respect to the one respondent's argument that general accounting principles discourage the use of value-based cost allocations in regulatory pricing situations, the petitioners note that the reference to the Horngren and Foster text is misplaced in this investigation because the CPF industry is not regulated. The petitioners agree, however, that if the CPF industry were regulated, sales value allocations might be distortive because prices would not be set by the marketplace.

In addition, the petitioners argue that the Department should not consider the respondents' weight-based allocation methodology as an acceptable

alternative to their normal fruit cost allocation methodologies. In previous cases, petitioners note, the Department has recognized that weight-based allocations may be inappropriate. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18795 (April 20, 1994) (Department determined that weight was an inappropriate allocation basis, stating that the "use of tonnage to allocate melt shop costs, as petitioner suggests, would result in the same cost per ton regardless of the grade of steel"). Furthermore, the petitioners note that none of the respondents use the submitted weight-based methodology in their normal course of business, nor do they use it for any internal decision-making. The petitioners claim that if the submitted allocation was accurate, the respondents would certainly maintain internal reports showing such a weight-based allocation, yet they do not. In addition, the petitioners state that they are not aware of any CPF producer anywhere that allocates fruit costs based on weight in its normal accounting system. (The petitioners acknowledge using weight as the basis for calculating fruit costs for tax purposes, but note that their financial and cost accounting systems use value-based allocations. The petitioners argue that, contrary to the respondents' claims, the use of a weight-based allocation for tax purposes does not establish it as an industry standard practice.)

Additionally, the petitioners claim that a weight-based allocation does not make sense in situations such as this one where the respondents' production processes assign values to various parts of the pineapple, depending upon the product being produced, i.e., CPF or juice products. As a result, it makes no sense to use a volume-based allocation ratio to calculate costs of production for products that are produced using a value-based production process.

The petitioners argue, therefore, that a value-based allocation is appropriate for use in the instant investigation where the raw material has different parts with very different values. The petitioners cite *Cost Accounting* at 534 (Horngrén, 5th ed. 1980) for the proposition that "[t]he majority of accountants . . . support allocation in proportion to some measure of the relative revenue-generating power identifiable with the individual products." Furthermore, the petitioners argue that *IPSCO* is not controlling in the instant proceeding because the facts in *IPSCO* are significantly different from the facts in this investigation.

Finally, the petitioners maintain that the potential dumping consequences suggested by the respondents are illogical. No company would decrease prices of subject merchandise in non-subject countries in order to affect the dumping margins in the United States because this would reduce profits in those countries. Neither would a company reduce U.S. prices in an attempt to reduce dumping margins because they would risk increasing these margins. The petitioners argue that the respondents would not increase concentrate prices, to allocate fruit costs away from subject merchandise because this would adversely affect their market share.

DOC Position

The legislative history of the COP statute states that "in determining whether merchandise has been sold at less than cost (the Department) will employ accounting principles generally accepted in the home market of the country of exportation if (the Department) is satisfied that such principles reasonably reflect the variable and fixed costs of producing the merchandise." H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973). Accordingly, the Department's practice is to adhere to an individual firm's recording of costs in accordance with GAAP of its home country if the Department is satisfied that such principles reasonably reflect the costs of producing the subject merchandise. See, e.g., *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22556 (May 8, 1995) ("The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise"). The Department's practice has been sustained by the CIT. See, e.g., *Laclede Steel Co. v. United States*, Slip Op. 94-160 at 21-25 (CIT October 12, 1994) (CIT upheld the Department's decision to reject the respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP).

Normal accounting practices provide an objective standard by which to measure costs, while allowing the respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative

methodologies that more accurately capture the costs incurred. See, e.g., *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21952 (May 26, 1992) (Department adjusted a company's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs).

In the instant proceeding, the respondents want the Department to reject their normal allocation methodologies in favor of alternative methodologies reported during the investigation. As noted, however, the Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP unless these accounting principles do not reasonably reflect costs associated with production of the subject merchandise. As a result, before analyzing any alternative allocations or accounting methodologies reported by a respondent during the proceeding, the Department will determine whether it is appropriate to use the respondent's normal allocation methodologies.

In the instant proceeding, therefore, the Department examined whether each respondent's normal fruit cost allocation methodology was reasonable. In examining each respondent's books and records at verification we found that each company had used its recorded fruit cost allocation methodology for at least a number of years. Furthermore, we found no evidence that each respondent had not relied historically upon its recorded allocation percentages to compute its production costs. In addition, evidence on the record, i.e., audited financial statements, indicates that each respondent's normal allocation methodology was accepted by its independent auditors. Given the auditors' acceptance of the respondent's financial statements and any lack of evidence to the contrary, we conclude that each respondent's normal allocation methodology is consistent with generally accepted accounting principles practiced in Thailand.

Given the fact that each respondents' allocation methodology is consistent with Thai GAAP, we will accept each respondent's normal allocation methodology unless the methodology results in allocations that do not reasonably reflect the costs associated with production of CPF. The respondents have argued that their normal allocation methodologies do not reasonably reflect costs because the methodologies were designed to achieve certain managerial goals as opposed to providing accurate cost information.

While the reasons cited by the respondents for employing the allocation methodologies may have been factors in their selection, this does not necessarily make such methodologies, or the resulting allocations, unreasonable.

In *Hercules, Inc. v. United States*, 673 F. Supp. 454 (CIT 1987), for example, the Court upheld the Department's decision to rely on COP information from respondent's normal financial statements maintained in conformity with GAAP. The respondent, SNPE, had argued that the accelerated depreciation method employed in its financial statements and records was for tax purposes and did not accurately reflect SNPE's actual costs. Consequently, SNPE submitted recalculated depreciation expenses under a straight-line methodology. The Department rejected SNPE's alternate allocation methodology, which was based on unverifiable allegations that straight-line depreciation methodology would more accurately reflect the actual costs, in favor of the information contained in SNPE's verified normal records and audited financial statements. See *Hercules*, 673 F. Supp. at 490-91.

In the instant investigation, the respondents' arguments that their normal allocation methodologies are based on certain managerial goals and therefore do not accurately reflect actual costs are similarly unpersuasive. An accounting methodology designed to achieve certain managerial goals does not necessarily imply that the employed methodologies result in an unreasonable reflection of costs, particularly where a company's accounting methodology had been approved by independent auditors. In addition, as discussed in the paragraphs below concerning the respondents' alternative allocation methodologies, the respondents have failed to demonstrate that their unverifiable alternative methodologies are a more reliable source of reasonable fruit cost allocations than their verified books and audited financial records.

Based on the foregoing, we have adjusted Malee's, SAICO's, and TIPCO's submitted fruit costs to reflect the allocations as calculated and verified under each company's normal accounting system. Their normal allocation methodologies are consistent with Thai GAAP and appear to reasonably allocate fruit costs to CPF. Furthermore, the respondents have provided insufficient, if any, evidence to the contrary. In addition, as discussed below, the respondents have failed to demonstrate that their unverifiable alternative methodologies are a more reliable source of reasonable fruit cost

allocations than their verified books and audited financial records.

Notwithstanding the Department's conclusion that the respondents' normal fruit cost allocation methodologies are in accordance with Thai GAAP and the Department's rejection of the respondents' arguments concerning the managerial goals of their normal allocation methodologies, the Department determines that in light of the practices followed by the other three respondents in this investigation, Dole's normal allocation methodology results in an unreasonable allocation of fruit costs to CPF. Due to the proprietary nature of the facts at issue, our entire analysis of Dole's normal allocation methodology is contained in the proprietary version of our concurrence memorandum dated May 26, 1995.

Thus, we have determined that because Dole's allocation does not "reasonably reflect" the cost of producing the merchandise, we cannot employ that allocation in our COP analysis. Given that Dole's normal methodology results in an unreasonable allocation of fruit costs to CPF, the Department must determine what would constitute a reasonable allocation of fruit costs. A reasonable fruit cost allocation methodology would be one which reflects the significantly different quality of the fruit parts which are used in the production of CPF versus those which are used in the production of juice products. One approach to deriving such an allocation methodology would be to compare the net realizable value of the CPF versus juice products over a period of years. Net realizable value (NRV) is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal. See *Cost Accounting* at 534. Ideally, such a NRV methodology would compare historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding and also would include data for markets where allegations of dumping have not been lodged.

While it would have been preferable to develop an allocation methodology based on historical NRV data in order to reasonably allocate Dole's fruit costs to CPF, we were unable to do so in this investigation because the data were not available and we did not present Dole with an alternative methodology for allocating fruit costs. However, we intend to do so in any future administrative reviews if an order is issued. Cf. *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7026

(February 6, 1995) (Department determined that it would have been preferable to disaggregate rose costs but the data were not available and the Department did not present respondents with an alternative methodology). Such a methodology would enable us to reasonably allocate Dole's fruit costs to CPF, but would not require them to change their method of recordkeeping.

Given the fact that the record in this investigation does not contain the data necessary to develop an allocation methodology for Dole based on its historical NRV data, for our final determination, we have allocated Dole's pineapple fruit costs based upon an average of the proprietary fruit cost allocation percentages used by Malee, SAICO, and TIPCO in their normal accounting systems.

As discussed above, the Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP unless those accounting principles do not reasonably reflect costs associated with production of the subject merchandise. Although we have relied on Malee's, SAICO's and TIPCO's normal fruit cost allocation methodologies and have based Dole's fruit costs upon the other three respondents' normal fruit cost allocation methodologies, we also will address the respondents' alternative, weight-based allocation methodologies.

Each of the respondents have argued that a weight-based methodology is appropriate in the context of this investigation because it is based on a non-distortive, neutral, physical criterion, i.e., weight. We believe, however, 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 cost 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 the pineapple fruit, may have no relationship to the revenue-producing power of the individual products. Thus, for example, if the joint cost of a hog were assigned to its various products on the basis of weight, center-cut pork chops would have the same unit cost as pigs' feet, lard, bacon, ham, and so forth. Fabulous profits would be shown for some cuts, although losses consistently would be shown for other cuts. See *Cost Accounting: A Managerial Emphasis* at 533.

Much like the hog in the previous example, the pineapple is comprised of various parts, i.e., the cylinder, core,

shells, etc., with significantly different uses and values. 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.

We also note that authoritative accounting literature provides examples of cost allocations in the canning industry dependent on two factors, a quantitative factor and a qualitative factor. See *Management Accountants' Handbook* (Keller 4th ed.) at 11:13, citing "Cost and Sales Control in the Canning Industry", N.A.C.A. Bulletin, Vol. 36 (November 1954) at 376. The output of finished products can be captured in the quantitative measure, which is used to allocate the direct preparation labor costs and other costs directly related to the quantity of raw fruit processed. The difference in the relative quality of the fruit used in each product is reflected in a qualitative factor, which is used to allocate the purchase cost of raw materials among products. The various grades or parts of the fruit are assigned a factor reflective of the quality of the fruit used for each product. With all of this in mind, we believe it is inappropriate to allocate fresh pineapple fruit costs to the various pineapple products solely on the basis of weight.

The respondents have also argued that value considerations are inappropriate because the purchased pineapples have a uniform value throughout and, therefore, the cost of pineapple properly should be allocated based on consumed weight. Based on verification testing and our review of the record in this case, however, we believe that CPF producers strive first to maximize production of the more valuable canned fruit products and second, to maximize revenue from the remaining raw material through the production of juice and concentrate. As such, the respondents place a higher value on the raw material which may be used in the production of subject merchandise. As evidence of this, we noted that the respondents pay a lower price to pineapple suppliers that deliver small fruit. Though two shipments may contain in total the same weight of fresh pineapple, a vendor that delivers smaller fruit will be paid less than one that delivers fruit of a larger size. This is because the smaller pineapples will yield a smaller cylinder of quality pineapple fruit which can be used in CPF production.

Accordingly, we reject respondents' claim that, although it is true that during the POI the sales value of canned pineapples was higher on a per-

kilogram basis than that of juice or concentrate, that does not mean that the pineapples used to make the canned pineapples were more expensive than those used to make the juice or concentrate. We do acknowledge that the purchased quantities of small fruit used exclusively in juice production were not significant during the POI, but the existence of a "penalty" for small fruit indicates a lower value for such items.

As discussed above, the respondents have also claimed that a value-based allocation methodology is legally impermissible pursuant to *IPSCO*. Contrary to the respondents' arguments, however, *IPSCO* is not controlling in this case. Nor does *IPSCO* stand for the proposition that in every instance value-based allocations are legally impermissible.

IPSCO involved the Department's use of an appropriate methodology for allocating costs between two grades of steel pipe. There were no physical differences between the two grades of pipe, only differences in quality and market value. *IPSCO*, 965 F.2d at 1058. Furthermore, the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. *Id.* Given these facts, the Department, in its final determination, allocated production costs equally between the two grades of pipe. The Department reasoned that because they were produced simultaneously, the two grades of pipe in fact had identical production costs. *Id.* The CIT rejected the Department's allocation methodology, reasoning that it did not account for differences in value between the two grades of pipe. On appeal, the Court of Appeals for the Federal Circuit held that the CIT erred by substituting its own construction of a statutory provision for the reasonable interpretation made by the Department, *i.e.*, identical production costs. *Id.* at 1061.

While the Court of Appeals noted that the CIT's instructions to allocate costs based on relative value in *IPSCO* resulted in an unreasonable circular methodology (*i.e.*, because the value of the pipe became a factor in determining cost which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on respondents' normal allocation methodologies, particularly where there are significant differences in the raw

materials, *i.e.*, the use of the cylinder in production of CPF and the use of the shells, cores, and ends, in production of juice and concentrate, as well as differences in processing, labor and overhead. Our reasoning here is consistent with *IPSCO* as well as the applicable legislative history. As a result, respondents' reliance on *IPSCO* is misplaced. We also find the respondents' references to the inappropriateness of value-based allocations in a rate-regulated environment to be irrelevant because there is no evidence on the record to suggest that either the subject merchandise or the juice products are sold in a rate-regulated environment.

We have also considered the respondents' comments regarding potentially undesirable consequences of a value-based allocation and find that such scenarios are unlikely to actually take place. However, as with any allocation methodology chosen by the Department, there exists the potential for respondents to manipulate the allocations in opposition to the Department's intent. The respondents' argument that it will be possible to reduce the dumping margin by reducing their prices of subject merchandise in the United States and increasing their prices of non-subject merchandise is misleading. Because it would be most reasonable to base measures of net realizable value upon long term historical data, it is unclear how respondents could use this information to restructure their past results. However, the Department would, of course, continue to review this information closely through the administrative review process. Thus, we believe that this scenario is unlikely as such action would likely result in lower profits on subject merchandise sales (possibly raising the dumping margin) and reduced market share for non-subject merchandise. We also believe it would be inappropriate for the Department to choose a particular course of action based on an argument that in its essence states, if the Department picks a particular methodology we, the respondents, will take advantage of loopholes in that methodology.

Finally, we disagree with the respondents' claim that petitioners' use of a weight-based allocation for fruit cost establishes that method as industry standard practice. The fact that the petitioners use weight as a basis for income tax purposes is not persuasive. We also note the dichotomy in respondents' reasoning that their own tax (and book) methodology must be rejected, while arguing that petitioners

tax accounting records should be controlling. We also note that the respondents did not provide any examples of companies that use weight-based fruit cost allocations as the basis for financial or managerial reporting.

Comment 7

Each respondent claims that its normal accounting method of allocating certain costs incurred prior to the split-off point of the CPF and juice production lines results in distortive and inappropriate cost of production figures.

The petitioners argue that the Department should rely on the respondent companies' normal accounting for these costs.

DOC Position

Because of the proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in our proprietary concurrence memorandum. For TIPCO, SAICO, and Malee, our determination was to allocate the costs following the companies' normal methodology for allocating pineapple fruit costs. For Dole, we allocated the costs using the average of the other three respondents' normal fruit cost allocation percentages, consistent with our determination in Comment 6 above.

Company Specific Issues

Dole

Comment 8

The petitioners argue that the methodology used by the Department in its preliminary determination to calculate a dumping margin for Dole based on an estimated quantity of its U.S. sales of Thai-origin merchandise is biased. Specifically, the petitioners contend that this methodology fails to take into account the fact that prices vary within UPC categories because Dole's Philippine-sourced merchandise is sold at a lower price than its Thai-sourced merchandise. In order to apply a methodology that is less distortive and more accurate, the petitioners assert that the Department should calculate one overall Thai-to-Philippine shipment ratio and apply this ratio to the total amount of potential uncollectible dumping duties (PUDD) calculated for all UPC codes.

Dole asserts that no possible distortion could arise from the methodology used by the Department in its preliminary determination. Although prices vary within a given UPC code, Dole argues that there is no correlation between the sales price and the country of origin because the selling price is

based on contract prices and standard price lists that do not distinguish between Philippine- and Thai-sourced merchandise. Therefore, Dole asserts that any possible dumping attributable to imports from Thailand is directly related to the volume of imports sourced from Thailand.

DOC Position

We agree with Dole, in part. At verification, we confirmed that Dole sells both its Thai- and Philippine-origin merchandise at the same price in the United States. Therefore, the petitioners' assertion that Dole's Philippine-sourced sales were sold at prices lower than its Thai-sourced sales is unfounded. In addition, contrary to the petitioners' assertion, the application of a single shipment ratio to the total PUDD for all sales would be distortive because this approach assumes that the shipment ratio between Thai- and Philippine-sourced merchandise is constant across all UPCs. This is not true. The shipment data confirmed at verification shows that the ratio of Thai- to Philippine-sourced merchandise varied immensely between UPCs. The petitioners' approach blurs the vast differences between these UPC shipment ratios.

In order to calculate a less than fair value margin based on an estimated quantity of Dole's U.S. sales of Thai-origin merchandise during the POL, we have continued to weight average the dumping margin for each UPC product category by the ratio of shipments of subject merchandise from Thailand to the total volume shipped from both Thailand and the Philippines during the last seven accounting periods of 1993. In calculating the ratios, we excluded all negative shipment quantities reported by Dole because these quantities do not represent actual shipments during the second half of 1993. Instead, these quantities reflect the reclassification of merchandise from one UPC category to another.

Comment 9

Dole argues that the Department's preliminary margin is grossly distorted due to the inclusion of a single, aberrant third country sale. Dole asserts that this sale is outside the ordinary course of trade and should be excluded from the Department's calculation of FMV for the following reasons: (1) The sale was of a product type sold only once in the third country market during the POI; (2) the sale constituted a negligible portion of the third country database; (3) the sale was not to a regular customer; (4) the terms of sale were uncommon for the third country market; and (5) the selling price was abnormally high when

compared to the average selling price for other products of the same can size during the POI.

In addition Dole argues that if it were subject to an antidumping order, it would not need to raise its U.S. prices or lower its German prices to avoid the imposition of dumping duties. Therefore Dole asserts that no purpose would be served by an antidumping duty order if it were to be based on this sale. In support of its position Dole cites *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924 (Fed. Cir. 1984) (*Melamine Chemicals*), where the Court of Appeals emphasized that the purpose of the antidumping law is "to discourage the practice of selling in the United States at LTFV * * *. That purpose would be ill-served by application of a mechanical formula to find LTFV sales where none existed."

The petitioners argue that this sale is not outside of the ordinary course of trade and should be included in the calculation of FMV. The petitioners contend that the terms of sale were not unusual because the same sales terms were offered on numerous third country sales during the POI. In addition, the petitioners assert that the customer was regular because Dole made several sales to this same customer during the POI. Finally, the petitioners contend that Dole's assertion that the selling price for this sale was abnormally high is misleading because sales made at prices below the COP were included in Dole's calculation of the average selling price for this can size. The petitioners argue that the fact that this sale was sold at a higher price than sales sold at prices below the COP does not provide evidence that the price is aberrational.

DOC Position

We agree with Dole that the sale was outside the ordinary course of trade as defined in section 771(15) of the Act and have excluded it from the calculation of FMV. We agree with the petitioners that the customer and terms of sale associated with this sale were not unique. Further, Dole's reliance on *Melamine Chemicals* is misplaced. *Melamine Chemicals* involved the issue of whether the Department's issuance and application of a regulation concerning exchange rate fluctuations during a less than fair value investigation was lawful. Notably, the sentence immediately following the ones quoted by Dole states, "A finding of LTFV sales based on a margin resulting solely from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair." *Melamine Chemical*, 732 F. 2d at 933 (emphasis in original). However, after reviewing all

aspects of the sale, we have determined that this sale was outside of the ordinary course of trade and have excluded it from the calculation of FMV.

In determining whether a sale is outside the ordinary course of trade, the Department does not rely on one factor taken in isolation, but rather considers all of the circumstances particular to the sale in question. See *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 606 (CIT 1993). Furthermore, our analysis of these factors is guided by the purpose of the ordinary course of trade provision, namely to prevent dumping margins from being based on sales which are not representative of home market or third country sales. See *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988). After reviewing all aspects of this sale, we found the following facts, taken as a whole, determinative: (1) Dole's single third country sale of this product constituted an insignificant portion of its total German sales volume; (2) the sale was of a product that was sold only once during the POI; (3) the sales quantity was significantly lower than the average sales quantity for the POI; (4) the sales price was significantly higher than the average sales price charged on other CPF products sold in the same can size during the POI; (5) the profit margin realized by Dole on this particular sale was substantially higher than the weighted-average profit earned on other sales of CPF in this can size during the POI; and (6) there was only one customer for this product in the third country market during the POI. See generally *Cemex, S.A. v. United States*, Slip Op. 95-72 at 6-14 (CIT April 24, 1995) (factors considered included lack of market demand, volume of sales, sales patterns, shipping arrangements, and relative profitability between models), and *Mantex, Inc. v. United States*, 841 F. Supp. 1290, 1305-09 (CIT 1993) (factors considered included volume and frequency of sales, demand, product use, and relative profitability). The facts provide the basis for our finding that this one sale was outside the ordinary course of trade.

Comment 10

Dole argues that the Department's uneven treatment of pre-sale movement and import duty expenses associated with third country and ESP transactions in the preliminary determination was unfair and at odds with the Department's policy of making "mirror-image adjustments to FMV and ESP so that they can be fairly compared at the same point in the chain of commerce." See *Koyo Seiko Co. v. United States*, 36 F. 3d 1565, 1573 (Fed. Cir. 1994) (*Koyo Seiko*). Dole notes that the antidumping

statute provides for such mirror-image adjustments through the circumstance of sale (COS) adjustment.

Dole argues that the Court of Appeals holding in *Koyo Seiko* regarding the COS and ESP offset provisions was not limited by its decision in *The Ad Hoc Committee of AX-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir. 1994) (*Ad Hoc Committee*). Dole asserts that the *Ad Hoc Committee* decision addressed the issue of pre-sale movement expenses incurred in connection with home-market sales, and only with regard to FMV where U.S. price is based on purchase price sales. Dole claims that it could not have been the intent of Congress for significant costs such as those incurred for ocean freight and import duties to be ignored when third country sales are used to calculate FMV.

Dole argues that all import duty and movement expenses incurred on its third country sales should be deducted under the COS provision as direct expenses for the following reasons: (1) In accordance with 19 CFR 353.56(a)(1), there is a *bona fide* difference in the COS between U.S. and third country sales made on an ex-warehouse basis; (2) movement and import duty expenses are directly related to the third country terms of sale because the terms call for delivery from Dole's European warehouse; (3) transportation costs are variable, not fixed, and as such are directly related to sales; (4) pre-sale warehousing expenses are directly related to sales because it is necessary to hold the inventory in forward warehouses in order to ensure that the merchandise is available within the delivery times required under the terms of the sales agreement; and (5) *Import Policy Bulletin 94.6* states that movement expenses are a direct cost of making the sale, and are always deducted from the price.

The petitioners argue that the Department properly classified the import duty and movement expenses associated with Dole's third country sales made on an ex-warehouse or delivered basis as indirect selling expenses. The petitioners assert that the costs incurred by Dole for duty and movement expenses would have been incurred whether or not any individual sale had ever taken place and, therefore, cannot be directly associated with individual sales.

DOC Position

In *The Ad Hoc Committee*, the Court held that the Department could not deduct home market pre-sale movement charges from FMV based on its inherent authority to apply reasonable

interpretations in areas where the antidumping law is silent. Instead we will adjust for these expenses under the COS provision of the Department's regulations (19 CFR 353.56). Pursuant to the COS provision, the Department will make an adjustment to FMV only if the expenses are determined to be directly related to the sales under investigation. To determine whether pre-sale movement expenses are direct, the Department examines the respondent's pre-sale warehousing expenses because the pre-sale movement charges incurred in positioning the merchandise at the warehouse are considered, for analytical purposes, to be linked in most instances to pre-sale warehousing expenses. See, e.g., *Ad Hoc Committee of AZ-NM-TX-FL Producers v. United States*, Slip Op. 95-01 at 3-9 (CIT May 15, 1995).

Typically the Department treats expenses associated with inventory that is held for purposes of production planning and being able to ship the merchandise quickly with a regular turnover as indirect selling expenses because this inventory is maintained by the company as a service to all customers. See, e.g., *Carbon Steel Wire Rod from Trinidad and Tobago*, 46 FR 43206 (September 22, 1983). In limited circumstances, however, the Department does recognize certain pre-sale expenses as direct. For freight and warehouse expenses, those circumstances usually involve products channeled or customized for certain buyers. See, e.g., *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921, 66928 (December 28, 1994) (allowing COS adjustment where pre-sale warehousing expenses incurred for designated amount of subject merchandise with certain specifications for particular customers); *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan*, 56 FR 16300, 16303 (April 22, 1991) (allowing COS adjustment for pre-sale warehousing expenses found to be directly related to sales on the basis that expenses were incurred and reported for specific products sold to specific customers); and *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136 (March 25, 1994) (respondent demonstrated that specific products were held in a warehouse for specific customers and that the stock in question was only available for sale to those specific customers).

In the instant proceeding, Dole reported two types of third country warehousing expenses: (1) Those

associated with moving the merchandise "in and out" of the warehouse; and (2) warehouse storage charges. Based upon our review of the evidence on the record, we are not satisfied that Dole has provided evidence to substantiate its claim that either pre-sale warehousing expense is directly linked to the sales under investigation. These pre-sale expenses do not appear to be direct expenses for the following reasons: (1) The amount of time that passes between the date the merchandise arrives at the European warehouse and the date it is shipped to the third country customer; (2) in most instances the third country sales were made from inventory, as demonstrated by the fact that the date of sale and the date of shipment are the same, *i.e.*, the fact that the merchandise was sold from inventory demonstrates that the warehousing was pre-sale; (3) the merchandise held in the European warehouses is not pre-designated for sale to a specific customer; (4) the merchandise sold from inventory was not specialty merchandise, but instead commercial products sold in the normal course of trade in Germany; (5) the merchandise that was held in inventory was sold to numerous third country customers during the POI; (6) Dole incurs the cost of pre-sale warehousing expenses, not the customer, *i.e.*, these expenses are not post-sale warehousing expenses because if they were post-sale, the customer would have to incur the cost of the post-sale warehousing; and (7) in its questionnaire response Dole did not claim the warehouse storage charges as direct selling expenses; rather, Dole characterized warehouse storage costs as indirect expenses.

As noted above, pre-sale movement charges incurred in positioning the merchandise at the warehouse generally are linked to pre-sale warehousing expenses. Therefore, because we have found Dole's third country pre-sale warehouse expenses to be indirect, the expenses involved in moving the merchandise to the warehouse also must be indirect. We do not have the option of treating comparable expenses on U.S. sales as indirect in nature because such sales are ESP sales, and section 772(d)(2)(A) of the Act clearly requires the deduction of such expenses in arriving at USP.

Comment 11

Dole argues that in the event the Department concludes that the third country pre-sale movement and import duty expenses are indirect selling expenses, the Department must similarly characterize identical U.S. movement and import duty expenses as

indirect expenses. Dole asserts that 19 CFR 353.56(b)(2) defines the pool of U.S. expenses used to calculate the "ESP cap" in the same terms it uses to define the pool of third country expenses subject to the cap. Therefore, Dole contends that the Department is unjustified in categorizing pre-sale movement expenses as "directly related" to U.S. sales while finding the same group of expenses to be indirectly related to third country sales.

The petitioners assert that under 19 CFR 353.41(d)(2)(i), "any cost and expenses, and United States import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States" must be subtracted from USP. Therefore, the petitioners argue that under the law, U.S. movement and duty expenses cannot be classified as selling expenses, but instead must be subtracted directly from USP.

DOC Position

We agree with the petitioners. Pursuant to section 772(d)(2)(A) of the Act, to treat these expenses as indirect expenses would be clearly contrary to the antidumping law.

Comment 12

Dole contends that the Department made the following clerical errors in its preliminary determination: (1) The Department improperly classified import duty and movement expenses associated with two third country sales made prior to importation as pre-sale rather than post-sale expenses; (2) the Department incorrectly classified freight expenses associated with moving the merchandise between Dole's European warehouse and the German customer as pre-sale rather than post-sale expenses; and (3) the Department inadvertently deducted the swells allowance from USP as both a discount and a warranty expense.

The petitioners agree that post-sale expenses associated with the third country sales should be treated as direct expenses.

DOC Position

We agree with Dole, in part. We have corrected the errors noted in points one and two above for the final determination. Regarding point three, we disagree with Dole's assertion that the swells allowance was deducted twice from USP. We have examined both the computer program and Dole's U.S. database and have concluded that the swells allowance was not deducted as a discount in our preliminary determination. Therefore, this expense

was properly deducted from USP just once as a warranty expense in our preliminary determination.

Comment 13

The petitioners argue that the Department should adjust Dole's submitted fruit costs for pineapple obtained from the company's own plantations. The petitioners assert that the Department should use the costs which were actually incurred during the POI instead of Dole's submitted amount, which represents an allocation of the annual plantation costs. According to the petitioners, Dole's methodology is contrary to the Department's questionnaire requirements and practice. In support of their position, the petitioners refer to the *Final Determination of Stainless Steel Bar from Spain*, 59 FR 69931, 66938 (December 28, 1994), where the Department stated:

The Section D questionnaire clearly requests weighted average production data based on costs incurred during the POI. We have departed from this general policy only when unique circumstances arise, such as when production did not occur during the period of investigation . . . (A)bsent strong evidence to the contrary, the Department assumes that the cost structure during the POI is representative and can be used to calculate the cost of production.

Dole argues that the Department should accept its submitted calculation of fruit costs, as it is appropriate to take account of the growing cycle which occurs at its plantations. According to Dole, the majority of its self-grown pineapple was harvested in the second half of 1994, yet more than half of its annual operating costs were incurred in the first half of the year, during the POI. Dole argues that the use of actual costs incurred during the POI would be distortive, in relation to the quantity of pineapples harvested in that period, while the company's submitted fruit costs reflect a proper matching of expenses and production.

DOC Position

We agree with Dole. The evidence on the record demonstrates the disproportionate relationship that exists between expenses incurred and pineapples harvested under the accounting methods practiced by Dole's plantations. Dole has presented evidence which has led to our determination that unique circumstances exist in this case, with regard to Dole's self-grown pineapples, and it is clear that the cost structure during the POI is not representative. As noted by Dole, its annual accrual system for plantation costs effectively ensures

an approximate relation between the costs incurred and the volume of fruit harvested during the same period. The company's submitted methodology, which presents a similar allocation, does not appear to be unreasonable, given the fluctuation in Dole's growing cycle. We therefore accepted Dole's submitted fruit costs, including the allocation of plantation fruit costs based upon the POI pineapple harvest.

Comment 14

The petitioners claim that Dole improperly excluded pineapple purchases made on the last day of the POI from its fruit cost calculation. The petitioners argue that this fruit was used in POI production and, therefore, the Department should include this amount in the calculation of Dole's COP and CV.

Dole did not object to the petitioners' comments.

DOC Position

We agree with the petitioners. COP and CV should be calculated using the actual costs incurred during the POI and the excluded pineapple purchases were used in POI production. As a result, we increased Dole's fruit costs by the amount of the excluded pineapple purchases.

Comment 15

In its submission, Dole allocated fixed overhead and certain variable overhead costs to its products in the same manner as in its normal accounting system. The petitioners argue that the Department should reallocate these overhead costs on the basis of net realizable value. The petitioners argue that Dole is unable to track its variable overhead costs on a product line basis and suggest that the normal allocation methodology does not use an appropriate activity base. The petitioners also state that the Department should exclude an offset to overhead costs which they claim was improperly applied.

Dole disagrees with the petitioners' assertions and states that the submitted allocation methodology is consistent with its normal accounting for these overhead costs and should be accepted by the Department. Dole did not comment on the overhead offset.

DOC Position

We agree with Dole, in part. The methodology used to allocate these overhead costs is, in fact, used by Dole in its normal course of business. In addition, the activity bases in this methodology are commonly used for overhead allocations and present a reasonable method of allocating these expenses. However, we agree with the

petitioners that the overhead offset was directly related to a non-subject product line and should not be allocated over all products. We therefore accepted the allocation methodology used by Dole, but adjusted the submitted overhead costs to exclude the submitted overhead offset.

Comment 16

The petitioners note that the Department calculated a standard case quantity for tropical fruit products that was less than Dole's submitted quantity. Since standard cases were used by Dole as an activity base for allocating sugar and acid costs, the petitioners assert that the Department should correct the quantity of standard cases submitted by Dole. Also, the petitioners assert that the standard case quantity submitted for concentrate was calculated using unverified estimates and should not be relied upon.

Dole did not comment on this issue.

DOC Position

We agree with the petitioners, in part. The number of standard cases was reviewed for all products by the Department, using Dole's normal conversion factors, and only the amount of tropical fruit cases was found to be incorrect. We therefore adjusted the number of standard cases used in the allocation of sugar and acid costs to reflect the quantity calculated by the Department. We also noted that this error affects the allocation of fixed overhead, and adjusted the allocation accordingly.

Comment 17

The petitioners assert that the Department should revise Dole's other materials costs to reflect the packing medium actually used by the company in each of its CPF products. The petitioners argue that, for purposes of computing COP and CV, Dole incorrectly allocated sugar and citric acid costs over all CPF products, including juice-packed products which do not contain sugar.

Dole disagrees with the petitioners and submits that the cost difference for products packed in juice and products packed in syrup is minimal and should not be recognized in the COP and CV calculations. Dole also argues that the packing medium does not affect the pricing of its products and refers to petitioners' own comments from the petition: "The difference in costs of manufacturing between the various forms and two varieties (juice packed and syrup packed) are sufficiently marginal to allow for equal pricing; consumer preferences are not

sufficiently pronounced as to support price differentials." Based upon this, Dole argues that sugar and citric acid unit costs were properly submitted for all products, regardless of the actual packing medium used.

DOC Position

We agree with the petitioners that Dole should have reported packing medium costs for each specific product. It is clear from a review of the record that the syrup packing medium costs more to produce than the juice packing medium. We have reflected this cost difference in our revised COP and CV figures for Dole.

Comment 18

Dole claims that the Department should revise the company's submitted G&A factor to reflect the use of 1994 financial data, provided at verification.

The petitioners did not comment on this issue.

DOC Position

We disagree with Dole. Dole's submitted G&A factor was computed based on 1993 financial data for Dole Thailand, Ltd. (DTL), and included an allocation of G&A expenses incurred by Dole Food Company, Inc. (DFC) and Dole Packaged Foods Company (DPF). At verification, Dole provided a revised G&A factor, which was computed based on full-year 1994 financial data. To support its revised calculation, Dole provided the Department with audited financial statements for DFC and unaudited financial statements for DTL. DPF does not prepare audited financial statements.

The Department normally computes the G&A expense factor based on the respondent's audited financial statements for the full-year period that most closely corresponds to the POI. See, e.g., *Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 30733 (July 27, 1990) (Comment 18). Audited financial statement information provides us with some degree of assurance that an independent party has reviewed the respondent's accounting data and expressed an opinion as to its fairness in reflecting the results of that company's operations. Therefore, because Dole did not provide 1994 audited financial statements for DTL, we calculated the G&A factor using the respondent's audited 1993 financial statements, which we believe are a reasonable surrogate for Dole's 1994 operations. See also Comment 35 below.

Comment 19

The petitioners argue that Dole improperly applied waste revenues and sugar refunds as offsets to G&A expenses. The petitioners claim that waste revenues should be applied to fruit costs, reflecting Dole's normal accounting system, in the same ratio that the Department determines fruit costs should be allocated (see Comment 6 above). Sugar refunds, according to the petitioners, should be applied to materials costs, since sugar is a raw material. In addition, the petitioners argue that sugar refunds should be applied only to those products to which sugar and citric acid costs were allocated.

Dole did not comment on this issue.

DOC Position

We agree with the petitioners. It would be more appropriate to apply waste revenues to fruit costs, reflecting Dole's normal accounting system. It would also be more appropriate to apply sugar refunds to other materials costs, since sugar is a raw material. We therefore adjusted fruit costs, other materials costs, and G&A costs to reflect the reclassification of waste revenues and sugar refunds.

Comment 20

Dole argues that the Department should use the amount of sugar refunds earned as an offset in its calculation of the G&A factor, rather than the amount of sugar refunds received.

DOC Position

We disagree with Dole. We noted that Dole, in its normal accounting system, does not record these refunds as earned until payment is received. Since the amount of the refund is uncertain until payment is received, this appears to be a reasonable treatment and, therefore, we have not adjusted the sugar refund offset amounts.

*TIPCO**Comment 21*

The petitioners argue that certain price adjustments reported as a warranty claim should be reclassified as a rebate in the final determination.

TIPCO argues that the reclassification of the claim is unnecessary given its insignificant value. However, TIPCO asserts that the Department can incorporate the claim as either a rebate or a warranty claim.

DOC Position

We agree with the petitioners, in part. We agree that this price adjustment was improperly reported as a warranty

claim. It is the Department's practice to allow only those expenses related to quality-based complaints to be classified as a warranty expense. See, e.g., *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (February 25, 1991). In this instance, the records do not indicate that the price adjustments were associated with quality based complaints.

We disagree with the petitioners, however, that the price adjustment should be treated as a rebate. A rebate is a refund of monies paid, a credit against monies due on future purchases, or the conveyance of some other item of value by the seller to the buyer after the buyer has paid for the merchandise. In this instance, the price adjustment was accounted for by reducing the selling price to the customer. Accordingly, we are treating these expenses as discounts.

Comment 22

TIPCO argues that the Department should compute G&A expenses for the final determination using the company's submitted 1994 G&A ratio calculation for the six months of the POI. TIPCO claims that the Department should not compute a G&A ratio based on 1993 financial data and apply that ratio to 1994 CPF manufacturing costs because the company's change in its accounting for factory administrative costs would make such a calculation nonsensical. Further, TIPCO maintains that application of a 1993 G&A ratio to 1994 costs would double count factory administrative costs since these costs would be included in both the numerator and the denominator of the G&A ratio calculation. Lastly, TIPCO argues that if the Department determines the company's 1994 G&A ratio is unacceptable because it is based on a six-month period, then the Department should compute G&A expenses based on the unaudited financial statement data for the full-year 1994 provided by TIPCO at verification.

The petitioners assert that, in keeping with its normal practice, the Department should use TIPCO's full-year 1993 audited financial statements to compute the company's G&A expense ratio for the final determination.

DOC Position

We have followed our normal practice for calculating G&A expenses by using TIPCO's 1993 full-year, audited financial statements. See also Comment 35 below. However, to correct for any possible distortion between 1993 and 1994 costs due to TIPCO's change in accounting classifications, we have adjusted the company's 1993 G&A and

cost of sales figures for an annualized estimate of factory administrative costs based on amounts incurred during the POI. This adjustment would represent our estimate of 1993 factory administrative costs since the actual 1993 cost figure is not available from the case record.

We also adjusted TIPCO's net interest expense calculation to take into account the change to 1993 cost of sales that occurred due to the reclassification of factory administration costs in 1994.

Comment 23

TIPCO states that the Department should accept the company's reported can weights for purposes of allocating certain can production department costs. TIPCO argues that difference between the can weights used by TIPCO in the submission and the POI can weights obtained at verification are insignificant. According to TIPCO, any increases to weights associated with certain can sizes will only be offset with decreases to weights for other can sizes.

The petitioners state that the Department should adjust the costs of cans to incorporate the current weights obtained from the production department at verification

DOC Position

We did not adjust for the differences in can weights since they had an immaterial affect on the cost of CPF sold during the POI. In its COP/ CV submission, TIPCO used the standard weight of cans to allocate the can production departments direct labor and overhead costs. At verification, we noted that the can weights used to allocate labor and overhead costs were outdated. Therefore, we obtained can weights specific to the POI. Although we raised this as an issue in our verification report, after reviewing the POI can weight data obtained at verification, we note that the difference in the reported weights has only a slight effect on CPF costs since can production labor and overhead during the POI were insignificant.

Comment 24

TIPCO states that it properly classified seasonal labor costs as direct, not indirect, labor. The only labor classified as indirect was the labor expense associated with salary of administrative personnel who were employed throughout the year in a supervisory or administrative capacity.

The petitioners have no comments on this issue.

DOC Position

We agree with the respondent and have accepted their classification of seasonal labor as direct labor for the final determination. During verification, we traced the payroll records of several seasonal production employees from source documentation to a specific fabrication cost item reported in TIPCO's income statement. We then reconciled this fabrication cost item to the amount reported in the COP and CV submission. During this testing, we noted that TIPCO normally accounted for the cost of the seasonal employees as part of direct labor costs.

Comment 25

The petitioners state that, at verification, the Department discovered that TIPCO incorrectly allocated electricity to certain pieces of machinery (e.g., electric generators) based on horsepower production factors rather than horsepower consumption factors. According to the petitioners, the Department should correct TIPCO's reported variable overhead costs for this error.

TIPCO states that it has already made changes to account for the electricity allocation issue found at verification in a supplemental submission.

DOC Position

At verification, we found that TIPCO had overstated the amount of electricity allocated to certain overhead departments. A supplemental submission that corrects the misstatement was requested by the Department and received on February 28, 1995. We reviewed this submission and found the corrections to be appropriate. We have used this corrected data in reaching our final determination.

Comment 26

TIPCO states that the Department should accept its submission methodology of making a downward adjustment to the cost of manufacturing to account for certain revenues received in connection with the production of subject merchandise. If this approach is not accepted, TIPCO believes that the Department should make an upward adjustment to prices pursuant to section 773(a)(4)(B) of the Act.

The petitioners did not comment on this issue.

DOC Position

Because of the business proprietary nature of this item, we have addressed TIPCO's comment and analyzed the issue in detail in the proprietary concurrence memorandum. Our

determination was to allow the revenues in question as an offset to TIPCO's submitted COP and CV figures.

Comment 27

Both the respondent and the petitioners raise certain issues regarding the appropriateness of the methods used by TIPCO to compute the weight of its pineapple juice and solid fruit for purposes of allocating costs.

DOC Position

We believe that the issues surrounding the appropriateness of TIPCO's weight calculations are moot. For the final determination, TIPCO's fresh pineapple costs were allocated based on its normal accounting system and not on the company's proposed weight-based methodology. See Comment 6 above.

SAICO**Comment 28**

SAICO argues that the Department should exclude certain U.S. sales of spoiled CPF from the calculation of any dumping margins, contending that these sales are aberrational and that claims for spoiled goods are extremely rare. SAICO cites the *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from Korea*, 57 FR 53693, 53782 (November 12, 1992) where defective corrosion-damaged pipe was excluded and the *Final Determination of Sales of Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 42942, 42949 (September 17, 1992) (*Welded SST Pipe*) in which aberrant and damaged sales were disregarded from the analysis. Additionally, SAICO argues, that the Department normally excludes cancelled or returned sales from its margin analysis. See *Welded SST Pipe*.

If the Department does not exclude the cancelled sales, SAICO argues that the expenses associated with the replacement shipments should be treated as indirect selling expenses because the circumstances of sale between the U.S. and German market do not differ. Treating the claim expenses as a circumstance of sale adjustment would distort the dumping margin. If the Department decides that the indirect selling expenses should apply only to the U.S. market, SAICO asserts that the allocation of the claim expense should still be made over all POI sales. To do otherwise would assume that prices of specific sales include a full allowance for aberrational and unforeseeable costs.

The petitioners contend that the Department should adjust for the actual costs incurred by SAICO for shipment of

the spoiled merchandise shipped to the U.S. customer. In their proprietary case brief, the petitioners provide a calculation of costs involved in this process based on all aspects of this transaction.

DOC Position

We agree with the petitioners that the sales of spoiled merchandise should not be treated as cancelled sales given that SAICO received payment in full for the merchandise. Instead, we are treating the expenses associated with the compensation for the spoiled sales as warranty expenses because they were associated with quality-based complaints. We allocated the total expenses SAICO incurred in connection with the spoiled sales over all sales made to the United States during the POI.

The expenses were not allocated over total worldwide sales because the data we have applies only to U.S. sales; we do not know whether SAICO made replacement shipments for spoiled merchandise to any other markets during the POI. Additionally, we do not believe it would be appropriate to allocate the expenses to the particular spoiled sales. SAICO does not have any warranty programs in place, and therefore its sales prices do not reflect an allowance for unforeseeable costs.

Comment 29

The petitioners interpret export bill discounts as sales-specific expenses that were necessitated by the credit terms that SAICO provided to certain customers. As such, the petitioners argue that these expenses were actual expenses SAICO incurred on certain sales and should be treated as direct selling expenses.

SAICO contends that because there is no adjustment to U.S. or foreign market selling price for actual interest expenses (but only imputed interest expenses), these expenses should not be deducted from U.S. price.

DOC Position

We agree with SAICO that these charges are included in imputed credit expense and therefore should not be deducted from U.S. price. Accordingly, we have not done so.

Comment 30

SAICO claims that, contrary to the assertions in the Department's verification report, the company produces syrup for CPF from a combination of water, sugar, and citric acid. It further maintains that pineapple juice is not an ingredient in its packing syrup but, instead, is used only for its

CPF products packed in their "natural juices." SAICO therefore asserts that the Department misstated in its cost verification report that the company improperly omitted the cost of pineapple juice for CPF products packed in heavy and light syrup.

The petitioners contend that the Department should revise SAICO's reported CPF costs to include the cost of pineapple juice used in heavy and light packing syrup. The petitioners believe that SAICO's cost of production for CPF should include the cost of all materials used to produce the merchandise, including pineapple juice used for packing syrup.

DOC Position

We have revised COP and CV to include an amount for the cost of pineapple juice used in SAICO's heavy and light packing syrups. During verification, we obtained documentation (verification exhibits 10 and 15) that led us to conclude that, despite SAICO's claims to the contrary, the company did in fact use pineapple juice as an ingredient in its heavy and light packing syrup.

Comment 31

SAICO argues that it could not rely on its normal accounting method for plantation pineapples for two reasons. First, it notes the fact that, at the time of its response preparation (as well as at the time of verification), the company's auditors had not made their year-end adjustment for pineapple costs. Thus, according to SAICO, essential data were missing for the company to compute the cost of plantation pineapples under its normal system. Second, SAICO maintains that, even if the year-end adjustment could have been made, the adjusting figure itself is an aggregate amount and cannot be divided into the materials, labor, and overhead cost elements that the company was required to report.

SAICO further argues that, in determining the proper cost-reporting period for the company's self-grown pineapples, the Department should select the period that captures to the extent practicable the costs incurred with respect to pineapples harvested during the POI. SAICO maintains that the pineapple costs computed on a 18-month period reasonably reflect such costs and that the Department should therefore rely on this methodology in its final determination.

The petitioners argue that SAICO's pineapple production costs should be based on the procedures used in the company's normal accounting system. Thus, the petitioners maintain that the

Department should revise SAICO's reported costs for self-grown pineapples to reflect the costs actually recorded by the company during the POI, including adjustments made by the company's auditors.

DOC Position

As part of our verification testing, we obtained and verified detailed information relating to SAICO's pineapple plantation costs. Contrary to SAICO's assertions in its case brief, this information showed monthly plantation costs, including capitalized preproduction costs, segregated by cost element. Moreover, the information is sufficient to compute a POI estimate of the year-end adjustment made by SAICO's auditors.

The lack of the year-end auditors adjustment and separable cost elements notwithstanding, SAICO has failed to offer any reason why its normal accounting method should not be used to compute the cost of its self-grown pineapples. Nor has the company provided the Department with information or analysis supporting its contention that such a methodology would be distortive for purposes of computing the cost of CPF during the POI. We have therefore used the plantation cost data obtained at verification to recompute the cost of SAICO's self-grown pineapples following the company's normal accounting method.

Comment 32

SAICO argues that certain plantation cost adjustments are reasonable and necessary in order to avoid distorting the cost of the company's self-grown pineapples harvested during the POI. First, SAICO believes that it properly excluded from total plantation costs all of the costs incurred at its three newest plantations—plantation numbers 7, 8, and 9. Second, SAICO states that it is more appropriate for the Department to allocate the company's plantation overhead costs based on the direct labor hours charged to each crop instead of on land area as reported in SAICO's original COP and CV submission.

The petitioners do not specifically address these adjustments in their case or rebuttal briefs. As a general comment, however, the petitioners do argue that the Department should base the cost of SAICO's self-grown pineapples on costs recorded under the company's normal plantation accounting system.

DOC Position

With respect to SAICO's exclusion of costs for plantations 7, 8, and 9, we believe in principle that this adjustment

is consistent with the company's normal method of deferring preproduction costs during the pineapple growing cycle. During verification, however, we found that plantation 7 had begun harvesting its pineapple crop during the POI. Consequently, in accordance with its normal method of accounting for self-produced pineapples, SAICO had begun recognizing as an expense the pineapple preproduction costs associated with the harvested plants. We have therefore revised SAICO's submitted fresh pineapple costs to account for the POI costs recorded by the company for plantation 7. In addition, we have excluded the preproduction costs incurred at plantations 8 and 9, in accordance with SAICO's normal accounting method.

For plantation overhead costs, we have accepted SAICO's labor-hour allocation method to charge a portion of total overhead costs to non-pineapple crops produced at the plantations. We found that SAICO did in fact normally charge all of its overhead costs to pineapples and none to the other crops produced at the company's plantations. We believe that this method unreasonably inflates the overhead costs associated with pineapple production since the overhead costs incurred generally relate to the overall operations of the plantations. Moreover, in this instance, given the labor-intensive nature of the plantation operations and the fact that the overhead costs correspond more closely with direct labor hours than land area, we believe that SAICO's proposed labor-hour allocation method represents an acceptable means of charging overhead costs to all plantation crops harvested during the POI.

Comment 33

SAICO argues that it is appropriate to include 1994 shutdown costs as part of the calculation of fixed overhead costs for the POI. According to SAICO, the 1994 shutdown costs are more closely associated with the POI than those incurred during the 1993 shutdown period.

The petitioners contend that SAICO's production costs should be based on the methods used by the company in its normal accounting system. According to the petitioners, SAICO shut down its processing plant during 1993 to prepare the facility for production operations during the subsequent months, that is, until the next shutdown in 1994. Thus, the petitioners maintain that the 1993 shutdown costs were incurred for and directly relate to production during the POI, and that the Department should therefore adjust SAICO's reported fixed

overhead costs to account for shutdown costs under the company's normal methodology.

DOC Position

We recalculated SAICO's fixed overhead costs for the POI based on the company's 1993 shutdown costs and following its normal accounting method. SAICO has historically amortized its annual plant shutdown costs on a prospective basis over the months following the shutdown period. Despite this fact, SAICO departed from its normal method and amortized shutdown costs retroactively for purposes of its COP and CV response. SAICO offered no explanation for this change in methodology other than to say that the 1994 shutdown costs were more "closely associated" with the POI. We found no justification for this claim. Further, we note the fact that SAICO's normal prospective accounting method was in accordance with Thai GAAP basis.

Comment 34

SAICO argues that the Department should not adjust the company's CPF costs for a certain POI transaction that the company's own outside auditors did not see fit to reflect in SAICO's 1994 interim financial statements.

The petitioners argue that this item should have been recorded as a loss in SAICO's accounting records and reflected in the company's reported COP and CV figures.

DOC Position

Because of the business proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to exclude the transaction from SAICO's reported COP and CV calculations.

Comment 35

SAICO argues that the Department should use the company's 1993 audited financial statement information to compute G&A and interest expense for the final determination. SAICO maintains that the 1994 financial data obtained by the Department at verification was unaudited and incomplete. Specifically, SAICO notes the fact that the 1994 data do not contain information necessary to compute the offsets for interest income, trade receivables, or finished goods inventory.

The petitioners contend that the Department should calculate SAICO's G&A and net interest expense factors based on the company's 1994 financial

data since this information encompasses the six months of the POI.

DOC Position

We have used the 1993 audited financial statements to compute G&A and interest expense factors. The Department normally computes G&A and interest expense factors based on SAICO's audited financial statement information for the full-year period that most closely corresponds to the POI. Audited financial statement information provides us with some degree of assurance that an independent party has reviewed SAICO's accounting data and expressed an opinion as to its fairness in reflecting the results of that company's operations. In addition, since companies often incur G&A and interest expenses sporadically throughout the fiscal year, we rely on the respondent's full-year audited data to ensure that our G&A and interest calculations capture the expenses incurred by the company over most, if not all, of its operating cycle. The full-year statements also make certain that we have considered any year-end adjusting entries made by respondent to its G&A and interest expenses. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut to Length Carbon Steel Plate from France*, 58 FR 37125, 37135 (July 9, 1993) (*Certain Carbon Steel Products from France*).

Comment 36

The petitioners state that, for the final determination, the Department should increase SAICO's reported cost of production to include the compensation paid by SAICO to its Board of Directors. The compensation paid to the Board of Directors was directly charged to retained earnings and was not recorded in the income statement.

SAICO did not comment on this issue.

DOC Position

For the final determination, we have determined that it is appropriate to include the Board of Directors' compensation in G&A costs.

Comment 37

SAICO believes that the Department should revise its submitted values for the clerical corrections and modifications presented at the first day of verification. These modifications were: (1) A single drained weight used in the COP/CV tables for a specific control number that had been incorrectly stated, (2) using actual cases

instead of standard cases of finished goods to calculate can and lid costs, and (3) revising the total net weights of the CPF production used to allocate variable overhead to correct for a minor mathematical error.

The petitioners state that the Department should revise SAICO's cost of production to reflect the actual costs obtained during verification.

DOC Position

The clerical corrections and modification were tested at verification and are appropriate adjustments. We have incorporated the adjustments into SAICO's COP and CV figures.

Comment 38

SAICO states that the sugar ratio used by the company in its COP and CV submission accurately reflects the differing amounts of sugar required in the production of heavy and light syrup products.

The petitioners did not comment on this issue.

DOC Position

We have relied on SAICO's submitted sugar ratio for allocating sugar costs between heavy and light syrup products for the final determination. SAICO's sugar ratio was found to be an average of the daily sugar ratio reported in the company's production logs. This ratio was analyzed and tested at verification with no discrepancies noted.

Comment 39

Both respondent and petitioners raise certain issues regarding the appropriateness of the methods used by SAICO to compute the weight of its pineapple juice and solid fruit for purposes of allocating costs.

DOC Position

We believe that the issues surrounding the appropriateness of SAICO's weight calculations are moot. For the final determination, SAICO's fresh pineapple costs were allocated based on its normal accounting system and not on the company's proposed weight-based methodology. See Comment 6 above.

Malee

Comment 40

Malee argues that the Department should exclude from its less than fair value calculation certain additional ocean freight and demurrage expenses it incurred on some of its sales to the United States. It asserts that it has already been reimbursed in part for these expenses by its freight forwarder and states that it will be reimbursed in

full. Further, Malee contends that in prior cases the Department has not included expenses where the respondent was seeking reimbursement for the expense. See, e.g., *Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3179 (January 28, 1992) (*Forklift Trucks from Japan*).

DOC Position

We agree with Malee that these expenses should be excluded from our calculations. In *Forklift Trucks from Japan*, the Department had no evidence on the record that the respondent's insurance company had rejected its claim, or that it would not be reimbursed in part or in full, for expenses associated with stolen trucks. In that instance, the Department determined that lack of this evidence was not dispositive that reimbursement would not occur, and thus the expenses were not treated as direct selling expenses.

In this case, at verification we found evidence that Malee was to be reimbursed by its freight forwarder for the demurrage charges. We examined Malee's records and confirmed that it has already been reimbursed in part for these expenses. Documents on the record indicate that Malee will be fully reimbursed for the remaining balance of the charges.

Comment 41

Malee argues that the Department should exclude certain interest expense which was reported as a bank charge in its sections B and C responses. This expense represents the interest expense for delayed payment.

Malee states that since the Department's only use for interest expenses in the sales response is for calculating the interest rate to be used for the imputed credit expenses, the Department does not include a company's actual interest expenses as a direct expense. Moreover, this interest expense for late payment is already included in Malee's interest expense reported in the COP/CV databases and thus has been double counted. As a result, the interest expense for late payment should be removed as a direct adjustment from the sales listing.

The petitioners argue that similar to other direct expenses, the late payment expense is an expense incurred by Malee for sales of CPF to its customers; therefore, the petitioners contend that this expense should be deducted as a direct expense. The petitioners claim that because this expense is charged by Malee's bank for late payment after

Malee has already received payment from the bank, it is not included in the imputed credit expense.

DOC Position

We agree with the petitioners that this interest expense should be deducted as a direct expense because this is a transaction specific bank charge. Because Malee received payment before it incurred this expense, it is not captured by our imputed credit cost. Furthermore, Malee's concern regarding double counting of late payment expenses is not substantiated because we do not have documents on the record demonstrating that this expense was recorded as an interest expense in Malee's accounting records. Accordingly, we continue to treat this expense as a bank charge.

Comment 42

The petitioners argue that the Department should adjust Malee's submitted factory overhead costs to include an amount for foreign exchange gains or losses incurred on purchases of machinery depreciated over a 7.5 year period. Additionally, the petitioners argue that the Department should adjust factory overhead by removing an offset for reimbursement of an overpayment on a machine purchase.

Malee agrees with the petitioners that fixed overhead should be adjusted for the depreciation effect of the foreign exchange gains or losses, but suggests that these amounts should be depreciated over five years. Malee did not comment on the reimbursement offset.

DOC Position

We agree with the petitioners, in part. Since the foreign exchange gains or losses relate directly to machinery purchases, we consider it appropriate to include them in the basis of the assets. Therefore, we adjusted Malee's fixed overhead costs to include the depreciation effect of the foreign exchange gains or losses. We calculated the revised depreciation expense using the five-year useful life suggested by Malee, which is a reasonable period for the company's equipment. Also, we removed the reimbursement offset from the overhead calculation as the company's normal record-keeping included this item in other income. We believe this is a reasonable treatment for a minor reimbursement. Malee's reclassification of this item to a credit in fixed overhead does not represent a more precise treatment, since the company did not identify the credit to the specific machine or even to the specific group which uses this

machinery. Therefore, we reclassified this credit to the other income account, in accordance with Malee's normal accounting treatment.

Comment 43

Malee argues that the activities of its parent company, Boon Malee, are not related to the production of the subject merchandise and, therefore, its G&A expenses should not be included in the G&A factor calculation. To support this position, Malee refers to the *Certain Carbon Steel Products from France*, 58 FR at 37136, where the Department agreed that the G&A expenses of a parent company whose activities were not related to production of the subject merchandise should not be used in place of those of the company actually producing the subject merchandise.

The petitioners claim that the G&A factor should be revised to include 1993 G&A expenses incurred by Malee's parent company. They argue that since Boon Malee is a holding company with no operations, its G&A expenses should be included in Malee's calculation. Malee's cite from *Certain Carbon Steel Products from France* is misplaced, according to the petitioners. They assert that the Department decided to base its G&A factor on the financial records of the producer, which included an allocation of the parent company's G&A expenses.

DOC Position

We agree with the petitioners. We noted that Malee is the only directly-owned active subsidiary of Boon Malee, which is a holding company that has no operations. In addition, we noted that Boon Malee's G&A expenses are related to a building that it rents to Malee. As discussed in *Certain Carbon Steel Products from France*, the Department's general approach to calculating a G&A factor is to use Malee's G&A expenses, along with an allocation of G&A expenses from the parent company. 58 FR at 37136; See also *Camargo Correa Metais v. United States*, Slip Op. 93-163 at 18 (CIT August 13, 1993). Therefore, we included Boon Malee's G&A expenses in our adjusted calculation of Malee's G&A factor.

Comment 44

The petitioners argue that we should revise Malee's submitted G&A expenses to include inventory write-downs made during the year. These adjustments are normally recorded by Malee to cost of sales. According to the petitioners, write-downs are a period expense, similar to G&A expenses, and thus should be reported as part of the fully-absorbed cost of products sold during

the period. The petitioners argue that both inventory write-downs and inventory write-offs have the same function of recognizing losses of future revenue and thus should be treated the same for COP.

Malee argues that inventory write-downs are not a cost of production and should not be included in COP. It claims that the only effect of these adjustments is on the value of inventory for balance sheet purposes, and on cost of goods sold for income statement purposes. Further, Malee argues that there is a fundamental difference between COP and cost of goods sold and states that the effect of such revaluation is self-cancelling over time. Malee claims that these write-downs are a method of absorbing losses more gradually as inventory declines in expected market value.

DOC Position

We agree with the petitioners that the inventory write-downs should be reflected in Malee's production costs. During verification, we noted that inventory write-downs are a normal, recurring period adjustment made annually by Malee. Also, we agree with the petitioners that such adjustments are part of the fully-absorbed cost of goods sold and should be included in the calculation of COP and CV. We therefore adjusted the G&A factor calculation to include the amount of inventory write-downs.

Comment 45

Malee asserts that certain proprietary payments, applied as offsets to COM, should be determined based upon the amounts earned rather than the amounts received during the POI. It claims that it is more appropriate to match the income earned during the POI with the expense incurred. It would be inappropriate, according to Malee, to use the amounts received during the POI, since they relate to production in a prior period.

The petitioners did not comment on this issue.

DOC Position

We agree with Malee, in part. We noted that certain proprietary payments are accrued at the time production occurs and the payment is effectively earned. However, we noted that other payments are not recorded as earned until a letter is received confirming the amount to be paid to Malee. This letter is normally received after the production is completed. We agree with Malee that the actual receipt date is a function of timing and cash flow and has no relationship to the production

occurring in that same period. Therefore, we adjusted the offset amounts to reflect the payments earned during the POI rather than the amounts received by Malee during the same period.

Comment 46

Malee asserts that the Department should recalculate COP and CV using the can and lid costs which were submitted to the Department at the start of verification as a correction of an error.

The petitioners claim that the revisions submitted at the start of verification should not have been accepted by the Department. These corrections adjusted per kilogram costs by a significant percentage, according to the petitioners. They argue that the explanation provided for this error was inadequate and should not have been accepted by the Department.

DOC Position

We agree with Malee. We reviewed Malee's explanation for its submitted cost revisions, which are described in the March 1, 1995, submission, and considered it to be reasonable. During verification, we reconciled the revised can and lid costs to stock reports and to the general ledger. Therefore, we accepted these costs for purposes of calculating COP and CV.

Comment 47

Malee states that the Department should recalculate COP and CV using the verified drained weight/net weight ratios, which were submitted at the start of verification. It also requests that the Department calculate the interest offset using the consolidated financial statements, as discussed at verification.

The petitioners did not comment on these issues.

DOC Position

We agree with Malee. We have used the submitted and reviewed drained weight/net weight ratios to calculate fruit costs and we used the consolidated financial statements to calculate CV interest expense.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of CPF from Thailand, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 11, 1995, the date of publication of our preliminary determination in the Federal Register. The Customs Service

shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Dole	2.36
TIPCO	38.68
SAICO	55.77
Malee	43.43
All Others	25.76

ITC Notification

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

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: May 26, 1995.
 Susan G. Esserman,
 Assistant Secretary for Import Administration.
 [FR Doc. 95-13695 Filed 6-2-95; 8:45 am]
 BILLING CODE 2510-02-P

APPENDIX C
LIST OF PARTICIPANTS IN THE HEARING

HEARING CALENDAR

Those listed below appeared as witnesses at the International Trade Commission's hearing:

Subject	:	CANNED PINEAPPLE FRUIT FROM THAILAND
Inv. No.	:	731-TA-706(F)
Date and Time	:	June 1, 1995 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, S.W., Washington, D.C.

OPENING REMARKS

Petitioner (Mark R. Fox, legislative assistant, for Senator Daniel Inouye, on behalf of the entire Hawaii delegation)
(Patrick J. McGrath, Georgetown Economic Services)

Respondent (Kenneth J. Pierce, Willkie, Farr and Gallagher)

**In Support of Imposition of
Antidumping Duties:**

Georgetown Economic Services
Washington, D.C.
on behalf of

Maui Pineapple Company, Limited
International Longshoremen's and Warehousemen's Union

Douglas R. Schenk, President, Maui Pineapple Company

**Renata Muller, Division Sales Manager,
Maui Pineapple Company**

**Paul J. Meyer, Chief Financial Officer, Maui Pineapple
Company**

-MORE-

**In Support of Imposition of
Antidumping Duties--Cont.:**

**Eduardo Chenchin, Vice President and Cannery Manager,
Maui Pineapple Company**

**Patrick J. Magrath, Lead Consultant, Georgetown
Economic Services**

**John M. Gloninger, Economic Consultant, Georgetown
Economic Services**

**Michael T. Kerwin, Economic Consultant, Georgetown
Economic Services**

**In Opposition to Imposition of
Antidumping Duties:**

PANEL 1

**Willkie, Farr and Gallagher
Washington, D.C.
on behalf of**

**Thai Food Processors' Association ("TFPA")
The Government of Thailand**

Robert Hawthorne, Siam Food Products Company

John Reilly, Vice President, Nathan Associates

Peter Minor, Associate, Nathan Associates

**Kenneth J. Pierce)
William B. Lindsey)
)--OF COUNSEL
Jacqueline A. Weisman)
Adams C. Lee)**

-MORE-

**In Opposition to Imposition of
Antidumping Duties--Cont.:**

**Harris and Ellsworth
Washington, D.C.
on behalf of**

**The Association of Food Industries (AFI)
Pineapple Group**

**Larry Abramson, President of Camerican
International, Incorporated**

James B. Murray, Sales Force Companies, Incorporated

**Herbert E. Harris, II)
)--OF COUNSEL
Jeffrey S. Levin)**

PANEL 2

**Patton Boggs, L.L.P.
Washington, D.C.
on behalf of**

Dole Food Company, Incorporated, ("Dole")

**Philip M. FitzPatrick, Vice President, Sales and Marketing,
Dole Packaged Foods Company**

David A. DeLorenzo, President-International, Dole Food Company

**Douglas L. Jocelyn, Jr. Vice President, Operations, Dole
Packaged Foods Company**

George J. Brennan, Assistant General Counsel, Dole Food Company

**Michael D. Esch)
)--OF COUNSEL
John F. Cobau)**

APPENDIX D
MAUP'S COST OF PRODUCTION

Table D-1
Cost-of-production experience of Maui on its operations producing canned pineapple fruit, fiscal
years 1992-94

* * * * *

APPENDIX E

**EFFECTS OF IMPORTS ON MAUI'S
EXISTING DEVELOPMENT AND PRODUCTION
EFFORTS, GROWTH, INVESTMENT, AND
ABILITY TO RAISE CAPITAL**

Response of Maui to the following questions:

1. Since January 1, 1992, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product, as a result of imports of canned pineapple fruit from Thailand?

* * * * *

2. Does your firm anticipate any negative impact of imports of canned pineapple fruit from Thailand?

* * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of canned pineapple fruit from Thailand?

* * * * *

APPENDIX F
LARGEST SALE PRICES

Table F-1

Weighted-average largest-sale net f.o.b. prices and total quantities of product 1, reported by Maui and importers of Thai product, and margins of underselling/(overselling) relative to Maui's first private label sales, by quarters, 1992-94

* * * * *

Table F-2

Weighted-average largest-sale net f.o.b. prices and total quantities of product 1, reported by Maui and importers of Thai product, and margins of underselling/(overselling) relative to Maui's second private label sales, by quarters, 1992-94

* * * * *

Table F-3

Weighted-average largest-sale net f.o.b. prices and total quantities of product 2, reported by Maui and importers of Thai product, and margins of underselling/(overselling), by quarters, 1992-94

* * * * *

Table F-4

Weighted-average largest-sale net f.o.b. prices and total quantities of product 3, reported by Maui and importers of Thai product, and margins of underselling/(overselling), by quarters, 1992-94

* * * * *

Table F-5

Weighted-average largest-sale net f.o.b. prices and total quantities of product 4, reported by Maui and importers of Thai product, and margins of underselling/(overselling), by quarters, 1992-94

* * * * *

APPENDIX G
PURCHASE PRICES

Table G-1

Weighted-average net delivered prices and total quantities of product 1, reported by retail grocers, and margins of underselling/(overselling), by quarters, 1992-94

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Table G-2

Weighted-average net delivered prices and total quantities of product 2, reported by retail grocers, by quarters, 1992-94

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Table G-3

Weighted-average net delivered prices and total quantities of product 3, reported by retail grocers, and margins of underselling/(overselling), by quarters, 1992-94

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Table G-4

Weighted-average net delivered prices and total quantities of product 4, reported by food service companies, and margins of underselling/(overselling), by quarters, 1992-94

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