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A-549-813  
2<sup>nd</sup> Sunset Review  
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February 27, 2007

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for Final Results of Full Sunset  
Review of the Antidumping Duty Order on Canned Pineapple Fruit  
from Thailand

### Summary

On October 27, 2006, the Department of Commerce (“the Department”) published the notice of preliminary results of the full sunset review of the antidumping duty order on canned pineapple fruit (“CPF”) from Thailand (71 FR 62994 ) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). We provided interested parties an opportunity to comment on our preliminary results. On December 18, 2006, we received a case brief on behalf of Respondents in response to the Department’s Preliminary Results.<sup>1</sup> On December 22, 2006, we received a rebuttal brief on behalf of the domestic interested party, Maui Pineapple Company, Ltd. (“Maui”). No hearing was requested by parties. As a result of this sunset review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the “Final Results of Review” section of this memorandum.

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<sup>1</sup> Respondents in this proceeding are The Pineapple Processors’ Group, The Thai Food Processors’ Association, Thai Pineapple Canning Industry Corp., Ltd. (“TPC”), Malee Sampran Factory Public Co., Ltd. (“Malee”), Siam Agro Industry Pineapples and Others Public Co., Ltd. (“SAICO”), Great Oriental Food Products Co. (“Great Oriental”), Thai Pineapple Products and Other Fruits Co., Ltd. (“THAICO”), The TIPCO Foods (Thailand) PCL (“TIPCO”), Pranburi Hotei Co., Ltd. (“PHC”), and Siam Fruit Canning (1988) Co., Ltd. (“SIFCO”).

## Background

The Department published the notice of preliminary results of the full sunset review of the antidumping duty order CPF from Thailand, pursuant to section 751(c) of the Act. See Canned Pineapple Fruit from Thailand: Preliminary Results of the Full Sunset Review of the Antidumping Duty Order, 71 FR 62994 (October 27, 2006) (“Preliminary Results”), and the accompanying Issues and Decision Memorandum for the Full Sunset Review of the Antidumping Duty Orders on Canned Pineapple Fruit from Thailand (Preliminary Decision Memorandum). In our Preliminary Results, we determined that revocation of the order would likely result in continuation or recurrence of dumping with a margin of 51.16 percent for SAICO, 41.74 percent for Malee, and 24.64 percent for “all others,” the rates from the original investigation.

We have analyzed the arguments of the interested parties submitted in case and rebuttal briefs following the preliminary results. The sole issue raised by the parties pertains to the magnitude of dumping margins likely to prevail if the order were revoked.

## Interested Party Comments

### Comment 1: Magnitude of the dumping margin likely to prevail

Respondents disagree with the Department’s policy of using the margins from the original investigation in determining the magnitude of the margin likely to prevail were the order revoked. See Respondents’ December 18, 2006 Case Brief, at 7 - 9. Respondents argue that when a number of reviews have been conducted, indicating more recent and more probative data, the Department should consider the more recent rates in its determination. Respondents state that the Department, in accordance with its policy, will not consider any changes in the level of dumping found unless those changes result in an increase in the dumping margin found in the investigation, and thus the margin can never go below the margin established in the investigation. Furthermore, Respondents argue, companies that did not participate in the investigation are given rates that are dependent on sales outside of their control rather than based on their own data. Respondents state that the Department’s policy is unreasonable and should be revised.

Respondents contend that margins found in the more recent reviews are more probative of the margins likely to prevail were the order revoked than are margins determined ten years ago when “. . . specific factors, such as an oversupply of fresh pineapple fruit, caused worldwide prices of canned pineapple fruit to decline below cost of production.” Id. at 8. Respondents argue that there is no evidence that those factors are continuing to affect the market today or will affect markets in the foreseeable future.

Respondents recommend that the Department determine the following with respect to the magnitude of margins likely to prevail. For companies that have been revoked, the Department should notify the ITC that they are no longer subject to the order, or have a likely margin of zero, and are not included among “all others.” For companies that have participated in administrative

reviews and were not subject to adverse facts available (“AFA”), the Department should use an average of all rates for that company derived from all review segments of the proceeding in which that company participated. For Vita Food Factory (1989) (“Vita”), TPC, and Tropical Food Industries, Respondents propose that the Department use an average of each company’s non-AFA margins in administrative reviews. For SAICO, which was only involved in the original investigation, in which it received a margin based on AFA, Respondents suggest the Department use an average of non-AFA margins for other parties from the second administrative review through the present. For companies that have not participated in administrative reviews, Respondents argue, the margin should be based on the average non-AFA margins found in the last eight administrative reviews.

In sum, Respondents suggest the following margins:

Dole	Excluded or 0
KFC	Excluded or 0
SFC	Excluded or 0
TIPCO	Excluded or 0
Malee	4.03 percent
Prachuab	7.02 percent
SIFCO	3.64 percent
Trofco	4.02 percent
Vita	6.93 percent
TPC	6.82 percent
SAICO	3.16 percent
All Others	3.16 percent

Maui argues that there is no justification for the Department to reconsider its Preliminary Results. Maui notes that Respondents did not challenge the Department’s determination in the Preliminary Results that dumping is likely to continue if the order were revoked. Instead, Respondents claim that the margins of dumping likely to occur were the order revoked would not be as high as those determined in the original investigation. See Maui’s Rebuttal Brief, dated December 22, 2006, at 2 - 4. Maui argues that Respondents’ selection of projected margins is meaningless and inconsistent with the Department’s policy and practice. Maui opposes Respondents’ methodology of “cherry picking” margins that are most favorable to the companies, and ignoring the AFA rates calculated by the Department. Id. Maui also contests Respondents’ argument that reviews conducted more recently are more probative of the likely margin than the original determination. Maui contends that Respondents’ export behavior while under the discipline of an order is in no way more probative than margins calculated without the discipline of an order.

Maui notes that the Department normally provides company-specific margins from the investigation for each company regardless of whether the margin was calculated using a company’s own information, or based on facts available. Finally, according to Maui, for companies not specifically investigated, or for companies that did not begin shipping until after

the issuance of the order, the Department provides a margin based on the “all others” rate determined in the investigation. In addition, Maui contests Respondents’ assertion that “the margin can never go below the margins announced in the original investigation.” Maui notes that the Department may select a more recently calculated margin, where dumping margins have declined over the life of the order, and imports have remained steady or have increased. However, consistent with the Department’s policy, the selection of a more recent rate is not applicable in this case. Maui argues that the Department should rely on the margins established in the original investigation, and reject Respondents’ arguments.

#### Department’s Position:

Section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the order is revoked. The magnitude of the dumping margin likely to prevail were the order to be revoked is the margin determined in the original investigation, because that is the rate that best reflects the behavior of exporters without the discipline of an order in place. See Uruguay Round Agreement Act, Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103 rd Cong., Sess. at 889 (1994).

We disagree with Respondents’ statement that the Department never reports lower dumping margins than those determined in the original investigation. The Department may find it appropriate to provide to the ITC a more recent rate where dumping margins have decreased over the life of the order, and imports have remained steady or have increased. In the sunset review of Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, for example, the Department determined that a lower margin from a more recent administrative review, for the participating company, was the appropriate margin to report to the ITC. See Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands, 65 FR 65294 (November 1, 2000). See also Tapered Roller Bearings from The People’s Republic of China: Notice of Final Results of Full Sunset Review, 65 FR 11550 (March 3, 2000).

This is not the case with respect to CPF. Data provided by respondents in their substantive comments, as well as margins from published Federal Register notices, indicate a pattern of decreasing exports and/or rising margins for non-revoked companies. Furthermore, we note that, in the Preliminary Results, we examined statistics compiled from the ITC’s Trade Data Web and found that the total import volumes of CPF from Thailand over the past five years have remained below their pre-order levels. Therefore, we have no basis on which to determine that a more recent rate is more probative of the margin likely to prevail. In addition, although Respondents claim that specific factors, such as an oversupply of fresh pineapple fruit, caused worldwide prices of CPF to decline below cost of production at the time the final determination was issued, they have provided no evidence to support their claim. Accordingly, we are determining that the rates from the investigation represent the magnitude of dumping that is likely to prevail if the order were revoked.

We agree with Respondents that the Department should provide to the ITC the names of all companies revoked from the order. Companies that have been revoked are: Dole Food Company Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, “Dole”), Kuibiri Fruit Company, Ltd. (“KFC”), Tipco Foods (Thailand) Public Co. Ltd. (“Tipco Foods”/“TIPCO”), and Siam Fruit Products Company, Ltd., (“SFP”).

Final Results of Review

In our Preliminary Results we determined that revocation of this order is likely to lead to continued dumping. In their case brief, Respondents did not challenge the Department’s determination. Respondents instead focused on projected margins likely to prevail were the order revoked. Based on information on the record, and review of the case briefs and rebuttal briefs provided by parties, we find, as we did in our preliminary determination, that revocation of the order is likely to lead to continued dumping, and the rates from the original investigation represent the magnitude of dumping that is likely to prevail in the event of a revocation of the order.

We determine that revocation of the order on CPF from Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturer/Producer/Exporter	Weighted-Average Margin (percent)
Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO)	51.16
Malee Sampran Factory Public Co., Ltd. (Malee)	41.74
The Thai Pineapple Public Co., Ltd. (TIPCO)	Revoked <sup>2</sup>
Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole)	Revoked <sup>3</sup>
Siam Food Products, Ltd. (SFP)	Revoked <sup>4</sup>
Kuibiri Fruit Canning Company, Ltd. (KFC)	Revoked <sup>5</sup>
All Others	24.64

<sup>2</sup> See Notice of Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit from Thailand, 69 FR 50164 (August 13, 2004).

<sup>3</sup> Id.

<sup>4</sup> See Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (December 13, 2002).

<sup>5</sup> See Notice of Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit from Thailand, 69 FR 50164 (August 13, 2004).

Recommendation

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

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

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David M. Spooner  
Assistant Secretary  
for Import Administration

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(Date)