

December 4, 2002, the Department sent a second letter to TPC informing the company that “[i]t is critical that the third-country summary information be presented in a consistent and uniform manner in order for the Department to make a decision regarding selection of the appropriate third-country market.” The Department requested that TPC “revise Exhibit A–1 to account for the resales by affiliated companies to unaffiliated customers for all sales to Japan during the POR, as requested in the Department’s original questionnaire” no later than December 11, 2002. TPC responded on December 11, 2002 that “it is impossible to provide [MC’s] resale data specific to TPC-produced canned pineapple fruit”<sup>10</sup> citing the same reasons it did in its October 23, 2002, section A response. TPC went on to state, however, that if the Department insisted upon having the data, TPC was requesting a six-week extension.

On December 27, 2002, the Department sent a third letter to TPC stating that “the Department again requests that you revise Exhibit A–1 to account for the resales by affiliated companies to unaffiliated customers for all sales to Japan during the period of review” no later than January 10, 2003. In the letter, the Department warned TPC that “[i]f you fail to provide this information, we may be forced to use AFA, as we will be unable to determine the appropriate third-country market to be used as the basis for normal value.” On January 10, 2003, the Department partially granted a request by TPC for an extension making the requested data due on January 21, 2003. On January 21, 2003, TPC submitted a revised volume and value of sales chart reflecting sales by affiliates to unaffiliated customers in the United States, the home market, and each of TPC’s largest third-country markets, including Japan.

On April 4, 2003, TPC made a submission bringing to the Department’s attention for the first time that the “cases” it reported as a unit of measure for its volume and value of sales in Exhibit A–1 referred to the number of actual cases sold, rather than the number of cases sold on a 20-ounce equivalent basis. TPC’s reporting of its volume and value of sales in actual cases sold rather than on a 20-ounce equivalent basis represented a change in its reporting methodology from the previous administrative review.<sup>11</sup> On April 16, 2003, the Department sent a

letter to TPC requesting that it revise Exhibit A–1 to reflect its volume and value of sales on a 20-ounce equivalent basis. In addition, the Department stated that [g]iven the current deadline of June 6, 2003 for the preliminary results of this review, there is now insufficient time to resolve the question of the proper comparison market and then, at a later date, to possibly request data for a new third-country market.

Accordingly, we are now requiring that you provide the Department with a *complete* section B response for all of your sales to unaffiliated customers in Japan.” In its April 16, 2003, letter to TPC the Department again warned that “if you fail to provide this information in the time provided, we may use facts available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), as we will be unable to determine the appropriate third-country market to be used as the basis for normal value.” The requested information was to be provided to the Department no later than April 24, 2003.

On April 24, 2003, the Department received a submission from TPC in which it failed to provide both its volume and value of sales on a 20-ounce equivalent basis and a complete database of its sales to unaffiliated customers in Japan. TPC argued that the Department should permit the reporting of volume and value on the basis of actual cases sold because: (1) CPF is inventoried, booked, and sold on the basis of actual cartons; (2) the price of CPF does not vary directly based upon the quantity of CPF in each can; and (3) there is no uniform, objective method in the industry for calculating a 20-ounce equivalence. TPC also stated that [i]t was impractical to arrange for [MC and its affiliates] to report sales volumes on a 20-ounce equivalent basis that is consistent with the methodology used by TPC in the time allotted for TPC’s response.”<sup>12</sup> TPC did not request an extension so that it could attempt to report its volume and value of sales on a 20-ounce equivalent basis.

In regard to the section B sales database for Japan, TPC claimed that it would not be able to provide the Department with the requested information for the following reasons: (1) Due to TPC’s distribution system in Japan, there are several companies with separate financial statements in many locations where invoicing takes place; (2) there has been a consolidation between two of the MC affiliates which would necessitate compiling their portion of the sales listing by hand; (3) one of TPC’s affiliates has a policy of

removing aggregate volume data on a 13-month rolling basis and thus the relevant data no longer exist; (4) many of the affiliates lack computerized sales data systems; (5) the complexity of the distribution system would make calculating movement and inventory expenses alone “a gargantuan and fundamentally unmanageable task;” (6) MC was moving offices in May and all of its accounting records had been put into boxes; and (7) the first week in May is a Japanese holiday. TPC stated that [f]or all of these reasons [i]t is regrettably unable to comply with the Department’s request, even within any foreseeable extension of the current deadline.”<sup>13</sup> TPC did however, request that the Department make a finding as to Japan’s appropriateness as a possible third-country comparison market prior to requiring TPC to provide a complete section B sales database.

## 2. Applicable Statute

Section 776(a)(2) of the Act, provides that:

\* \* \* if an interested party or any other person—(A) withholds information that has been requested by the administering authority \* \* \* ; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782 \* \* \* ; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority \* \* \* shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this subtitle.

The statute requires that certain conditions be met before the Department may resort to the FA. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency.

If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as

<sup>10</sup> TPC’s December 11, 2002, letter at 4.

<sup>11</sup> See Memorandum from Charles Riggie, Program Manager, Office 5, to File, dated April 16, 2003.

<sup>12</sup> TPC’s April 24, 2003, submission at 7.

<sup>13</sup> *Id.* at 13.