

69 FR 50164, August 13, 2004

A-549-813  
Review 02-03  
**Public Document**  
G205:MAW/DL

DATE: August 6, 2004

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Jeffrey A. May  
Deputy Assistant Secretary  
for Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the Final Results of the Eighth  
Antidumping Duty Administrative Review: Canned Pineapple Fruit  
from Thailand

### **Summary**

We have analyzed the case and rebuttal briefs of interested parties for the final results of the antidumping duty review covering canned pineapple fruit (CPF) from Thailand. We received comments from the petitioners<sup>1</sup> and certain respondents. We recommend that you approve the positions we have developed in the Department Position sections of this memorandum.

### **Background**

On April 8, 2004, the Department of Commerce (the Department) published the Preliminary Results of the Eighth Antidumping Duty Administrative Review of CPF from Thailand.<sup>2</sup> The period of review (POR) is July 1, 2002, through June 30, 2003. The respondents in this case are:

- Vita Food Factory (1989) Co., Ltd. (Vita);
- Kuiburi Fruit Canning Co., Ltd. (Kuiburi);

---

<sup>1</sup> The petitioners in this case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

<sup>2</sup> See *Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination To Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 69 FR 18524 (April 8, 2004) (*POR8 Preliminary Results*).

- The Thai Pineapple Public Co., Ltd. (TIPCO); and
- Dole Food Company, Inc. (DFC), Dole Packaged Foods Company (DPF), and Dole Thailand, Ltd. (DTL) (collectively, Dole).

We gave interested parties an opportunity to comment on the *POR8 Preliminary Results*. On May 10, 2004, we received case briefs from Dole and the petitioners. We received rebuttal briefs from the petitioners on May 17, 2004, and from Dole on May 18, 2004.

### **List of Comments**

#### I. ISSUES SPECIFIC TO DOLE

- Comment 1: Sales Process
- Comment 2: Quantity and Value and Completeness
- Comment 3: Foreign Indirect Selling Expenses
- Comment 4: Repacking
- Comment 5: Short-Term Borrowing Rate
- Comment 6: Warranties
- Comment 7: General and Administrative (G&A) Expense
- Comment 8: Interest Expense
- Comment 9: Credit Expenses
- Comment 10: Early Payment Discount

#### II. ISSUES SPECIFIC TO KUIBURI

- Comment 11: Conversion of Euro-denominated Gross Unit Prices
- Comment 12: Unreported Sales to Puerto Rico
- Comment 13: Ocean Freight Currency Denomination
- Comment 14: Credit Expense
- Comment 15: Net Realizable Value (NRV) Calculation
- Comment 16: Discrepancies in Gross Unit Price Calculations
- Comment 17: Direct and Indirect Selling Expense for Euro-Denominated Sales



## **Discussion of Issues**

### **III. ISSUES SPECIFIC TO DOLE**

#### **Comment 1: Sales Process**

The petitioners note that at verification the Department found that Dole's sales policy does not allow an order to be shipped with fewer items than requested by a customer (*i.e.*, short-ship). They suggest a change be made in light of this, the details of which cannot be discussed here due to their proprietary nature. For this and an expanded Department Position *see* Memorandum to The File Re: Final Results of Eighth Administrative Review of Canned Pineapple Fruit from Thailand (Dole Final Calculation Memo) (August 6, 2004) at 2.

Dole counters this argument by asserting that its sales verification report shows a clear finding that Dole does not short-ship merchandise.<sup>3</sup> Therefore, it argues that there are no grounds to make a correction to the calculation of its dumping margin.

#### **Department's Position:**

We found no evidence in the course of verification to support a change for this item for the final results of this review.

#### **Comment 2: Quantity and Value and Completeness**

The petitioners make a two-part argument regarding the completeness of Dole's response. The first addresses Dole's sales to Puerto Rico, which it did not include in its U.S. sales database. The second argument addresses an unexplained difference between the reported sales and Dole's books and records. In both cases, the petitioners maintain the Department should apply adverse facts available to these sales.

With regard to the sales to Puerto Rico, the petitioners have two main points. First, they argue that, at verification, Dole attempted to resolve the problem of unreported sales by suggesting that a portion of the sales to Puerto Rico were direct shipments of Philippine-origin merchandise from Dole Philippines and, therefore, outside the scope of this. However, the petitioners contend, this "resolution" conflicts with the reporting standard applied to Dole in every administrative review of this case. The petitioners assert that Dole has always stated that it cannot identify its sales by country of origin and, therefore,

---

<sup>3</sup> *See See* Memorandum to the File Re: Verification of the Sales Information in the Response of Dole Food Company, Inc., Dole Packaged Foods Company and Dole Thailand Ltd. in the 2002-2003 Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand (Dole Sales Verification Report) at 4 (April 28, 2004), as cited in Dole Case Brief on Preliminary Results of the Review dated May 17, 2004 (Dole's Rebuttal to Petitioners' Case Brief).

reports all U.S. and Canadian sales using shipment ratios.<sup>4</sup> These shipment ratios capture, by product, the percentage of merchandise coming from Dole Thailand. Citing sections of the verification report, the petitioners assert that in this review the Department found that Dole does not track the country of origin past the entry of said merchandise into a U.S. or Canadian warehouse.<sup>5</sup> The specific type of CPF going to Puerto Rico has an established shipment-ratio and the petitioners state that using a “results-oriented inquest” to identify the country of origin for unreported sales is “completely unacceptable.”<sup>6</sup>

The petitioners find it odd that Dole was able to trace country of origin when it works in Dole’s favor (*i.e.*, for the sales to Puerto Rico) but was not otherwise able to do this. They further argue that because the Department has always accepted Dole’s claim that country of origin is not necessary it would be “manifestly unfair to engage in extraordinary measures to {excuse}” the sales to Puerto Rico.<sup>7</sup> The petitioners consider it irrelevant that shipment documents show the country of origin of a sale to Puerto Rico because it flies in the face of the Dole reporting methodology that has been used in the instant and all prior reviews for Dole’s commingled inventory. The only acceptable grounds for exclusion from the sales databases of any product is a shipment ratio of zero (*i.e.*, a product sourced solely from Dole Philippines) and this, argue the petitioners, also applies to the sales to Puerto Rico. They further assert that conclusions pertaining to Dole’s completeness should not be drawn by the Department based on “this selective deviation from the established methodology.”<sup>8</sup>

Second, they contend that Dole improperly excluded these sales from its submitted databases and, further, failed to present them at the start of the sales verification. The petitioners also state that the Department has two choices in how to deal with these sales: ignore them or apply an adverse inference of facts available. The petitioners advocate doing the latter. In cases where respondents have disclosed missing sales prior to the start of verification, the petitioners point out that, the Department has shown leniency toward the sale and cite an earlier review of this case involving Dole Thailand.<sup>9</sup> This situation is different, however, in that after the start of verification the Department discovered these sales. Therefore, the petitioners argue, the Department needs to apply adverse facts available (AFA)

---

<sup>4</sup>For those sales that are shipped through a U.S. or Canadian warehouse, Dole is unable to identify the country of origin after the merchandise leaves the warehouse. Therefore, Dole has calculated a “shipment ratio” according to the ratio of Thai-origin merchandise to Philippine-origin merchandise entering each warehouse by product. This product-specific ratio is applied to all reported sales out of the applicable warehouse.

<sup>5</sup> Dole Sales Verification Report at pages 7-8 as cited in Petitioners’ Case Brief for Dole Thailand Ltd. (Petitioners’ Dole Case Brief) at 2-3 (May 11, 2004).

<sup>6</sup> See Petitioners’ Dole Case Brief at 3.

<sup>7</sup> See Petitioners’ Dole Case Brief at 3.

<sup>8</sup> See Petitioners’ Dole Case Brief at 4.

<sup>9</sup> See Petitioners’ Dole Case Brief at 5.

here, as it has in the past in situations where sales are unreported.<sup>10</sup> The petitioners assert that, after the start of verification, the chance to admit unreported sales expires and, if the Department does not penalize Dole for these unreported sales, “all incentives for respondents to “get it right” during the sales reconciliation process will be removed.”<sup>11</sup>

The second completeness argument made by the petitioners addresses an unexplained difference between the reported sales and Dole’s books and records, adjusted for reconciling items.<sup>12</sup> Since this difference was labeled “unexplained” by the Department, the petitioners assert that the completeness of Dole’s reporting methods is questionable. This is different from the fifth administrative review where the Department dismissed the petitioners’ concerns over a slight discrepancy because it was explained. They argue that in the instant review the discrepancy in question is unexplained after adjustments for reconciling items have been made. The petitioners point out that given Dole’s margin of 0.49 percent, or only about one one-hundredth of a percent from being above *de minimis*, the discrepancy in question is neither large nor small and they warn the Department against categorizing it as either. Rather, they conclude that such errors are “case dispositive.”<sup>13</sup>

The petitioners cite sections 776(a)(2) and 776(b) of the Tariff Act of 1930, as amended, (the Act) which establish the conditions that must be met to apply facts available and an adverse inference, respectively.<sup>14</sup> The petitioners maintain that, in this case, the Act requires the application of AFA because requested data was not provided by Dole in a timely manner and Dole failed to co-operate to the best of its ability. According to the petitioners, even though the “general” information was determined at verification, these two reporting failures cannot be considered satisfactorily verified. With regard to the unreconciled U.S. sales the only evidence on the record, state the petitioners, is that it exists and there is no way to “correct” the U.S. sales even if the Department wanted to. The petitioners contend that it is “not unreasonable to impute an adverse inference commensurate with the size of a discrepancy.”<sup>15</sup>

The petitioners go on to suggest various forms of AFA. They begin by stating that the minimum AFA should be to apply to the unreported U.S. sales the highest transaction margin from the preliminary

---

<sup>10</sup> For support the petitioners cite *Stainless Steel Sheet & Strip from Italy in Acciai Speciali Terni S.p.A. v. Unites States* (142 F. Supp 2d 969 (CIT 2001) in Petitioners’ Dole Case Brief at 5.

<sup>11</sup> See Petitioners’ Dole Case Brief at 6.

<sup>12</sup> The amount of the discrepancy is proprietary, therefore see Petitioners’ Dole Case Brief at 6 for the amount of the discrepancy.

<sup>13</sup> See Petitioners’ Dole Case Brief at 7.

<sup>14</sup> See Section 776(a)(2) as cited in Petitioners’ Dole Case Brief at 7 and 8.

<sup>15</sup> See Petitioners’ Dole Case Brief at 8.

results.<sup>16</sup> Alternatively, if the Department decides that this is not reasonable, the petitioners suggest that, the average of the positive margins calculated on U.S. sales be used. This was done, state the petitioners, in the original investigation of this case for unreported sales to Puerto Rico.<sup>17</sup> However, the petitioners assert that the facts in the instant review are different from the investigation because the respondent benefitted from its own experience and the warning that the Department issued in the investigation that sales to Puerto Rico should be included in the database. Further, the petitioners contend that these mistakes were not presented with first day corrections at the start of verification.

Dole counters by saying neither the failure to report the sales to Puerto Rico nor the unreconciled U.S. sales supports the application of facts available or AFA. First, its unintentional exclusion of the sales to Puerto Rico does not, Dole argues, support an adverse inference of facts available. It points out that it has a very large U.S. sales database which was compiled from the sales listing Dole keeps in the normal course of business. Dole explains that it excluded from its U.S. sales listing those labeled in its books as export, which included the sales to Puerto Rico. Dole points out that, at verification, the Department found that all sales labeled for export, except those to Puerto Rico, were exported to third countries. According to Dole, the petitioners have failed to establish that the exclusion of the sales to Puerto Rico was anything but inadvertent.

While acknowledging that Puerto Rico is part of the U.S. customs territory, Dole provides reasons why it believes that forgetting this is understandable. First, Dole states, most U.S. possessions (*e.g.*, Guam and the U.S. Virgin Islands) are not part of the U.S. customs territory. Second, it maintains “the Department’s Foreign Trade Statistics Regulations require a Shipper’s {Export} Declaration be filed for shipments from the United States to Puerto Rico.”<sup>18</sup> Further, Dole argues the total number of sales to Puerto Rico is small and most of the sales were of non-subject merchandise. It also asserts that many of the shipments were of Philippine-origin merchandise and direct from Dole Philippines Inc. to the customer and cites the verification report as confirmation of this.<sup>19</sup> Additionally, applying the Thai/Philippine shipment ratio to sales through a warehouse further reduces the reportable volume of the sales to Puerto Rico, which Dole contends the petitioners acknowledged.

Dole argues that the petitioners have made a “confusing, convoluted argument” regarding the reportable volume of the sales to Puerto Rico, trying to get the Department to apply the Thai/Philippine shipment ratio to all the sales to Puerto Rico, including those shipped directly to the customer, and this should be

---

<sup>16</sup> See Petitioners’ Dole Case Brief at 7.

<sup>17</sup> See *Final Determination of Sales of Less Than Fair Value: Canned Pineapple Fruit from Thailand* 60 FR 29553 (June 5, 1995) at Comment 2 as cited in Petitioners’ Dole Case Brief at 9.

<sup>18</sup> See Dole’s Rebuttal to Petitioners’ Case Brief at 5.

<sup>19</sup> See Dole’s Rebuttal to Petitioners’ Case Brief at 5.

“rejected out of hand.”<sup>20</sup> It goes on to assert that the petitioners’ argument misrepresents the Department’s practice and Dole’s position in this case. Dole argues that it loses track of country of origin once the CPF enters a U.S. or Canadian warehouse and, for warehoused CPF, shipment-ratios are used to extract the Thai sales. Shipment-ratios, however, are not used if the sale is a direct shipment. Additionally, Dole states that, per the Department’s request, different shipment ratios, which are sales specific, are used for direct shipments. It cites the verification report and its response to the section A supplemental questionnaire as support for this argument.<sup>21</sup> The petitioners’ allegations overlooked this, maintains Dole, countering that it is the petitioners who are making a “results-oriented” argument by proposing that the U.S. warehouse shipment ratios be applied to the direct shipments. Applying a shipment ratio of zero to direct shipments from the Philippines is, asserts Dole, entirely keeping with the methodology used by Dole and the Department. When its shipment ratios are applied, Dole claims that the volume of reportable sales to Puerto Rico is tiny.

Addressing the petitioners’ second argument, Dole states that the use of facts available is not supported by the *de minimis* U.S. reconciliation difference and, further, that this difference does not represent sales it wished to conceal. Dole then describes how it prepared its reconciliation and cites the Sales Verification Report to show that the Department thoroughly verified Dole’s sales database for completeness.<sup>22</sup> Neither the Department nor Dole pursued the U.S. sales difference, states Dole, arguing that the petitioners “implicitly recogniz{ed}” that there are many potential explanations for this difference.<sup>23</sup> According to Dole, this type of tiny discrepancy is not an indication that adjustment is needed and, indeed, must be expected when comparing a company’s sales revenue from its general ledger to the tens of thousands of sales from a specific sales listing.

Dole states there is no basis for the petitioners’ assertion that an adverse inference of facts available is needed for both the sales to Puerto Rico and the U.S. sales discrepancy. It states that the sales to Puerto Rico omission is fully explained. Further, Dole notes that in similar past situations the Department has applied an average of the positive margins to the omitted sales even when the omission was discovered during verification.<sup>24</sup> Dole argues that for the Department to apply an adverse inference of facts available it must find that a party has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”<sup>25</sup> Dole maintains that it has fully cooperated with all

---

<sup>20</sup> See Dole’s Rebuttal to Petitioners’ Case Brief at 6.

<sup>21</sup> See Dole’s Rebuttal to Petitioners’ Case Brief at 6.

<sup>22</sup> See Dole’s Rebuttal to Petitioners’ Case Brief at 8.

<sup>23</sup> See Dole’s Rebuttal to Petitioners’ Case Brief at 8.

<sup>24</sup> Dole cites to the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553 (June 5, 1995) at Comment 2 in Dole’s Rebuttal to Petitioners’ Case Brief at 9.

<sup>25</sup> Dole quotes and cites to Section 776(b) of the Tariff Act of 1930, as amended in the Dole’s Rebuttal to Petitioners’ Case Brief at 10.

the Department's requests for information, as its submissions attest, and that the discrepancies under discussion are small and inadvertent, and have no impact on the overall completeness and dependability of Dole's submitted U.S. sales database.

**Department's Position:**

Regarding the petitioners' first point concerning Dole's missing U.S. sales to Puerto Rico, the Department determines that it is not appropriate to include direct shipments from the Philippines to Puerto Rico in the U.S. sales database. Doing this is not in conflict with the reporting standards to which Dole has been held in this and past segments of this proceeding. Dole's ability to identify direct shipments from the Philippines to Puerto Rico versus its inability to identify country of origin for sales made from its warehouses is consistent with its reporting for the rest of the U.S. market and the Canadian market. As discussed in Dole's section A response, Dole loses track of the country of origin once the CPF enters its warehouses in the United States and Canada.<sup>26</sup> Where sales are shipped directly to the customer and do not enter a warehouse, we requested that Dole not apply shipment ratios.<sup>27</sup> Dole complied with this request and excluded from its U.S. and Canadian database any direct shipments from Dole Philippines.<sup>28</sup> It would not be in keeping with the reporting standards we have applied to Dole for the rest of the U.S. sales, as well as the Canadian sales, if we applied to the direct shipments of CPF from the Philippines to Puerto Rico the shipment ratios used for sales coming from warehouses. The Department verifiers examined shipment documents for all but one direct shipment sale, which confirmed Dole's claims regarding the direct shipments. We are therefore satisfied that all the Philippine-origin sales with "DFL" as the origin should be excluded from the U.S. sales database.<sup>29</sup> The verification team found no evidence of direct shipments from Thailand. We will therefore include only sales made to Puerto Rico through warehouses, with the appropriate shipment ratios applied, in the U.S. database.

Regarding the petitioners' second point that AFA should be applied to the sales to Puerto Rico, the Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met.

Section 776(a) of the Act, provides that facts available may be used if

- (1) necessary information is not available on the record, or

---

<sup>26</sup> See for example Dole's section A questionnaire response (Section A) at 2 and 9-10 (October 15, 2003).

<sup>27</sup> See Dole's supplemental section A questionnaire response (Supplemental Section A) at 10-11 (January 20, 2003).

<sup>28</sup> See *id.* See also Dole's section B & C questionnaire responses (November 17, 2003).

<sup>29</sup> See Dole Sales Verification Report at 7.

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

*See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316 , Vol. 1, at 868-870 (1994). First, we must establish that the conditions required by the statute have been met before the Department may resort to the facts available. During the course of verification we found that Dole had failed to include in its reported U.S. sales database all of its U.S. sales, because it had not included its sales to Puerto Rico.<sup>30</sup> Therefore, we find that the necessary information to calculate an accurate weight averaged dumping margin and sale specific dumping margin on every U.S. sale is not on the record in this case. Further, section A of the Department’s questionnaire asked Dole to “{s}tate the total quantity and value of the merchandise under review that you sold during the period of review (“POR”) in (or to) . . . the United States,” while Dole was asked to provide sales information for all U.S. sales in section C of the Department’s questionnaire. Since the U.S. customs territory includes the 50 States, District of Columbia, and Puerto Rico,<sup>31</sup> by failing to report its sales to Puerto Rico, Dole both failed to provide such information by the deadlines for the submission of the information and withheld information requested by the administering authority.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. In the case of Kuiburi’s missing U.S. sales, discussed below at Comment 12, this company informed the Department through its Exhibit A-1 that its sales to Puerto Rico were not included in its U.S. database. However, in Dole’s case, nowhere in any of Dole’s questionnaire or supplemental questionnaire responses does it indicate that its sales to Puerto Rico were not properly reported as part of its U.S. database. It was not until after verification had begun that Department officials discovered that Dole had not reported in the U.S. database its sales to Puerto Rico. Dole’s rebuttal arguments that most U.S. possessions are not part of the U.S. customs territory and that special paperwork must be completed to ship from the United States to Puerto Rico are unpersuasive. The Department’s questionnaire asks for U.S. sales. As an experienced respondent who has participated not only in the original investigation but also in four subsequent reviews of this case, Dole should have been aware that Puerto Rico was part of the U.S. customs territory and that it was required to include these sales in its U.S. database.

---

<sup>30</sup> *See* Dole Sales Verification Report at 7.

<sup>31</sup> *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553 at Comment 2 (June 5, 1995) and, for example, “<http://www.census.gov/foreign-trade/guide/sec2.html>” and “<http://www.portofbellingham.com/realestate/ftz/glossary.htm>.”

Moreover, Dole was already aware that Puerto Rico is part of the U.S. customs territory. In the original investigation Malee Sampran Public Company, Ltd., The Thai Pineapple Public Co., Ltd. (now Tipco Foods (Thailand) Public Co., Ltd.<sup>32</sup>), and Siam Agro Industry Pineapple and Others Co., Ltd. failed to report sales to Puerto Rico. As cited above, the Department's response to this failure explicitly states that Puerto Rico is part of the U.S. customs territory. Therefore, as a participant in the original investigation, Dole was on notice that sales to Puerto Rico needed to be included in its U.S. database. By failing to report all U.S. sales, Dole failed to act to the best of its ability in this review. The excuse that it inadvertently forgot to include these sales does not alter the fact that Dole knew that the sales in question should have been included in its U.S. database. Therefore, we find that the partial application of an adverse inference in this review is appropriate, pursuant to section 776(b) of the Act.

As AFA, the Department assigned the highest positive margin to each sale to Puerto Rico line item on a CONNUM-specific basis. This information is sufficiently adverse so as to effectuate the statutory purpose of the adverse facts available rule. *See* Dole Final Calculation Memo (August 6, 2004) at 3.

The other half of the petitioners' quantity and value argument concerns a very small and unexplained difference between the reported sales and Dole's books and records adjusted for reconciling items. At verification, we have limited time in which to perform various tests on the reasonableness and accuracy of the response. As is clear from the verification report, we did not request further information on this item because we did not then and do not now feel that this small difference calls into question the integrity of the response. The Department feels that this difference is insignificant and therefore will make no adjustment to the U.S. sales database for it.

### **Comment 3: Foreign Indirect Selling Expenses**

The petitioners argue that the Department should exclude amounts found at verification for indirect selling revenue received by Castle and Cook Worldwide (CCWW) on sales of fruit cups which Dole had included in its calculation of the foreign indirect selling expenses ratio. They contend that the inclusion of this revenue "artificially decreases the total selling expenses incurred by Dole Thailand during the POR."<sup>33</sup>

Dole responds by stating that it included expenses and revenues associated with CCWW's sales of fruit bowls in its foreign indirect selling expenses calculation to be consistent with the first half of the POR when the fruit bowls were categorized with subject merchandise in the same account in Dole's normal course of business. It further points out that the petitioners argue to exclude revenue, but not expenses, related to fruit bowls from the foreign indirect selling expenses calculation, but notes that the Department has already removed fruit cup expenses and revenues to recalculate Dole's calculation of foreign indirect selling expenses ratio in the preliminary

---

<sup>32</sup> *See Final Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit from Thailand*, 69 FR 36058 (June 28, 2004)

<sup>33</sup> *See* Petitioners' Dole Case Brief at 10.

results.

### **Department's Position:**

As Dole points out, for the preliminary results, the Department recalculated Dole's foreign indirect selling expense ratio, excluding fruit cup expenses and revenues. *See* Memorandum to the File Re: Preliminary Results of Eighth Administrative Review of Canned Pineapple Fruit from Thailand (Dole Prelim Calculation Memo) (April 1, 2004) at pages 8-9 and at Attachment 5. Accordingly, no further change is needed for the final results.

### **Comment 4: Repacking**

The petitioners assert that partial AFA should be used for repacking expenses (REPACKU) because the Department discovered at verification that Dole had failed to report its REPACKU in the U.S. database despite stating in its response that it had U.S. repacking. Because the information was not put on the record in a timely manner, the petitioners maintain the company failed to act to the best of its ability, thereby impeding this review, and suggest that the Department apply the "highest repacking expenses incurred in the third country market for all sales in the U.S. market."<sup>34</sup>

Dole takes issue with the petitioners' allegation that the REPACKU information was not put on the record in a timely manner. It cites to many record sources to assert its claim that the REPACKU information was on the record, including in the original U.S. database submitted in November. Repacking was inadvertently excluded from the U.S. January database.<sup>35</sup> The Department, argues Dole, was able to rectify this oversight for the preliminary results by using the complete listing of per-unit repacking costs by product code as previously provided by Dole. Dole maintains that the petitioners have no record support for their assertion that partial AFA is warranted for the REPACKU since this information was on the record (in the section C response at Exhibit C-17), was verified, and the Department already applied the reported per-unit repacking expenses to the preliminary results.

### **Department's Position:**

Although Dole inadvertently failed to report repacking expenses in its REPACKU field in its January U.S. database, it did report that it had incurred repacking expenses at page 51 of its section C questionnaire response and reported its calculation of repacking expenses at Exhibit C-17 of the same response. Therefore, the petitioners' assertion that Dole did not put its repacking information on the record in a timely manner is inaccurate. We also verified the REPACKU expenses in our sales verification. *See* Sales Verification Report at 11. After verification, for the preliminary results, we were able to assign per-unit repacking expenses specifically to those products on which the expenses

---

<sup>34</sup> *See* Petitioners' Dole Case Brief at 10.

<sup>35</sup> *See* Dole's Rebuttal to Petitioners' Case Brief at 11.

were incurred. Therefore, in this instance, our review was not impeded by Dole's mistake. We will continue to calculate Dole's repacking expenses for the final results as we did for the preliminary results.

### **Comment 5: Short-Term Borrowing Rate**

The petitioners argue that the Department should recalculate Dole's short-term borrowing rate for some short-term interest rates, applying as partial AFA the highest short-term U.S. interest rate verified by the Department. They argue that this is supported by the fact that for the period March 28, 2003, through July 4, 2003, the Department was unable to verify all the confirmations from Dole's bank regarding Dole's short-term repayments, and various discrepancies were noted between some of the rates reported and the corresponding bank documents.

In response, Dole argues that the short-term U.S. interest rate requires no correction. It contends that at verification Dole revised its short-term U.S. interest rate worksheet because of "very slight" changes to the rate which were due to "some very minor corrections." Dole further notes that the Department found a "very slight discrepancy" between an interest rate on the worksheet and the actual rate charged by the bank. However, Dole maintains, the discrepancy had no noticeable effect on the average POR short-term U.S. interest rate.

Dole also notes that the Department was able to verify most of the interest rates for March 28 to July 4, 2003 and found no discrepancies.<sup>36</sup> However, Dole acknowledges that the Department was not able to tie all the interest rates for this period because the request was made after the banks in New York had closed on the last day of verification.<sup>37</sup> According to Dole this does not provide a platform to support a partial AFA finding because the particular discrepancy found at verification is not material and, further, does not raise doubt regarding the other interest rates on the worksheet.

### **Department's Position:**

The Department will make no change to Dole's short-term borrowing rate for the final results of this review. The Department elected not to pursue this issue further at verification after verifying multiple interest rates that comprised Dole's short-term borrowing for the POR and finding all but one had been correctly reported.<sup>38</sup> As a result, because we successfully verified the preponderance of interest rates covering the POR, we are satisfied with the accuracy of the short-

term interest rates used for the preliminary results and will continue to use them for these final review

---

<sup>36</sup> See Dole Sales Verification Report at 12 as cited in Dole's Rebuttal to Petitioners' Case Brief at 13.

<sup>37</sup> See Dole Sales Verification Report at 12 as cited in Dole's Rebuttal to Petitioners' Case Brief at 13.

<sup>38</sup> See Dole Sales Verification Report at 12.

results.

### **Comment 6: Warranties**

The petitioners assert that partial AFA should be applied to Dole's warranty expenses because the Department found at verification that Dole Thailand had incorrectly calculated warranty expenses based on numerators in mixed currency and a denominator in U.S. dollars (USD) on Canadian sales. Absent dependable information, the petitioners contend that partial AFA is needed. Second, the petitioners cite both the Department's supplemental questionnaires<sup>39</sup> and Dole Sales Verification Report<sup>40</sup> in which the Department requested that Dole provide customer-specific warranty information. They maintain the highest exchange rate available for the POR should be used to convert the Canadian dollars to USD for these expenses for two reasons. In both instances Dole stated that there was not enough time to do so. The petitioners argue that this warrants partial AFA because, not only is there not accurate information on the record, but Dole also withheld information from the Department.

Dole acknowledges that at verification the Department found mistakes made in the warranty expense calculations for Canadian sales. Dole cites the verification report to show that the Department requested, received, and placed on the record complete supporting documentation for each figure on the warranty expenses worksheet.<sup>41</sup> This information was, as Dole points out, used to apply a corrected warranty expense to the database in the preliminary results. Therefore, contends Dole, there is no missing information and consequently no grounds to apply facts available or AFA. Second, Dole argues, there are no grounds for the application of facts available based on the lack of customer-specific warranty expenses information. Dole maintains that the calculation of customer-specific information was not feasible in the time available at verification. Further, it claims that from a policy standpoint there is "no legitimate purpose" served by calculating customer-specific warranty expenses.<sup>42</sup> Dole asserts that warranty claims are random events which the company cannot predict and therefore are not and cannot be connected to differences in sales terms between customers. Therefore, argues Dole, the only "reasonable approach" is to use a customer category basis to cover anticipated average warranty expenses.

### **Department's Position:**

At the sales verification, as Dole points out, the Department collected the necessary information to correct the Canadian warranty expense calculation including exchange rate information used by Dole in its normal course of business. There is no evidence the mistakes Dole made in calculating Canadian

---

<sup>39</sup> Dated January 6, 2004.

<sup>40</sup> See Dole Sales Verification Report at pages 12-13 (April 28, 2004).

<sup>41</sup> See Dole Sales Verification Report at 12 as cited in Dole's Rebuttal to Petitioners' Case Brief at 14.

<sup>42</sup> See Rebuttal to Petitioners' Case Brief at 14.

warranty expenses were anything other than inadvertent, and the Department was able to obtain dependable information, which was verified, to correct Dole's mistakes for the preliminary results of the instant review. Therefore, Dole's warranty calculation mistakes do not meet the criteria for applying AFA.<sup>43</sup>

In response to the petitioners' second point, although the Department requested in a supplemental questionnaire that Dole provide customer-specific warranty expenses, we did not ask Dole to provide this information at verification. While we prefer this information on as detailed a basis as is possible and relevant given the case, we have not always required customer-specific reporting. *See* for example *Stainless Steel Plate Coils from Belgium; Final Results of Antidumping Duty Administrative Review* 67 FR 64352 at Comment 5 (October 18, 2002) and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey From Argentina* 66 FR 24108 (May 11, 2001) upheld in the *Notice of Final Determination of Sales at Less than Fair Value: Honey From Argentina* 66 FR 50611 (October 4, 2001) where the Department chose not to use customer-specific warranty expenses. Therefore the Department will make no changes to Canadian warranty expense for the final results of this review, but will consider other options if the issue is raised in future reviews and we have concerns about the reasonableness of the reporting on this item.

#### **Comment 7: General and Administrative (G&A) Expense**

The petitioners claim that during verification the Department found a discrepancy between the reported cost of manufacture (COM) in the January and November databases. The petitioners argue that the Department should use the COM from the "verified ICS COM"<sup>44</sup> when calculating a G&A expense ratio for DTL.

In reply, Dole first gives the history of its reported G&A expenses in this POR.<sup>45</sup> The end result was that Dole reported a G&A ratio that was comprised of the DFC's G&A ratio plus DTL's G&A ratio. In the original cost database submitted in November, DTL's G&A expenses had been reported in COM but these were removed from the reported January COM at the Department's request. Dole observes that this logically reduces the reported COM from the cost database submitted in January. Since the G&A ratio is based on the 2002 fiscal year, Dole points out that its denominator is from the 2002 audited financial statements. As a result, Dole asserts, the petitioners' argument is off point because the verified ICS COM to which they refer is for in-scope products for the POR and is not the proper basis for calculating a G&A ratio.

#### **Department's Position:**

---

<sup>43</sup> *See* sections 776(a) and 776(b) of the Act

<sup>44</sup> *See* Petitioners' Dole Case Brief at 12.

<sup>45</sup> *See* Dole's Rebuttal to Petitioners' Case Brief at 15.

It is the Department's practice to base the G&A ratio on the fiscal year most closely coinciding with a POR or investigation. *See for example Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand* 68 FR 65247 (November 19, 2003) and accompanying Issues and Decision memorandum at Comments 12 and 16. As Dole points out in its rebuttal brief, the ICS COM reflects the COM for the POR, which does not coincide with the 2002 fiscal year on which Dole's G&A ratio is based. The Department will make no change to Dole's G&A ratio for the final results of this review.

### **Comment 8: Interest Expense**

The verification report states that Dole deducted an amount "for short- and long-term interest income."<sup>46</sup> The petitioners argue that Dole should not have excluded its long-term interest income from interest expenses. The petitioners assert that the Department should recalculate Dole's interest expense ratio excluding only short-term interest income.

Dole argues that it correctly reported its interest expenses calculation by removing only short-term interest income as an offset. As support, it cites Exhibit D-9 in its section D response. Dole points out the Sales Verification Report incorrectly states that both short- and long- term interest were removed from the interest expense calculation but that Exhibit D-9 clearly shows that the calculation is correct. Regardless of the fact that it appropriately deducted only short-term interest income, Dole points out that the Department recalculated Dole's interest expenses, to included foreign exchange gains and losses, by removing short-, but not long-, term interest income. Therefore, contends Dole, no correction is required to this expense.

### **Department's Position:**

Although the Sales Verification Report's narrative does mistakenly state that an amount for long-term interest expense was deducted from the interest expense calculation, the verification exhibit clearly shows that Dole only subtracted short-term interest income from its interest expense calculation. At verification the Department examined the ratio of short-term interest, the respective amounts purported to be short- and long-term interest expenses,<sup>47</sup> and verified the interest expense ratio, which includes long-term interest income, submitted in section D at Exhibit D-9. Further, as Dole points out, the Department recalculated Dole's interest ratio for the preliminary results removing short-term interest income only. Therefore, the Department made no further change to Dole's interest expense ratio for the final results of this review.

### **Comment 9: Credit Expenses**

---

<sup>46</sup> *See* the Dole Sales Verification Report at 16 as quoted in the Petitioners' Dole Case Brief at 12.

<sup>47</sup> *See* the Dole Sales Verification Report at 16.

Dole argues that the Department must use a surrogate short-term borrowing rate for Canadian imputed credit expenses “that reflects commercial reality.” Dole argues the Canadian prime rate POR average, which it submitted in its section B questionnaire response, meets this criteria. In the event the Canadian prime rate continues to be unacceptable to the Department, Dole suggests as an alternative that the Department use an average of the Canadian prime rate and the commercial paper rate was used by the Department in the preliminary results of the instant review.

First, Dole contends that the POR average Canadian prime rate (4.65 percent) it submitted meets the requirements of Policy Bulletin 98.2 and the questionnaire, and reflects the actual cost of short-term borrowing in the Canadian dollar (CDN) market. Despite this, according to Dole the Department mistakenly recalculated Canadian credit expenses, providing a laconic and unsupported explanation for doing so. The commercial paper rate used by the Department, maintains Dole, is only available to borrowers with the highest credit ratings. Dole goes on to say it selected the Canadian prime rate as a “standard rate available to corporate borrowers.” According to Dole, in the instant review the Department did not consider, as it did for the fifth review remand of this case, that Dole’s actual average short-term interest paid was less than the U.S. prime rate.<sup>48</sup> Dole contends that the use of commercial paper interest rates is not supported in any case because it does not qualify for these rates.

The Department’s approach, asserts Dole, does not consider Dole’s actual credit rating and its actual history of borrowing for the POR. Dole claims that the Department confirmed at verification DFC’s Standard & Poor’s (S&P) credit rating went from BBB negative to BB and its Moody’s credit rating fluctuated between Ba1 and Ba3 during the POR. According to Dole, as the verification exhibits show that a Ba1 rating corresponds to a short-term rating of “not prime,”<sup>49</sup> it cannot borrow at commercial paper rates and its ratings are “barely investment grade.”<sup>50</sup> As support for this, Dole cites the differences between its actual short-term borrowing rate during the POR and the U.S. Federal Reserve 30-day commercial paper rate during the POR.

Dole goes on to argue that, “despite” Dole’s BBB negative credit rating, the Department “attempted to justify” using the commercial paper rate in the Final Remand Results with two arguments.<sup>51</sup> The first argument was that S&P’s credit rating is for long-term borrowing, which incorrectly implies that Dole did not provide a short-term credit rating by choice. In the seventh review the Department acknowledged, states Dole, that there were no short-term credit ratings to use for Dole. Dole states that the Department, at that time, incorrectly concluded that there were no third party credit ratings it

---

<sup>48</sup> See *Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order, Maui Pineapple Company, Ltd. v. United States*, Court No. 01-03-01017 (June 16, 2003) (Final Remand Results) at 7 as cited in Dole Case Brief on Preliminary Results of Review (Dole’s Case Brief) at 6 (May 10, 2004).

<sup>49</sup> See Dole Sales Verification Report at Exhibit 21 as cited in Dole’s Case Brief at 7.

<sup>50</sup> See Dole’s Case Brief at 7.

<sup>51</sup> See Dole’s Case Brief at 8.

could use in its analysis.<sup>52</sup> Dole contends that this situation does not exist because during verification the Department reviewed the S&P and Moody's ratings and the correlation between long-term and short-term ratings and cites sales verification Exhibit 21 as support. It further argues that this exhibit shows that Dole's long-term ratings directly correspond to short-term speculative and sub-prime ratings. Dole states that the reason that short-term rating has not been established by the credit rating agencies is because Dole has not issued commercial paper. Dole claims that this shows it does not qualify for commercial paper borrowing in the United States and, therefore, there is no reason to assume it could do so in Canada.

Citing the Final Remand Results,<sup>53</sup> Dole maintains that the Department acknowledged, for U.S.-dollar transactions, it is standard to use the broader commercial and industrial rate for loans maturing in 30 to 365 days and not the commercial paper interest rates. Dole inferred from the remand that the Department did not use equivalent rates for Canadian dollar transactions because none was available; therefore, the Bank of Canada's 30-day commercial paper rate was used. The commercial paper rate, quotes Dole, "is a loan of a financially strong company' with interest rates below prime."<sup>54</sup> It contends that this description does not fit Dole Canada or DFC, neither of which is able to issue commercial paper in Canada at rates available to a "financially strong company."<sup>55</sup>

The second argument Dole presents against the Department's past justification of using commercial paper is that in the seventh review, the Department made a mistake by failing to consider using a simple average of the commercial paper and prime rate. In the seventh review Dole claims the Department acknowledged that the standard surrogate for U.S.-dollar transactions was to use the commercial and industrial loan rate from the Federal Reserve, and that this type of rate had no Canadian equivalent. Dole points out that the Department stated that the goal was to find the best available surrogate which would not necessarily be an identical match.<sup>56</sup>

Dole goes on to argue that the Department was unreasonable when it refused to average the Canadian prime and commercial paper rates in the face of Dole's demonstration that it could not borrow at a commercial paper rate in conjunction with the Department's view that the prime rate is not ideal. The justification that the Department "will use publicly available information"<sup>57</sup> in rejecting this solution does

---

<sup>52</sup> Dole cites to the Issues and Decision Memorandum for the Final Results of the Seventh Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand (Seventh Review Decision Memo) at 14 (November 19, 2003) in the Dole's Case Brief at 8.

<sup>53</sup> See Final Remand Results at 8 as cited in Dole's Case Brief at 6.

<sup>54</sup> See Final Remand Results at 8 as cited in Dole's Case Brief at 7.

<sup>55</sup> See Final Remand Results at 7, as cited in Dole's Case Brief at 7.

<sup>56</sup> See Seventh Review Decision Memo at 14 as quoted in Dole's Case Brief at 9.

<sup>57</sup> See Seventh Review Decision Memo at 15 as quoted in Dole's Case Brief at 9.

not stand up in Dole's opinion, since the two rates are both publicly available. Dole argues that the additional Department justification, that an average "would unnecessarily distort the calculation of imputed credit,"<sup>58</sup> is unfounded. Dole contends that the Department never established how an average rate would be distortive. According to Dole, since the commercial and industrial rate is an average of a wide range of borrowers, "it defies common sense" that a simple average of the Canadian commercial paper and prime rate would be distortive.<sup>59</sup>

Dole concludes by stating that, in light of the specifics of this review, the Canadian commercial paper rate is not an appropriate surrogate short-term interest rate. Dole argues that, in lieu of a better alternative, the Department should either revert to the Canadian prime rate Dole submitted or use the average of the commercial paper rate and prime rate for Canada which for the POR would be 3.80 percent

In response, the petitioners argue that Dole incorrectly implies that the surrogate rate it submitted must be accepted "because it represents an actual cost of short-term borrowing."<sup>60</sup> They state that clearly any lender would be willing to make a loan at an above-market interest rate, but that the question to ask is "what the best likely rate would have been."<sup>61</sup> The surrogate interest rate should, assert the petitioners, reflect Dole Canada's specific experience in the Canadian-dollar market and the Department has already decided the rate Dole submitted for this does not reflect "Dole Canada's usual commercial behavior."<sup>62</sup>

Further, the petitioners argue against Dole's contention that, in contrast to the remand for the fifth review, the Department did not compare Dole's actual rate of borrowing. They point out that in a previous letter, using the same source as Dole, the petitioners found the analogous averaged U.S. borrowing rate is 4.42 percent.<sup>63</sup> The petitioners state that this differs from the reported and the verified rates.<sup>64</sup> Dole should not be allowed, asserts the petitioners, to choose an unrealistically high hypothetical Canadian-dollar borrowing rate which would inflate Dole's Canadian-market expenses.

---

<sup>58</sup> See Seventh Review Decision Memo at 15 as quoted in Dole's Case Brief at 9.

<sup>59</sup> See Dole's Case Brief at 9 and 10.

<sup>60</sup> See Petitioners Rebuttal for Dole Thailand Ltd. (Petitioners Rebuttal to Dole's Brief) at 3 (May 17, 2004).

<sup>61</sup> See Petitioners Rebuttal to Dole's Brief at 3.

<sup>62</sup> See Dole Prelim Calculation Memo at 8 as cited in Petitioners Rebuttal to Dole's Brief at 3.

<sup>63</sup> See Petitioners Rebuttal to Dole's Brief at 3.

<sup>64</sup> Due to the proprietary nature of this information it is not possible to state here how the 4.42 percent differs from Dole's verified U.S. dollar interest rate. See the Petitioners' Rebuttal to Dole's Brief at 3 for this information.

To rebut Dole's claims that it would not have qualified for the commercial paper rate, the petitioners argue that even companies with "low investment grade" bond ratings can be considered a good credit risk because of a low risk of default. They state that Dole is exactly the type of company that is able to issue commercial paper. Additionally, credit rating services such as S&P and Moody's refer to long-term debt, such as bonds or notes, to which commercial paper is not comparable. They assert these rating services can also have separate commercial paper ratings. In response to Dole's claim that Moody's Ba1 rating corresponds to a "Not Prime" short-term rating, the petitioners also point out that Moody's states that "the relationship between long-term and short-term ratings is approximate and may not necessarily apply in all situations."<sup>65</sup> Therefore, maintain the petitioners, the S&P and Moody's ratings should not affect use of the commercial paper rate as the most appropriate surrogate Canadian interest rate. Dole's argument, assert the petitioners, should be rejected.

### **Department's Position:**

The criteria for determining interest rates in markets where a respondent has no short-term borrowing are laid out in Policy Bulletin 98.2:

In the case of foreign market sales, it is not possible to develop a single consistent policy for selecting a surrogate interest rate when a respondent has no short-term borrowings in the currency of the transaction. The nature of the available information will vary from market to market. However, any short-term interest rate used should meet the three criteria discussed above – it should be reasonable, readily obtainable, and representative of "usual commercial behavior."

Both the Canadian prime rate and prime commercial paper rate meet the first two criteria. At issue here is the third criterion. For the reasons discussed below, the Department finds that the Canadian commercial paper rate is representative of Dole Canada's usual commercial behavior.

The facts in this review are nearly identical to those in the Final Remand Results and the final results of the seventh review of this proceeding, in which we also used the commercial paper rate.<sup>66</sup> In the Final Remand Results, to determine the most appropriate surrogate rate for Canadian-dollar transactions, we compared Dole's actual U.S.-dollar denominated short-term interest rates to the U.S. commercial and industrial loan rate mandated by Policy Bulletin 98.2 as a surrogate for U.S.-dollar transactions absent U.S.-dollar denominated borrowing. *See* Final Remand Results at 2-9. Having made this comparison we determined that a Canadian equivalent of the U.S. commercial and industrial loan rates mandated by

---

<sup>65</sup> *See* Dole Sales Verification Report at Exhibit 21 as quoted in Petitioners Rebuttal to Dole's Brief at 4.

<sup>66</sup> *See* Final Remand Results and *Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand* 68 FR 65247 (November 19, 2003)

the policy bulletin would be the most appropriate surrogate. We attempted to find a compilation of Canadian-dollar commercial and industrial loan rates equivalent to the Federal Reserve statistics that we use as surrogate rates for U.S.-dollar transactions. We noted that the Federal Reserve statistics reflect a very broad sample of lending experience and fall below the prime rate reported by the Federal Reserve. We found no equivalent statistics for Canadian-dollar transactions. Consequently, we selected an average commercial paper rate, the Bank of Canada 30-day “prime corporate paper rate,” as our replacement surrogate interest rate for calculating short-term credit expense for Dole’s Canadian-dollar transactions.<sup>67</sup> We selected this rate because, among our choices, we found it best reflected Dole Canada’s usual commercial behavior. The selected Bank of Canada commercial paper rate is based on monthly averages of rates posted for 30-day paper by major finance company participants in the market. The U.S. Federal Reserve defines commercial paper as “short-term, unsecured promissory notes issued primarily by corporations” with maturities which range up to 270 days, but average about 30 days.<sup>68</sup> It notes that “[m]any companies use commercial paper to raise cash for current transactions, and may find it to be a lower-cost alternative to bank loans.”<sup>69</sup> Barron’s *Dictionary of Accounting Terms* notes that commercial paper is “a loan of a financially strong company” with interest rates generally below prime.<sup>70</sup>

Despite Dole’s arguments, there have been no significant changes between the reviews to convince the Department that the Canadian prime rate is more appropriate. First, from Dole’s U.S. sales response,<sup>71</sup> we know that in the U.S. market Dole’s usual commercial behavior would be to obtain short-term credit at less than the published prime rate. We find, as we established in the Final Remand Results, that while it is not necessarily true that a company’s potential credit rating in one market can be inferred by that company’s experience in a different market, with Dole Canada such an inference can reasonably be made. We know from Dole’s responses and our verification that Dole Canada is an integral part of DPF<sup>72</sup> and that, while Dole Canada is a separate legal entity, it is integrated into DPF’s management.<sup>73</sup> Therefore, since Dole’s U.S. short-term borrowing is below the U.S. prime rate, given Dole Canada’s relationship with DPF, it is reasonable to infer that Dole Canada would be able to borrow below the Canadian prime rate. As Dole had submitted the Canadian prime rate, the Department had to find a rate more reflective of Dole Canada’s usual commercial behavior.

---

<sup>67</sup> This rate was obtained from the Bank of Canada website at <http://www.bankofcanada.ca/en/rates.htm>.

<sup>68</sup> Federal Reserve Release “Commercial Paper” at the Federal Reserve website, <http://federalreserve.gov/releases/>.

<sup>69</sup> Id.

<sup>70</sup> Barron’s *Dictionary of Accounting Terms* (1995) at 76.

<sup>71</sup> See Dole Section C Questionnaire Response (November 17, 2003) at C-40 and -41 and Exhibit C-11.

<sup>72</sup> See Dole Section A Questionnaire Response (October 15, 2003) and Dole Sales Verification Report.

<sup>73</sup> See Dole Sales Verification Report at 2-3.

As in the seventh review, Dole's argument that its poor credit ratings from Moody's and S&P show that it is not eligible for the "favorable" commercial paper rate is not convincing. Dole argues that at verification the Department reviewed documents<sup>74</sup> that showed a correlation between long- and short-term credit rating. As evident in the narrative of our Sales Verification Report, the Department drew no such conclusion from the documents in question. We agree with the petitioners that the ratings from Moody's and S&P are long-term ratings and have, at best, tenuous relevance to short-term interest rates. Further, as the petitioners point out, the documents which Dole cites to support a link between long- and short-term credit ratings also state that "the relationship between long-term and short-term ratings is approximate and may not necessarily apply in all situations."<sup>75</sup> There is no evidence on the record that clearly establishes Dole's long-term credit rating is anything other than approximate, or that it would be applicable to Dole's short-term credit rating. The fact is, despite Dole's assertions to the contrary, Dole has no credit ratings from third parties that the Department can use in its analysis.

As a result, Dole's actual short-term borrowing history in the United States is a better reflection of Dole's usual commercial behavior rather than long-term credit ratings. As Dole states in its brief, its long-term credit ratings for S&P fluctuated between Ba1 and Ba3 and its Moody's rates varied between BBB negative and BB during the POR. Even if, as Dole states, this means it is "barely investment grade," Dole is still able to obtain U.S. short-term borrowing below the U.S. prime rate. Therefore, it is more appropriate to use a short-term interest rate in Canada that is below the Canadian prime rate. While the Department would prefer to have a Canadian rate that reflects the difference between Dole's actual U.S. borrowings and the U.S. prime rate, this information simply does not exist in this case. The Canadian commercial paper rate, however, serves as a better available surrogate than the Canadian prime rate.

Dole suggests, in lieu of using the Canadian prime rate which it acknowledges the Department has rejected previously, using an average of the Canadian commercial paper and Canadian prime rates. Essentially, Dole wishes us to "split the difference" with an average. Again we note that the Department is not mandated to find an identical match to the U.S. interest-rate in cases such as this, but rather to find the best surrogate available. We consider the commercial paper rate to be a better surrogate than the average of the Canadian commercial paper and Canadian prime rates in this case for the following reasons. First, we again cite Policy Bulletin 98.2, which states that "{f}or foreign currency transactions, we will establish interest rates on a case-by-case basis using publicly available information, with a preference for published average short-term lending rates." The commercial paper rate is a published rate; the average of prime and commercial paper is not. Therefore, we find no reason to create an unpublished rate when a published rate is available. Second, the difference between the Canadian prime rate and Canadian commercial paper rate is closer to the difference between the U.S. prime rate and Dole's actual U.S. short-term borrowing than is the difference between the Canadian prime rate

---

<sup>74</sup> See Dole Sales Verification Report at Exhibit 21

<sup>75</sup> See Dole Sales Verification Report at Exhibit 21 as quoted in Petitioners Rebuttal to Dole's Brief at 4.

and the average of the Canadian prime and commercial paper rates.<sup>76</sup> Third, the Department maintains its position from the previous review that an average rate would unnecessarily distort the calculation of imputed credit. In the United States, Dole borrows at less than prime. Therefore, to apply the Canadian prime rate to imputed credit, either by itself or in an average, would be distortive because it does not reflect the commercial reality of Dole.

For the final results we find that the Canadian commercial paper rate serves as the best available surrogate. Therefore, we will make no adjustments to Dole's imputed Canadian credit for the final results.

#### **Comment 10: Early Payment Discount**

Dole argues that, while the Department properly recalculated the early payment discount on US sales (NEARLPYU), it erroneously applied this discount to all sales. To correct this error, Dole proposes alternative language to the margin calculation program to calculate an NEARLPYU only when the original early payment discount (EARLPYU) is above zero.

The petitioners concur with Dole that the Department erroneously applied the early payment discount to all sales, but disagrees with Dole on how to correct this problem. They argue that Dole's solution introduces another error into the program because, for observations where the original EARLPYU was zero or less, SAS assigns missing values to the NEARLPYU. This causes the margin program to incorrectly lower the dumping margins maintain the petitioners. To correct the original error and avoid the error the Dole correction would introduce, the petitioners propose alternative programming language.

#### **Department's Position:**

The Department agrees with both parties that the revised early payment discount should only be applied to sales where an early payment discount was received and we have made the appropriate changes to the margin calculations.

---

<sup>76</sup> See Attachment II of Dole Final Calculation Memo

#### IV. ISSUES SPECIFIC TO KUIBURI

##### **Comment 11: Conversion of Euro-denominated Gross Unit Prices**

The petitioners assert that when the Department converted Kuiburi's Euro-denominated gross-unit prices in Spain from Euros to USD, it did not use the U.S. date of sale. They cite the following narrative instructions found in the comparison market program:

NOTE FOR NETPRIH - If &HMGUP or other price adjustment variables are reported in two or more currencies, then combine variables of same currency and wt avg the separate combined variables. After merging into U.S. sales, convert them on the U.S. sale date and recreate into normal value and adjustments.

The petitioners state the Department should modify its margin program to ensure that in order to match Spanish sales with the appropriate U.S. sales, the conversion of Kuburi's Euro-denominated sales is made on the U.S. date of sale, consistent with the Department's narrative computer instructions.

##### **Department's Position:**

The Department properly converted the Euro-denominated gross unit prices on the date of the U.S. sale for price matching purposes in the preliminary results calculation and no program modification is necessary in this regard. In our preliminary comparison market program (*see* line 384 of the preliminary comparison market program log), we created a gross unit price variable for sales denominated in Euros which we called GRSUPREU. We carried this variable through the program to section 8 where we weight averaged GRSUPREU and named the new variable GRSHMPEU. *See* lines 1013-1024 of the preliminary comparison market program log. GRSHMPEU was carried forward to the margin program, where it is converted using exchange rates that have been merged with the U.S. sales data. *See* line 2318 of the preliminary margin program log. We note that the petitioners' confusion on this point may have resulted from our separate conversion of Euro-denominated variables to Thai baht on the date of the comparison market sale for purposes of the cost test which is also our normal practice. *See* line 385 of the comparison where we make  $\&HMGUP = (GRSUPREU * \&EXRATEEU)/\&EXRATE$ .

##### **Comment 12: Unreported Sales to Puerto Rico**

The petitioners argue that the Department must apply an adverse inference of facts available for

Kuiburi's failure to report its sales to Puerto Rico because (1) Kuiburi failed to disclose the omission in any submission provided prior to verification, and (2) according to petitioners, the Department had previously instructed Thai respondents that Puerto Rico is a part of the customs territory of the United States for reporting purposes and Kuiburi thus may not claim inadvertence. The petitioners state that as an adverse inference the Department should assign the highest transaction margin calculated for any other U.S. sale reported by Kuiburi to the unreported quantity of sales to Puerto Rico.

### **Department's Position:**

Kuiburi reported the aggregate quantity and value of its sales to Puerto Rico on the record in its section A response.<sup>77</sup> The Department did not ask about Kuiburi's reporting of these sales separately from other sales to the United States. The petitioners acknowledged this information was on the record in their pre-verification comments submitted on February 11, 2004. At verification, the Department confirmed that Kuiburi did not include the sales to Puerto Rico in its U.S. sales database submitted with the section C response. Given that the aggregate amount of these sales had already been reported in the section A response and the sales Puerto Rico represented a very small percentage of the total volume of U.S. sales, at verification the Department requested that Kuiburi provide complete information on its POR sales to Puerto Rico.<sup>78</sup> Kuiburi cooperated fully. The Department verified the information and, in the interest of completeness, the Department included the sales to Puerto Rico in the preliminary results.

With regard to the petitioners' argument that Kuiburi cannot claim inadvertence in failing to report the sales to Puerto Rico in its section C submission because the Department previously instructed respondents that sales to Puerto Rico were reportable, we note that the Department's instructions on this matter were issued during the investigation. Kuiburi did not participate in this proceeding until the third administrative review. The fact that Kuiburi reported sales to Puerto Rico as a separate market in its section A response supports the company's assertion at verification that it had not known that such sales were reportable.<sup>79</sup> Department verifiers found no evidence to the contrary.

Considering the circumstances discussed above, we find no grounds for applying facts available to Kuiburi's sales to Puerto Rico in the final results. We note that the U.S. Court of International Trade supported a similar decision by the Department in a previous administrative review of CPF from Thailand to accept information on sales previously not reported in the sales database and not to apply adverse inferences pursuant to the discovery of these sales. *See Maui Pineapple Company, Ltd., Plaintiff, v. United States, Defendant, and Dole Food, Inc. Dole Packaged Foods Company, and Dole*

---

<sup>77</sup> See Kuiburi Section A Response, October 8, 2003 at Exhibit A-1.

<sup>78</sup> See Memorandum to the File Re: Verification of the Sales and Cost Information submitted Kuiburi, Fruit Canning, Co., Ltd. in the Eighth Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand (April 28, 2004) (Kuiburi Verification Report) at 8.

<sup>79</sup> *Id.*

Thailand, Ltd., Defendant Intervenors, 264 F. Supp. 2d 1244; 2003 Ct. Intl. Trade. Given that the Department was able to obtain and verify all the relevant sales information for the shipments to Puerto Rico, we will continue to include these sales in our final results.

### **Comment 13: Ocean Freight Currency Denomination**

The petitioners argue that the ocean freight expenses reported by Kuiburi (INTFRTT and INTNFRU) in the sales databases should be denominated in the currency in which these expenses were incurred by Kuiburi. They note the Department's finding at verification that freight forwarders invoiced Kuburi for ocean freight in Thai baht, but that Kuiburi reported these expenses in U.S. dollars. The petitioners stated that the Department should convert the reported dollar-denominated ocean freight back to Thai baht and then re-convert the charges to U.S. dollars on the U.S. date of sale.

#### **Department's Position:**

As discussed in the verification report, we found that Kuiburi based its reported ocean freight on the actual U.S.-dollar rate paid by its freight forwarder.<sup>80</sup> However, the freight forwarder charged Kuiburi for this expense in Thai baht. The U.S.-dollar ocean freight amount was converted to Thai baht on the invoice. Therefore, for these final results, we have used the actual Thai baht amount paid by Kuiburi for ocean freight where such information is on the record. For details, *see* Analysis Memorandum for Kuiburi Final Results (Analysis Memorandum) at 2 and Attachment III. For all other sales for which ocean freight was incurred, we have left the amount as reported in U.S. dollars because we do not know the exact day on which the freight invoices were issued and, thus, would not know which exchange rate to use to convert them to Thai baht. Because the U.S. dollar amount also appeared on the freight invoice, we consider the reported dollar amount to be a reasonable substitute for the Thai baht charge that Kuiburi actually paid.

### **Comment 14: Credit Expense**

The petitioners ask that the Department modify either the U.S. dollar or the Euro short-term interest rate used to calculate credit expenses for sales in the respective currencies in the preliminary results because the two interest rates used in the preliminary results are not comparable. The petitioners note the Department obtained its Euro interest rate from a source (the IMF Financial Statistics) that provides an analogous U.S. dollar interest rate. They note the difference between the IMF Financial Statistics lending rate for U.S. dollars and the U.S. dollar interest rate used by Kuiburi. In order to ensure consistency in the handling of Euro-denominated sales versus U.S.-dollar sales, the petitioners suggest that the Department either replace Kuiburi's U.S. interest rate with the analogous rate from the IMF

---

<sup>80</sup> See Kuiburi Verification Report at 10.

Financial Statistics or, alternatively, modify the Euro rate.<sup>81</sup>

### **Department's Position:**

The Euro "lending rate" provided in Attachment VIII in the Analysis Memorandum is the best publicly available interest rate applicable to our calculation of credit expense. To change the Euro-denominated rate in the manner suggested by the petitioners would result in a rate that was not "reasonably available" as called for by Policy Bulletin 98.2. However, we have reviewed the U.S.-dollar rate provided by Kuiburi and have determined that it is not the best publicly available surrogate interest rate.<sup>82</sup> Tracking Kuiburi's surrogate U.S. interest rate to the Federal Reserve web page cited in Kuiburi's Exhibit B-3 of section B, we determined that this rate was a POR average of interest rates of short-term (three month) negotiable promissary notes issued by companies and sold to investors.<sup>83</sup> Consistent with *LMI-La Metalli Industriale, S.p.A. v. United States*, 912 F.2d 455 (Fed. Cir. 1993) (*LMI*) and *Policy Bulletin 98.2 (Policy Bulletin)*, the Federal Reserve's commercial and industrial rate for loans maturing between 30 and 365 days is our preferred surrogate rate when a company had no U.S. dollar-denominated short-term borrowing. Therefore, we have recalculated Kuiburi's credit expense for U.S. dollar sales, using a POR average interest rate of 3.47 percent. See Analysis Memorandum at 2 and Attachment IV

### **Comment 15: Net Realizable Value (NRV) Calculation**

For purposes of allocating Kuiburi's fruit costs, the petitioners argue that the Department should use the NRV ratio from the earliest five-year period from which full data are available. In this regard, the petitioners contend that the ratio calculated from data submitted in Kuiburi's Supplemental Questionnaire Response (January 20, 2004) (Supplemental) at Exhibit S-14(a) for the period 1997-2001 is the applicable ratio.

### **Department's Position:**

In its questionnaire, the Department defined NRV as the value of annual production of each joint product (*i.e.*, annual production quantity times average annual per-unit sales price to unaffiliated parties during the same year) less the costs incurred after the split-off point related to each specific joint product (the separable costs). The 1997-2001 ratio cited by the petitioners from Exhibit S-14(a) is based on relative revenues alone and does not take into account separable costs. At verification, we determined that 1998 was the first full fiscal year for which Kuiburi had a complete record of separable

---

<sup>81</sup> See Kuiburi Section B Questionnaire Response (October 31, 2003) (Section B) at B-31 and Exhibit B-3 for a description of the short-term interest rate used by Kuiburi. See Analysis Memorandum for Kuiburi Fruit Canning Co., Ltd. (April 1, 2004) at 5 and Attachment VIII for Euro interest rate.

<sup>82</sup> See Section B at B-31 and Exhibit B-3.

<sup>83</sup> Kuiburi cited <http://www.federalreserve.gov/releases/h15/data/m/fp3m.txt>

costs. Therefore, we have used the ratio based on revenue and cost data from the period 1998 - 2002. See Supplemental at Exhibit S-14(b).

**Comment 16: Discrepancies in Gross Unit Price Calculations**

The petitioners note that for certain observations in the U.S. database, the total quantity in kilograms (QTY2U) appears to be incorrectly calculated and, consequently, the reported unit price per kilogram (GRSUPR2U) is also wrong. The petitioners observe that QTY2U should equal the total quantity in cartons (QTY1U) times the kilos per carton (KGUNIT). In turn, unit price per kilogram is equal to the total price of the line item (GRSUPR1U) divided by QTY2U. The petitioners cite specific observations where this computation has been correctly made.

**Department's Position:**

The apparent discrepancies noted by the petitioners in specific observations in the U.S. database are due to rounding. We reviewed the original U.S. sales data submitted in the Excel format by Kuiburi and found that the reported amounts of kilos per carton (KGUNIT) for the specific observations cited by the petitioners were reported out to three decimal places. When we multiplied QTY1U by the KGUNIT calculated out to three decimal places, we obtained the QTY2U amounts reported by Kuiburi. Therefore, the unit prices of the cited observations are correctly reported.

**Comment 17: Direct and Indirect Selling Expense for Euro-Denominated Sales**

The petitioners note that the Department has already "recalculated" billing adjustments and credit expenses for Euro-denominated sales by treating these charges as Euro-denominated and converting them to U.S. dollars on the U.S. date of sale. The petitioners argue that Department should treat bank charges (BANKT) as well as indirect selling expenses (INDIRST) for Euro-denominated sales in the same manner and modify the calculation programs accordingly, given that both bank charges and indirect selling expenses are computed by multiplying the gross unit price by a specific ratio.

**Department's Position:** We agree with the petitioners and have revised the programs accordingly. See Analysis Memorandum at 2.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

AGREE\_\_\_\_ DISAGREE\_\_\_\_

---

Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

---

Date