

assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR § 353.22.

Dated: December 30, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

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[A-201-601]

**Fresh Cut Flowers From Mexico; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review**

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

**ACTION:** Notice of preliminary results and partial termination of Antidumping Duty Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. This review was initiated in response to requests by respondents, Rancho del Pacifico (Pacifico) and Rancho Guacatay (Guacatay). Although we initiated a review of both producers, we are terminating the review with respect to Guacatay because the respondent timely withdrew its request for review. This review covers one producer/exporter and entries of the subject merchandise into the United States during the period April 1, 1995 through March 31, 1996.

We have preliminarily determined that sales have not been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

**EFFECTIVE DATE:** January 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Daniel Singer or Leon McNeill, AD/CVD

Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4733.

**Applicable Statutes and Regulations**

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 23, 1987, the Department published in the Federal Register an antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491).

On April 30, 1996, Pacifico and Guacatay requested that the Department conduct an administrative review in accordance with § 353.22 (a)(1) of the Department's regulations. Pacifico and Guacatay also requested that the Department revoke the antidumping duty order as it pertains to them upon completion of the review. We published a notice of initiation on May 24, 1996 (61 FR 26518), covering Pacifico and Guacatay, and the period April 1, 1995 through March 31, 1996. On July 2, 1996, Guacatay timely withdrew its request for review. Because there were no other requests for review for Guacatay from any other interested party, the Department is now terminating this review in part in accordance with § 353.22(a)(5). We shall instruct the U.S. Customs Service to liquidate Guacatay's entries for this period at the rates in effect at the time of entry. Because Guacatay is a previously reviewed company, the cash deposit rate will continue to be the company-specific rate currently in effect.

The Department is conducting this review in accordance with section 751 of the Act.

**Scope of the Review**

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review, such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS)

items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers sales of the subject merchandise entered into the United States during the period April 1, 1995 through March 31, 1996.

**Determination Not To Revoke**

On April 30, 1996, Pacifico requested revocation of the antidumping order, pursuant to § 353.222(d) of the Department's proposed regulations. According to § 351.222(d) of the proposed regulations, the Department need not conduct a review of the second year of the three-year period of sales at not less than fair value (LTFV) required for revocation. Because the proposed regulations have not been issued as final regulations, the current regulations remain in effect.

Under § 353.25(a)(2)(i) of the Department's current regulations, the Department may revoke an order if one or more producers or resellers covered by the order have sold subject merchandise at not less than NV for a period of at least three consecutive years. Although Pacifico was a respondent in the administrative reviews of the 1992/1993 POR and 1993/1994 POR, earning zero margins in both reviews, Pacifico did not participate in the administrative review of the 1994/1995 POR. See 61 FR 28166 (June 4, 1996). Therefore, the Department finds Pacifico ineligible for revocation at this time.

**Duty Absorption**

On June 21, 1996, the petitioner requested that the Department determine whether antidumping duties had been absorbed by Pacifico during the period of review (POR) pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995,

section 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the Act. This approach assures that interested parties will have the opportunity to request a duty absorption determination prior to the time for sunset review of the order under section 751(c). Because the order on certain fresh cut flowers from Mexico has been in effect since 1987, this is a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, Pacifico is itself the importer, *i.e.*, the exporter and the importer are the same entity; therefore, 751(a)(4) is applicable. We have preliminarily determined that there is no dumping margin on any of Pacifico's U.S. sales during the POR. We, therefore, preliminarily find that antidumping duties have not been absorbed by Pacifico on its U.S. sales.

**United States Price**

In calculating United States Price (USP), we used constructed export price (CEP), in accordance with subsections 772(b), (c), and (d) of the Act, because Pacifico's sales to the first unaffiliated purchaser occurred after importation into the United States. As in the original LTFV investigation and in all prior administrative reviews, all United States prices were weight-averaged on a monthly basis to account for perishability of the product. CEP was based on the packed F.O.B. prices to the first unaffiliated purchaser after importation into the United States.

Where appropriate, we made deductions from CEP for U.S. inland freight, U.S. and Mexican brokerage and handling charges, and for credit

expenses incurred on sales in the United States. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act. No other adjustments were claimed or allowed.

**Normal Value**

In calculating NV, we used home market prices to unaffiliated purchasers, as defined in section 773 of the Act. In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Pacifico's volume of home market sales of the subject merchandise to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Pacifico's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Pacifico.

Home market price was based on the F.O.B. farm gate unit price of subject merchandise sold to unaffiliated purchasers in the home market. No adjustments were claimed or allowed.

**Preliminary Results of Review**

We preliminarily determine that the following weighted-average dumping margin exists for the period April 1, 1995 through March 31, 1996:

Manufacturer/exporter	Margin (per-cent)
Rancho del Pacifico .....	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication. Parties who submit comments are requested to submit with their comments (1) a statement of the issue and (2) a brief summary of the comment. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review;

(2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of the merchandise, the cash deposit rate shall be 18.20 percent, the rate established in the LTFV investigation. See 52 FR 6361 (March 3, 1987).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d)(1) of the Act (19 U.S.C. 1675(a) and § 353.22 and § 353.25.

Dated: December 31, 1996.

Robert S. LaRussa,  
*Acting Assistant Secretary for Import Administration.*

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