

Date of Sale

TIPCO, SAICO, and Malee requested that the Department determine whether their proposed date of sale methodology (*i.e.*, invoice date) was appropriate based on information contained in their respective questionnaire responses. After an analysis of this information, additional data presented by the respondents concerning this issue, as well as the arguments raised by the petitioners, we instructed TIPCO, SAICO, and Malee to report the original order date as the date of sale unless there was a change to the essential terms of sale (*i.e.*, price and/or quantity) prior to the date of invoicing. For those sales where there was a modification to the price and/or quantity, we asked these respondents to report the invoice date as the date of sale. The invoice date was selected, rather than the actual date of the modification, in order to reduce the administrative burden claimed by respondents in obtaining the actual order modification date.

In response to the Department's instructions, respondents have argued that both the buyer and seller do not consider the terms to be fixed until the date of shipment and that the Department should accept the date of invoice as the date of sale for all sales. The questionnaire responses, which indicate that the contracts or initial agreements do not establish that the terms are binding and that either party can change the order at any time up to the invoice date, support this assertion.

The Department considers the date of sale to be the date upon which all material terms of the contract for sale are set, especially price and quantity (see *General Electric Co. versus United States*, Slip Op. 93-55 at 4 (CIT, April 21, 1993); *Toho Titanium Co. versus United States*, 743 F. Supp. 888, 890 (CIT 1990)). Our review of the record in light of the arguments subsequently presented by the respondents indicates that the material terms of any order can be changed prior to the invoice date. Further, we note that, for a significant number of sales during the POI, price or quantity did change prior to the invoice date. Therefore, upon further examination of the facts of this issue, the Department has determined that the invoice date is the appropriate date of sale for all TIPCO, SAICO, and Malee sales.

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 noted in the "Case History" section above, Dole has reported all of its U.S. sales of subject merchandise, including those of Philippine origin, for each product category where Dole had shipments from both Thailand and the Philippines to the United States during 1993. 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 POI, we have weighted the dumping margin for each product category by the ratio of the 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 (*i.e.*, July 19 through December 31, 1993). We used the July-December accounting periods as the basis for establishing the ratio rather than the entire 1993 period because Dole's average inventory turnover rate is reported to be six to seven months.

For certain U.S. and German market sales, Dole reported its re-sale of subject merchandise purchased from unrelated producers in Thailand. Section 773(a)(1) of the Act (1994) specifies that FMV be calculated based on sales of "such or similar merchandise". The term "such or similar merchandise" is defined by section 771(16) of the Act (1994) as merchandise which is produced in the same country and by the same person as the merchandise which is the subject of the investigation. Therefore, we cannot use sales of CPF produced by persons other than Dole when calculating FMV. Accordingly, we have excluded all of Dole's German sales of subject merchandise it did not produce from our calculation of FMV.

Similarly, in calculating USP, we also determined that it is appropriate to exclude all of Dole's U.S. sales of the subject merchandise it did not produce. However, because we were unable to determine which particular U.S. sales were of merchandise produced by firms other than Dole, we have weighted the dumping margin for each product category identified by Dole. We weighted the dumping margin by applying a ratio of the volume of Dole-produced product to the combined total volumes of Dole-produced and purchased product shipped to the United States during 1993, allowing us to calculate a margin based on an estimated quantity of Dole-produced product. We note that this weighing period is different than that used to weigh Thai- and non-Thai produced merchandise. However, the only information available for purposes of

weighing these sales was for the whole calendar year 1993.

In addition, we preliminarily determined that Dole should have reported as U.S. sales certain shipments made during the POI which Dole claimed were pursuant to a long-term agreement negotiated prior to the POI (see *Toho Titanium Co. versus United States*, 743 F. Supp. 888, 891 (CIT 1990); *General Electric Co. v. United States*, Slip. Op. 93-55 at 4 (CIT, April 21, 1993)). Based upon our analysis of the agreement, it appears that the price terms are indefinite and subject to Dole's control. Because these shipments were not reported, we are applying the average of all positive margins to one-half of the maximum quantity specified in the agreement to be purchased during 1994 (*i.e.*, we have divided the yearly maximum quantity in half to correspond to our six-month POI). Dole will be required to report these shipments for the final determination.

United States Price

For TIPCO, SAICO, and Malee, we based USP on purchase price (PP), in accordance with section 772(b) of the Act (1994), because all of each company's U.S. sales to the first unrelated purchaser took place prior to importation into the United States and exporter's sales price (ESP) methodology, in those instances, was not otherwise indicated.

SAICO failed to report certain U.S. sales in its revised Section C response which we determined to be sales made during the POI. We included these sales, as they were included in SAICO's initial submission of Section C response, and made appropriate adjustments for charges based on the information available (see Concurrence Memorandum, dated January 4, 1995).

For Dole, where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act (1994). For a small number of Dole's U.S. sales which took place prior to importation into the United States, we preliminarily determine USP to be based on ESP because: (1) The merchandise was introduced into the physical inventory of Dole's U.S. warehouses after importation and, thus, was not shipped directly from the cannery in Thailand to the unrelated U.S. customer; (2) all the selling activities associated with Dole's U.S. sales, including these sales, are handled in the United States through Dole's U.S. sales office by unrelated brokers located in the United States; and (3) it appears that Dole's canneries in Thailand have no control over the prices