

FINAL RESULTS OF REDETERMINATION PURSUANT TO
UNITED STATES COURT OF INTERNATIONAL TRADE REMAND ORDER

MAUI PINEAPPLE COMPANY, LTD.,

v.

UNITED STATES

and

DOLE FOOD COMPANY, INC., DOLE
PACKAGED FOODS COMPANY, and

DOLE THAILAND, LTD.,

Court No. 01-03-01017

Summary

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the United States Court of International Trade (the CIT) in Maui Pineapple Company, Ltd. v. United States and Dole Food Company, Dole Packaged Foods and Dole Thailand (collectively, Dole), Slip Op. 03-42 (April 17, 2003), Court No. 01-03-01017 (Maui Pineapple). This remand pertains to several issues involving Dole in the Department's fifth administrative review of the antidumping duty order on canned pineapple fruit from Thailand, for the period July 1, 1999, through June 30, 2000.

Background

On October 17, 2001, the Department published in the Federal Register its final results in the above-referenced administrative review. See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 66 FR 52744 (October 17, 2001) (Final Results). The CIT ordered the Department to: (1) explain its choice of a surrogate interest rate used for Dole's imputed credit expense and how its selection of this rate was consistent with *LMI-La Metalli Industriale, S.p.A. v. United States*, 912 F.2d 455 (Fed. Cir. 1993) and *Policy Bulletin*

98.2, and (2) determine whether certain language in the final margin program constitutes a clerical error and, if so, correct it.

On June 2, 2003, we released our draft results of redetermination to Dole and to the petitioners in this proceeding, Maui Pineapple Company, Ltd. and the International Longshoremen's and Warehousemen's Union. On June 6, 2003, we received comments on our draft redetermination from Dole. On June 9, 2003, we received rebuttal comments from the petitioners. We have addressed all of these comments in the Analysis of Comments Received section, below.

Issue 1: The Calculation of Dole's Imputed Credit Expenses

The plaintiff in this case, Maui Pineapple Company Ltd., argued that, although Dole did not have any short-term borrowings in the Canadian market, the average bank prime lending rate used by the Department in the Final Results, was not an appropriate surrogate rate in this case. The plaintiff requested that the CIT should “direct Commerce to revise its calculations to substitute a Canadian dollar interest rate that is consistent with Dole’s actual creditworthiness.” (Plaintiff’s Public Brief at 34.) Dole’s creditworthiness, according to the plaintiffs, is demonstrated by the rate it receives for U.S.-dollar borrowing. (Plaintiff’s Proprietary Brief at 32.) The plaintiff has not questioned the propriety of the Department’s policy of using publicly available information when the respondent has no history of actual short-term borrowing in a given market. However, the plaintiff asserted that the Department has not considered whether the published prime rate from the *Economist* that the Department used in its Final Results was reflective of Dole’s creditworthiness. The CIT has remanded this issue to the Department with instructions to more adequately address the plaintiff’s arguments and explain how the

rate chosen is reflective of Dole's "usual and reasonable commercial behavior." (Maui Pineapple, Slip Op. 03-42 at 35.)

In accordance with the CIT's instructions, the Department has considered the plaintiff's arguments regarding the interest rate used for Dole's imputed credit expense. 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 Department has concluded that an alternative surrogate interest rate would be more appropriate.

In the 1990 *LMI* ruling, the Court of Appeals for the Federal Circuit (CAFC) overturned the Department's use of home market borrowing rates to impute U.S. credit expenses because the respondent had actual U.S. dollar borrowings at a much lower interest rate, and ruled that the cost of credit "must be imputed on the basis of usual and reasonable commercial behavior."¹ In ruling on the specific facts of *LMI*, the CAFC set forth the following general principles: "the imputation of credit cost . . . is a reflection of the time value of money," the imputed cost "must correspond to a . . . figure reasonably calculated to account for such value during the gap period between delivery and payment," and should conform with "commercial reality."² The Department's *Policy Bulletin* was written with the intention of transforming the general principles established by *LMI* for imputing U.S. credit costs into a consistent Department practice that could be applied both to U.S. and foreign market imputed short-term credit costs.

^{1/} *LMI*, 912 F.2d at 460-61.

^{2/} *Id.*

As the CIT has noted in Maui Pineapple, the *Policy Bulletin* is specific with respect to the choice of surrogate interest rates for U.S. short-term credit when respondents have no actual U.S. dollar short-term borrowing. In the Discussion section, the *Policy Bulletin* states:

In developing a consistent, predictable policy establishing a preferred surrogate U.S. dollar interest rate in all cases where respondents have no U.S. dollar short-term loans, we have employed three criteria: 1) the surrogate rate should be reasonable; 2) it should be readily obtainable and predictable; and 3) it should be a short-term interest rate actually realized by borrowers in the course of “usual commercial behavior” in the United States.³

In *Carbon Steel Plate from Sweden* and in *Carbon Steel Flat Products from Australia*, the Department selected the average short-term lending rates calculated by the Federal Reserve as surrogate U.S. interest rates.⁴ Each quarter, the Federal Reserve collects data on loans made during the first full week of the mid-month of each quarter by sampling 340 commercial banks of all sizes. The sample data are used to estimate the terms of loans extended during that quarter at all insured commercial banks. These Federal Reserve rates meet the three criteria discussed above. They represent a reasonable surrogate for respondents’ U.S. dollar borrowing rates because they are calculated based on a variety of actual dollar loans to actual U.S. customers. Furthermore, they have none of the flaws of the other options discussed above. Finally, they are readily available to all interested parties and easy to obtain.

The *Policy Bulletin* specifies in its Statement of Policy that:

For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve’s weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.

^{3/} The use of investment return or deposit rates is inappropriate, as stated in *Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review*, 60 FR 38542 (July 27, 1995) at Comment 8 and in *Final Determination of Sales at Less Than Fair Value; Antidumping Duty Investigation of Stainless Steel Angle from Japan*, 60 FR 16608 (March 31, 1995), at Comment 7. Investment return or deposit rates are not lending rates and, therefore, are not a reasonable measure of the value of the loans extended by the respondent (the seller) to its customers.

^{4/} *Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Antidumping Duty Administrative Review*, 61 FR 15772, 15780 (April 9, 1996); *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049, 14054 (March 29, 1996).

Regarding the selection of surrogate rates for the calculation of foreign currency imputed credit when the respondent has no short-term borrowings in the currency of the transaction, the *Policy Bulletin* is less specific, but establishes some basic criteria. In the Discussion section, the *Policy Bulletin* states:

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.” In any case, we note that cases where a respondent has no short-term borrowings in the currency of its foreign market transactions are very rare.

In the Statement of Policy section, the *Policy Bulletin* simply states the following:

For 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.

In the instant case, the CIT has asked the Department to explain how the *Economist* prime rate used in the Final Results to impute credit expense for Dole’s Canadian-dollar transactions satisfies the criteria for foreign market sales set forth in *LMI* and the *Policy Bulletin* in light of the arguments presented by plaintiff that Dole’s actual credit history in the United States demonstrates that Dole is a “most favored” borrower that is qualified for lower rates. (Plaintiff’s Proprietary Brief at 32).

In the questionnaire issued to Dole for this administrative review, the Department requested that Dole provide the following information for foreign market credit expense:

Report the unit cost of credit computed at the actual cost of short-term debt borrowed by your company in the foreign market. If you did not borrow short-term during the period of review, use a published commercial short-term lending rate. (Questionnaire at B-20, Public Document No. 19)

The *Economist* prime rate offered by Dole as a surrogate meets the requirements of the questionnaire and satisfies the *Policy Bulletin* requirement that a surrogate rate be “readily obtainable.” The *Economist* rate is also a reasonable surrogate to the extent that it reflects an actual cost of short-term borrowing in the Canadian dollar market. During the administrative review, the plaintiff did not propose that the Department use any alternative published rates, but instead suggested that the Department impute a Canadian rate based on the spread between Dole’s actual short-term interest rates in the U.S. market and a published U.S. prime rate.⁵ Since our clear preference is to use published rates, and no applicable alternative published rates were considered at that time, for the Final Results we used the *Economist* rate submitted by Dole. However, in response to the CIT’s instructions that the Department explain how the *Economist* prime rate is consistent with *LMI* and the *Policy Bulletin*, we have considered whether alternative publicly available surrogate rates would be more representative of the respondent’s “commercial reality” and “usual and reasonable commercial behavior.” (Maui Pineapple, Slip Op. 03-42 at 35.) In this regard, we have found other surrogate interest rates that reflect the cost of short-term borrowing in Canadian dollars during the period of review (POR). These include statistics compiled and published by the Bank of Canada, Statistics Canada, and the International Monetary Fund (IMF).

We have determined not to continue to use the *Economist* prime rate submitted by Dole. First, we are concerned that the *Economist* rate is not based on a sufficiently broad sample of actual lending rates and, therefore, is not as representative of usual commercial behavior as the referenced alternative

^{5/} Petitioners’ Case Brief, July 9, 2001 at 14, Proprietary Document No. 88.

sources. The *Economist* cites only one Canadian financial institution, the Royal Bank of Canada, as its source of the rate. Even if we were to decide that the prime rate was appropriate in this case, we might select another source, such as the IMF “lending rate” or the Bank of Canada “chartered bank administered interest rate: prime business,” as our source because those average rates are based on a larger, and thus more representative, sample of actual loans.

Our second concern with the *Economist* prime rate is that a prime rate does not reflect Dole’s usual commercial behavior, as plaintiff has argued. In the U.S. market, we have documented from the U.S. sales response⁶ that Dole’s usual commercial behavior would be to obtain short-term credit at less than the published prime rate. While we acknowledge that a company’s potential credit rating in one market cannot necessarily be inferred by its experience in another, in the case of Dole Canada we find that such an inference is reasonable, based on our knowledge that Dole Canada is an integral part of Dole Packaged Foods, Dole’s U.S./North American division responsible for the sale of canned pineapple.⁷ We obtained an indication of the level of integration between Dole Canada and Dole Packaged Foods during the fifth review verification, when Dole company officials demonstrated that the sales of Dole Canada are included in Dole Packaged Foods’ internal financial statements because it is considered part of the North American division, and noted that although Dole Canada is a separate legal entity, for management purposes it is considered part of Dole Packaged Foods.⁸ Our acceptance

^{6/} Dole Section C Questionnaire Response, November 6, 2000, at C-36 and Exhibit C-12, Proprietary Document No. 21

^{7/} See Dole Section A Response, Oct. 6, 2000 at A-10 through A-11, and Exhibits A-2, A-4, and A-18 for a description of the relationship between Dole Canada and Dole Packaged , Proprietary Document No. 8.

^{8/} See Memorandum from Constance Handley and Christopher Riker to Gary Taverman: Verification of the Sales and Cost Information in the Response of Dole Food Company, Inc., Dole Packaged Foods Company and Dole

of the inference of Dole Canada's ability to obtain short-term credit is based on these particular record facts regarding this respondent.

Having considered the shortcomings of the *Economist* prime rate with respect to the criteria laid out in *LMI* and the *Policy Bulletin*, 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 note 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 have 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.⁹ We selected this rate because, among our choices, we believe 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.¹⁰ It notes that "{m}any companies use commercial paper to raise cash for current

Thailand Ltd. in the 1999 - 2000 Administrative Review of Canned Pineapple Fruit from Thailand (April 2, 2001) at 26, Proprietary Document No. 68.

^{9/} This rate was obtained from the Bank of Canada website at <http://www.bankofcanada.ca/en/rates.htm>.

^{10/} Federal Reserve Release "Commercial Paper" at the Federal Reserve website, <http://federalreserve.gov/releases/>.

transactions, and may find it to be a lower-cost alternative to bank loans.”¹¹ *Barrons Dictionary of Accounting Terms* notes that commercial paper is “a loan of a financially strong company” with interest rates generally below prime.¹² The Bank of Canada also offers statistics on 90-day commercial paper, but we selected the 30-day rate as more representative of Dole Canada’s payment terms.¹³

We calculated a simple period-of-review-average of twelve monthly “prime corporate paper rates” from the Bank of Canada equal to 5.15 percent and applied this as our surrogate interest rate in the calculation of Dole’s credit expense for Canadian dollar transactions.¹⁴

Issue 2: Correction of Clerical Error

The plaintiff alleges that a clerical error exists in the programming language of the Dole margin program and argues that the Department should correct it as part of the remand redetermination. (Plaintiffs's Public Brief at 34.) The CIT has directed the Department to determine whether an error exists and make necessary corrections.

The plaintiff states that the following language in the program is incorrect:

TOTINDU=(DINVCARU+INVCARU*THAILR)+DINDIRSU+INDEXPU;

The plaintiff argues that both inventory carrying costs incurred in the country of exportation (DINVCARU) and inventory carrying costs incurred in the United States (INVCARU) are

^{11/} Id.

^{12/} Barron’s *Dictionary of Accounting Terms* (1995) at 76.

^{13/} See Dole Section B Questionnaire Response, November 6, 2000, at B-14 for a description of Dole’s payment terms, Proprietary Document No. 21.

^{14/} See Analysis Memorandum for Draft Remand Results, May 27, 2003 at Attachment 4.

denominated in Thai baht and, therefore, in order to correct the clerical error the parentheses must be changed as follows to convert both variables from baht to U.S. dollars:

$$\text{TOTINDU} = ((\text{DINVCARU} + \text{INVCARU}) * \text{THAILR}) + \text{DINDIRSU} + \text{INDEXPU};$$

After reviewing the programming language in question and the relevant variables, we are able to confirm that the plaintiff correctly identified this language as a clerical error and provided the appropriate correction. Our conclusion is based on our confirmation that the variables DINVCARU and INVCARU are both denominated in Thai baht in the margin program due to programming language that precedes the calculation of TOTINDU in which we correct inventory carrying costs to reflect a change in the cost of manufacture.¹⁵

In reviewing the program, we have discovered two other clerical errors in the Margin Program directly related to the one found by the plaintiff.¹⁶ First we discovered an error in the following language:

$$\text{DUSINDU} = (\text{DINVCARU} / \text{THAILR}) + \text{DINDIRSU};$$

Given that we have established that both DINVCARU and INVCARU are denominated in baht, and part of the purpose of this line in the program is to convert DINVCARU from baht to U.S. dollars, the correct language should be as follows:

$$\text{DUSINDU} = (\text{DINVCARU} * \text{THAILR}) + \text{DINDIRSU};$$

^{15/} See *Margin Calculation Program* at lines 1067-1068 attached to Analysis Memorandum for Dole Food Company, Dole Packaged Food and Dole Thailand, Final Results of the Fifth Administrative Review of Canned Pineapple Fruit from Thailand (October 9, 2001) (*Margin Program*), Proprietary Document No. 100 (Public Document No. 92).

^{16/} See *Margin Program* at line 1089, Proprietary Document No. 100.

In the interest of consistency, we have incorporated this additional correction in our recalculation along with the correction offered by the plaintiff.

Second, in recalculating the imputed credit expense for the comparison market, we discovered that we failed to account for missing pay dates although we stated in the Final Results Decision Memorandum that we would set all missing pay dates.¹⁷ Therefore, in our recalculation for the remand redetermination we have set to February 20, 2001 all pay date variables for which no actual dates were reported.

Analysis of Comments Received

As noted, Dole filed comments in response to our draft redetermination and the petitioners submitted rebuttal comments. We address each in turn, below.

Comments on Issue 1: Calculation of Dole's Imputed Credit Expenses

Dole argues that the Bank of Canada commercial paper interest rate in Canada is not an appropriate surrogate interest rate for the calculation of Dole Canada's imputed credit expense for Canadian-dollar transactions. It claims that there is no basis for the Department's assumption that Dole Canada would be able to issue 30-day commercial paper in Canada at the rates available to "major finance company participants." Dole argues that "{t}he ability of the parent company to borrow at a given rate in U.S. dollars does not equate to the ability of a subsidiary to borrow in a different currency in a different market." Dole asserts that at most "the relationship between Dole Canada and its parent would support using the parent company's actual cost of short-term borrowing in U.S. dollars."

^{17/} See Memorandum from Bernard T. Carreau to Faryar Shirzad: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand (October 9, 2001) at 7. February 20, 2001 is the starting date of the second Dole verification..

Dole also argues that the assumption that Dole, the parent company, could borrow by issuing commercial paper at rates available for a “financially strong company” is mistaken because it does not take into consideration Dole’s actual BBB negative credit rating from Standard and Poor’s during 1999-2000. Dole states that a “rating of BBB negative is barely investment grade, and in fact, did not allow Dole to borrow at the favorable rates available for issuers of commercial paper.” Dole asserts that its inability to obtain these favorable rates during the POR can be established by comparing its actual average U.S. short-term interest rates to average U.S.-dollar 30-day commercial paper rates for the period as reported by the Federal Reserve (5.71 percent).

Dole argues that the Department could address its concern that the *Economist* prime rate reflects only a limited sampling of interest rates by using the Bank of Canada average prime rate (Bank of Canada “Chartered bank administered interest rate: prime business”) in place of the *Economist* rate.

Alternatively, Dole suggests that an average of two Bank of Canada average interest rates, commercial paper and prime, would more accurately reflect the available commercial borrowing for a company such as Dole.

The petitioners argue that the Department properly determined that Dole’s originally reported surrogate Canadian-dollar rate was inappropriate for calculating Dole’s imputed credit expenses because it was unrepresentative of the rate that Dole and its affiliated companies could have obtained. The petitioners reject Dole’s positions that (a) there is no basis for assuming that Dole Canada would have been able to borrow at the Canadian-dollar commercial paper rate and (b) there is no basis for assuming that rates for a “financially strong company” would apply to Dole and its affiliates. The

petitioners state that the Department correctly concluded that the structural and operational integration of Dole Canada with Dole Packaged Foods allowed for a reasonable inference that the company's U.S. and Canadian borrowing experiences would be similar. They assert that the Department must ignore Dole's arguments that a different surrogate rate might have applied because these arguments are supported by selective and untimely submitted information, which the petitioners argue should be rejected from the record of this proceeding.

Department Position

We will retain the Bank of Canada commercial paper rate as our surrogate interest rate for the calculation of imputed credit expenses for Canadian dollar transactions based on the specific facts of the case. We are not persuaded by Dole's argument that the company's long-term credit rating during the POR is an indication that the company was unable to borrow at the favorable rates available for issuers of 30-day commercial paper. The BBB-credit rating issued by Standard & Poor's and placed on the record by Dole as an attachment to its comments on the Department's draft remand redetermination reflects Standard and Poor's' assessment of Dole's capacity to honor long-term financial obligations. The Department calculates imputed credit expense based on short-term borrowing rates and, thus, in selecting a surrogate interest rate, is more concerned with a company's capacity to meet its short-term obligations. We note that although Standard & Poor's and other firms issue separate ratings for companies' short term creditworthiness, Dole chose not to provide the Department with these more relevant ratings. In any event, in selecting a surrogate interest rate to calculate Dole's imputed credit expense in the

Canadian dollar market, we consider Dole's actual short-term U.S. borrowing history in the POR to be more relevant than an assigned credit rating. Therefore, based on the facts of the case, we regard Dole's actual average POR interest rate for U.S.-dollar denominated short-term borrowing to be our essential point of reference for the selection of a comparison market surrogate rate in this specific case.

In an attached proprietary memorandum, we consider the relationship of Dole's actual U.S. dollar interest rate to published average U.S. dollar interest rates, including the Federal Reserve's average prime rate and the Federal Reserve's average commercial and industrial rate, for loans maturing between a month and a year. *See* Memorandum from David Layton, Analyst to Charles Riggle, Program Manager: Analysis Memorandum for Final Remand Results (June 16, 2003) (Analysis Memorandum). The Federal Reserve's commercial and industrial rate is our preferred surrogate rate when a company had no U.S.-dollar denominated short-term borrowing, as explained in the *Policy Bulletin*.

The U.S. average commercial and industrial lending rate for loans maturing between 30 and 365 days is based on a relatively large basket of loan rates, all of which are lower than prime. In searching for a surrogate rate for Dole Canada, we sought a Canadian published rate equivalent to the Federal Reserve commercial and industrial average rate in the sense that it represents a broad sample of short-term lending experience. We also sought a published rate which we could defend as representative of Dole's "usual commercial behavior." The facts of this case demonstrate that Dole's usual commercial behavior regarding short-term borrowing is better reflected by its actual borrowing history than its long-term credit rating. Accordingly, we selected the Canadian commercial paper rate as the best available Canadian equivalent of the U.S. Federal Reserve commercial and industrial

average rate, in part because it is a common source of short term credit for larger corporations, and in part because it is a conservative reflection of Dole's average actual short-term rate in the United States. See Analysis Memorandum at 2.

In its comments, Dole suggests that a comparison of its actual POR-average U.S.-dollar short-term interest rate to the average U.S.-dollar 30-day commercial paper rates reported by the Federal Reserve establishes that Dole could not have obtained the favorable commercial paper rates we ascribe to it in Canada, and thus invalidates the Canadian dollar surrogate we have selected. (Dole comments at 3-4) We disagree. Our comparisons of the spread between U.S. prime and Dole's U.S. actual rate and the spread between Canadian prime and our selected Bank of Canada commercial paper rate indicates that the Canadian commercial paper rate is in fact conservative. See Analysis Memorandum at 2.

With regard to Dole's assertion that the relationship between Dole Canada and its parent, that we highlighted in the Draft Remand Results at 6-7, would at most "support using the parent company's actual cost of short term borrowing in U.S. dollars as a surrogate for its subsidiary's imputed credit expense in selling in the Canadian market," we note that use of a U.S.-dollar interest rate to impute Canadian-dollar credit expense would be inconsistent with the Department's practice pursuant both to *LMI* and the *Policy Bulletin*. The *Policy Bulletin* states that "{f}or purposes of calculating credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated." What we tried to do in this case is use a published Canadian-dollar interest rate which is equivalent to the rate that the Dole parent obtains in the United States in terms of (1) its applicability to a large corporate borrower such as Dole and (2) the position of Canadian commercial paper relative

to other published Canadian-dollar rates compared to the position of Dole's actual U.S.-dollar rate relative to selected published U.S.-dollar rates. *See* Analysis Memorandum at 2 and Attachment 1.

With respect to Dole's suggestion that we adjust the Canadian commercial paper rate by calculating an average of that rate with the published Canadian prime rate, we believe this would unnecessarily distort the calculation. Specifically, because the facts in the case demonstrate that Dole's actual U.S.-dollar short-term rate was at a given rate, and we also know that the spread between the published U.S. prime rate and Dole's actual U.S. rate is greater than the spread between the Canadian prime and the Canadian commercial paper rate, we do not believe it is appropriate in this case to use an average which factors in a prime rate. This would work against our intention to take into account Dole's commercial reality when deciding on the appropriate surrogate Canadian-dollar rate. Although, as Dole suggests, the *Policy Paper* does not explicitly rule out the creation of hybrid average rates, the Department establishes surrogate interest rates on a case-by-case basis with preference for published average short-term interest rates. Specifically, it remains our preference to use published average rates rather than rates that have been further manipulated because these published rates, as they are presented by the statistical services, reasonably reflect the respondent's commercial reality in this case.

In large part, the petitioners have supported the Department's approach regarding the imputed credit issue in the draft remand redetermination. With regard to the petitioners' suggestion that we reject Dole's submission of additional information on its creditworthiness (*i.e.* the Standard and Poor's long-term credit rating), we disagree. In order to fully comply with the Court's instructions that the Department explain how the selected surrogate interest rate for Dole Canada reflects Dole's usual

commercial behavior, the Department was obliged to consider public information not previously on the record, and Dole's submission.

Comments on Issue 2: Correction of Clerical Error

Dole notes that the Department, in the course of considering the clerical error allegation remanded by the Court, corrected several other clerical errors in the program including what Dole describes as "an unrelated error the Department discovered regarding the dates of payment for certain sales for which no actual payment was provided." (Dole's Comments at 4.) Dole states that the Department must also correct an error in the commission offset language of the margin program that the Department already considered and corrected in the sixth review. Dole notes that the Department agreed with both Dole and the petitioners that certain language related to commission and constructed export price offsets in the sixth review margin program was incorrect. (Dole's Comments at 5.) Dole argues that the Department should make the same correction in its recalculation of the margin for the remand redetermination.

In a footnote to their comments, the petitioners note that the issue of the offset language raised by Dole is not before the Department, as no party has contested the Department's offset programming language in the fifth review segment. (Maui's Comments at 3.) They contend that since the offset language "is not an obvious clerical error, but results from a post-appeal evolution of the Department's policy, the Department should make no change in its remand redetermination for commission offsets."

However, having made the general statement that the issue of the offset language is not an issue before the Department in this segment, the petitioners also state that the proposed change to the offset

language as implemented in the sixth review is incorrect because the change would remove language that calculates appropriate offsets where comparison market commissions exceed U.S. commissions.

Department Position

We agree with petitioners' observation that the matter of the offset language is not before the Department as no party contested the offset programming language in this segment. Therefore, we have not changed the margin program language concerning the offsets and will not comment on the petitioners' analysis of the offset language. All changes that we have made in the program language for these final results of the remand redetermination are related to the specific issues that were remanded by the Court for the Department's consideration. Although Dole characterizes the missing pay dates as an "unrelated error," our setting of these dates is directly related to our reconsideration of the imputed credit issue. In order to recalculate the imputed credit using a surrogate interest rate consistent with the practice prescribed in our *Policy Bulletin*, the following programming language was used:

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CREDITT = ((GRSUPRT - (EARLPYT - OFFINV1 - OFFINV2 - OFFINV3 - BACKHAUL -  
                TRANSALW + BILLBAKT)) * (PAYDT - SHIPDT)) * (0.0515 / 365);
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If we do not assign dates to those transactions where pay dates were not reported, as we stated we would in the administrative review, our cost test program yields missing values and there is a possibility that the entire calculation would be distorted.

Results

We have recalculated the antidumping duty rate applicable to Dole in accordance with this final redetermination. As a result of changes made to the analysis for this company (namely, application of a new surrogate interest rate for the calculation of Canadian dollar credit expense as detailed in Issue 1, above and correction of several related clerical errors), Dole's rate changes from 0.49 percent to 0.98 percent.

This redetermination is in accordance with the order of the CIT in Maui Pineapple Company, Ltd. v. United States, Slip Op. 03-42 (April 17, 2003).

Joseph Spetrini
Acting Assistant Secretary
for Import Administration

(Date)