

On October 4, 2002, in response to the Department's questionnaire,² Praft stated that it made no shipments to the United States of the subject merchandise during the POR. The Department independently confirmed with the BCBP that there were no shipments from Praft during the POR. *See Memorandum to File from Marin Weaver*, October 24, 2002. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are treating Praft as a non-shipper for purposes of this review and are preliminarily rescinding this review with respect to Praft.

Scope of the Review

The product covered by this review is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

Verification

As provided in sections 782(i)(2) and (3) of the Act, we verified information provided by Malee, TIPCO and Dole. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records.

Facts Available (FA)

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2), 776(b) and 782(d) of the Act, the use of adverse facts

available (AFA) is appropriate for the preliminary results for TPC.

1. Background

On September 19, 2002, the Department issued a market economy questionnaire to TPC. In section A(1) TPC was instructed to submit a chart that reports the volume and value of sales of the merchandise under review to the United States and in the home market or, if the home market is not viable, as in this case, to each of its three largest third-country markets. When reporting volume, the questionnaire instructed respondents to exclude sales to affiliated resellers and "[r]eport instead the resales by the affiliates to unaffiliated customers."³ In addition, the general instructions of the questionnaire instructed TPC to "identify any methodological changes you have made from your response in any previous administrative review" and to "identify any reporting methodologies that you know to not be in accordance with previous Departmental decisions regarding your company."⁴

On October 23, 2003, the Department received TPC's section A response and the accompanying volume and value of sales chart labeled as Exhibit A-1. TPC failed to report resales to unaffiliated customers in the United States and in its two largest third-country markets, the Netherlands and Japan, in both the response and in Exhibit A-1 as instructed by the Department's questionnaire. TPC stated in its response that its answers and the accompanying exhibits were predicated on TPC not being affiliated to Mitsubishi International Corporation (MIC) and Princes Foods B.V. (Princes), which have sales in the United States and the Netherlands respectively.⁵ In addition, for Mitsubishi Corporation's

(MC's) sales of CPF in Japan, TPC stated that because of MC's layered distribution system, lack of a centralized computer system to collate sales, different levels of trade at which sales are made to the final customer, and Japan's import protection scheme for Okinawan pineapple, it was "impossible to limit [its] reporting of the value and volume of sales in Japan to resales to unaffiliated customers."⁶

On November 14, 2002, the Department sent a letter to TPC stating that:

Based upon the information provided in your response and the Department's preliminary finding in the sixth review, you are required to resubmit your section A response so that it reflects downstream sales made by Mitsubishi International Corporation and Princes to unaffiliated customers, and also U.S. sales made by Chicken of the Sea International. To the extent necessary, please revise the quantity and value chart submitted as Exhibit A-1 of your October 23, 2002 response to reflect any transshipments by Princes.

Furthermore, please ensure that you have accounted for all sales to Japan made either directly by TPC or through an affiliate. Provide a revised Exhibit A-1 to reflect the three largest third-country markets after taking into account the sales by affiliates.⁷ The Department specified that the information was to be provided to the Department no later than November 22, 2002. On November 22, 2002, TPC submitted a revised section A response reporting sales to unaffiliated customers by Princes in the Netherlands, and by MIC and Chicken of the Sea International (COSI) in the United States, but still failed to report sales in Japan by affiliates to unaffiliated customers. TPC again claimed that it "proved impossible" to limit its reporting of sales in Japan to sales by affiliates to unaffiliated customers citing the same reasons it gave in its original section A response.⁸

At this point in the review, the primary issue in the case had become whether the Netherlands or Japan was the appropriate third-country comparison market.⁹ Therefore, on

³ See Antidumping Questionnaire at A-2.

⁴ Antidumping Questionnaire at G-7.

⁵ TPC argued that although the Department found it to be affiliated with MIC and Princes in the preliminary determination of the sixth review, it was responding to the Department's questionnaire in the seventh review as if it was not affiliated with MIC and Princes because it challenged the finding in its case brief for the sixth review and the Department's final determination in that review was still pending at the time it submitted its section A response on October 23, 2002. In the final results of the sixth review TPC was found to be affiliated with MIC and Princes. *See Notice of Final Results of Antidumping Duty Administrative Review, Recission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 67 FR 76718 (December 13, 2002) and accompanying Issues and Decision Memorandum at Comment 12. The Department continues to find TPC to be affiliated with MIC, Princes, and COSI in this review, as no relevant facts have change since the sixth review. *See* TPC's November 22, 2002, section A response at 1-9.

⁶ TPC's October 23, 2002, section A response at 10.

⁷ *See* November 14, 2002, letter from the Department to TPC (footnote omitted).

⁸ TPC's November 22, 2002, revised section A response at 11 and 12.

⁹ In TPC's original section A chart submitted to the Department on October 23, 2002, the volume of sales to the Netherlands was somewhat higher than the volume of sales to Japan. This difference was significantly reduced however when TPC submitted its revised section A chart on November 22, 2002, showing the volume of sales of subject merchandise to unaffiliated customers in the Netherlands. The equivalent sales information for Japan was thus imperative in order to make a determination as to the appropriate third-country comparison market.

² Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.