

## I. Abstract

The technical data letters of explanation will assure BIS that U.S.-origin technical data will be exported only for authorized end-uses, users and destinations. The letters also places the foreign consignee on notice that the technical data is subject to U.S. export controls and may only be reexported in accordance with U.S. law.

## II. Method of Collection

Submitted on paper or electronically.

## III. Data

OMB Number: 0694-0047.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,050.

Estimated Time Per Response: 30 minutes to 2 hours, depending on the required document.

Estimated Total Annual Burden Hours: 8,807.

Estimated Total Annual Cost: \$0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: August 2, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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BILLING CODE 3510-DT-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-813]

### Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand for the period of review (POR) July 1, 2005 through June 30, 2006. The review covers two respondents, Vita Food Factory (1989) Ltd. (Vita) and Tropical Food Industries Co. Ltd. (Trofco). The domestic interested party for this proceeding is Maui Pineapple Company Ltd. (petitioner).

The Department preliminarily determines that Vita and Trofco made sales to the United States at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of Vita's and Trofco's merchandise during the POR. The preliminary results are listed below in the section titled "Preliminary Results of Review."

**EFFECTIVE DATE:** August 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Douglas Kirby, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2371 or (202) 482-3782, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

The Department published the antidumping duty order on CPF from Thailand on July 18, 1995. *See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit from Thailand*, 60 FR 36775 (July 18, 1995) (*Antidumping Duty Order*). On July 3, 2006, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on CPF from Thailand. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006).

The Department received a request for review from Vita, by the July 31, 2006 deadline and therefore, on August 30, 2006, the Department published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on CPF from Thailand for Vita. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006).

Trofco also submitted a request for review, but Trofco's review request was not received by the Department until after the deadline for requesting an administrative review. However, the record of this proceeding shows that if not for an error by the express delivery service, Trofco's review request would have been received by the Department on or before the July 31, 2006 deadline. Therefore, on October 10, 2006 the Department initiated a review for Trofco. For further discussion on this issue, *see Initiation of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand*, 71 FR 59430 (October 10, 2006).

On August 14, 2006, the Department issued sections A through E of the questionnaire to Vita.<sup>1</sup> Vita submitted its section A response on September 12, 2006, and submitted its sections B through D response on September 27, 2006. The Department issued a sections A through D supplemental questionnaire on February 6, 2007, and Vita responded on February 20, 2007. On April 13, 2007, the Department issued a second sections A through D supplemental questionnaire to Vita; Vita responded on April 25, 2007. Finally, on May 18, 2007, the Department issued a third sections A through D supplemental questionnaire to Vita, and Vita responded on May 30, 2007.

On October 12, 2006, the Department issued sections A through E of the questionnaire to Trofco. Trofco submitted its section A questionnaire response on October 17, 2006, and submitted its responses to sections B and C on November 15, 2006. The Department issued a sections A through C supplemental questionnaire on

<sup>1</sup> 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 cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

January 29, 2007, and Trofco responded on February 12, 2007. On May 18, 2007 the Department issued a second sections A through C supplemental questionnaire and Trofco responded on May 24, 2007.

On November 27, 2006 the petitioner filed an allegation of sales below the cost of production for Trofco. On December 14, 2006 the Department initiated a cost investigation. Trofco submitted its section D response on December 28, 2006. See "Cost of Production Analysis" *infra* for further discussion. On January 31, 2006, the Department issued a section D supplemental questionnaire to Trofco. Trofco responded on February 20, 2007. On March 26, 2007 the Department issued a second section D supplemental questionnaire, and Trofco responded on April 4, 2007. A third and fourth section D supplemental questionnaire were issued on May 2 and May 16, 2007, respectively, and Trofco submitted its responses on May 10 and May 22, 2007.

On November 15, 2006, the petitioner submitted deficiency comments on sections A through D of Vita's questionnaire responses. On November 21, 2006, the petitioner submitted deficiency comments on Trofco's section A questionnaire response. On January 18, 2007, and April 12, 2007, respectively, the petitioner submitted deficiency comments and a rebuttal to Trofco's section D questionnaire responses. See *Cost of Production Analysis* *infra* for further discussion.

On March 30, 2007, the Department, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), extended the deadline for the preliminary results of this antidumping duty administrative review by 120 days from April 2, 2007 until no later than July 31, 2007. See *Canned Pineapple Fruit from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 15101 (March 30, 2007).

#### Verification

On March 27, 2007, the petitioner submitted a timely letter requesting that the Department conduct verification of Vita's and Trofco's questionnaire responses pursuant to section 782(i)(3)(A) of the Act. The Department intends to conduct a sales and cost verification of Vita and a sales verification of Trofco following the preliminary results of this review. From June 20 through June 26, 2007, the Department conducted a cost verification of Trofco. For the results and analysis of Trofco's cost verification, see *Memorandum from*

*Ernest Z. Gziryan, Senior Accountant to Neal M. Halper, Director, Office of Accounting, Verification of the Cost of Production and Constructed Value Data Submitted by Tropical Food Industries Co. Ltd. in the Antidumping Duty Administrative Review of Canned Pineapple Fruit from Thailand (Trofco Cost Verification Report)* (July 31, 2007) on file in room B-099, the Central Records Unit of the main Commerce building (CRU).

#### Period of Review

This review covers the period July 1, 2005 through June 30, 2006.

#### Scope of the Order

The product covered by this order 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. There have been no scope rulings for the subject order.

#### Less than Fair Value Analysis

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the export price (EP) to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice in accordance with section 777A(d)(2) of the Act.

#### Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by respondents that are covered by the description in the "Scope of the Order" section, above, and that were sold in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 771(16)(B) and (C) of the Act, where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaires.

#### Date of Sale

It is the Department's practice to use invoice date as the date of sale. However, 19 CFR 351.401(i) states that the Secretary may use a date other than the invoice date if the Secretary is satisfied that the material terms of the sale were established on some other date. See *Allied Tube and Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 217-219 (CIT 2000). Both Vita and Trofco reported invoice date as the date of sale for all sales in both the comparison and U.S. markets. After analyzing the responses of both parties and the sample sales documents provided, we preliminarily determine that invoice date is the appropriate date of sale for all sales under review.

#### U.S. Price

In accordance with section 772(a) of the Act, we use EP when the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) was not otherwise warranted by the facts on the record. As discussed below, we conclude that all of Vita's and Trofco's U.S. sales are EP sales.

*Vita*: Vita identified all of its U.S. sales as EP sales in its questionnaire responses. The Department based the price of each of Vita's U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, or to unaffiliated purchasers for exportation to the United States and the use of CEP was not otherwise warranted based on the facts on the record. In accordance with section 772 (a) and (c) of the Act, we calculated EP using the prices Vita charged for packed subject merchandise shipped FOB. We made deductions for movement expenses, including, where applicable, charges for transportation, terminal handling, container stuffing, bill of lading preparation, customs clearance, and legal and port fees documentation. See *Analysis Memorandum for Vita Food Factory (1989) Co., Ltd., (Vita Preliminary Analysis Memorandum)* dated concurrently with this notice. Vita reported post-sale, post-POR price adjustments in its September 12, 2006, section A questionnaire response. In addition, Vita explained that the company did not revise its sales

contracts and other related sales documents for these reported post-sale billing adjustments. The Department asked in a supplemental questionnaire to Vita why no revisions to the sales documentation were made for the reported post-sale billing adjustments. Vita explained that it is its normal practice to make post-sale billing adjustments through discussions by telephone with its customers without revisions to sales documentation. *See Vita 1st Supplemental Questionnaire at 9.* Because Vita was unable to provide any documentation demonstrating that there were actual price adjustments, we did not make any adjustments to EP for these claimed post-sale price adjustments. *See Corus Engineering Steels Ltd. v. United States*, (Slip Op. 2003-110, 2003 CIT Lexis 110) (CIT August 27, 2003) at 11 (“The burden of proof is upon the claimant to prove entitlement.”). Moreover, Vita reported similar post-sale billing adjustments in the most recent review and the Department did not include these adjustments in the calculation of EP. *See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review (10th Review Preliminary Results)* 71 FR 44256, 44258 (August 4, 2006), unchanged in *Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, (10th Review Final Results)* 71 FR 70948 (December 7, 2006) and accompanying *Issues and Decision Memorandum at Comment 1.*

*Trofco:* Trofco identified all of its U.S. sales as EP sales in its questionnaire responses. The Department based the price of each of Trofco’s U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, or to unaffiliated purchasers for exportation to the United States and the use of CEP was not otherwise warranted based on the facts on the record. In accordance with sections 772 (a) and (c) of the Act, we calculated EP using the prices Trofco charged for packed subject merchandise shipped FOB, from which we made deductions for movement expenses, including, where applicable, charges for transportation, terminal handling, container stuffing, bill of lading preparation, Customs clearance, and legal and port fees documentation. *See Analysis Memorandum for Tropical Food Industries Co., Ltd., (Trofco Preliminary Analysis Memorandum)* dated concurrently with this notice.

### Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the comparison market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. *See “Level of Trade” section below.* After testing comparison market viability and whether comparison market sales were at below-cost prices, we calculated NV for Vita and Trofco as discussed in the following sections.

### Home Market Viability

In accordance with section 773(a)(1)(C) 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 (i.e., the aggregate volume of home market sales of the foreign like product normally should be greater than or equal to five percent of the aggregate volume of U.S. sales), we compared the aggregate volume of home market sales of the foreign like product to the aggregate volume of its U.S. sales of subject merchandise. *See also* 19 CFR 351.404(b).

*Vita:* Because the aggregate volume of Vita’s home market sales of foreign like product is less than five percent of the aggregate volume of its U.S. sales of subject merchandise, we based NV on sales of the foreign like product in a country other than Vita’s home market. *See* section 773(a)(1)(B)(ii) of the Act. Specifically, we based NV for Vita on sales of the foreign like product in Germany. The Department selected Germany because sales to Vita’s largest third-country market (the Netherlands) were largely trans-shipments to ultimate customers located in Germany. In addition, the product similarity for CPF sold to Germany and to the U.S. was superior *vis-a-vis* the product similarity for the Netherlands and the United States. *See “Cost of Production Analysis” infra* for further discussion.

*Trofco:* Trofco’s home market sales were greater than five percent as compared to the aggregate volume of U.S. sales during the POR. Therefore, Trofco’s volume of sales in the home market during the POR was sufficient to serve as a viable basis for calculating NV.

### Cost of Production (COP) Analysis

*Vita:* In the most recently completed administrative review of the antidumping duty order on CPF from Thailand, the Department determined

that Vita sold foreign-like product in its comparison market at prices below the cost of producing the product and excluded such sales from the calculation of NV. *See 10th Review Preliminary Results and 10th Review Final Results.* Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department determined that there are reasonable grounds to believe or suspect that during the current POR, Vita sold the foreign like product at prices below the cost of producing the product and instituted a below cost inquiry as to Vita’s sales in the comparison market.<sup>2</sup> *Compare Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 67 FR 62951, 62954 (October 9, 2002) (unchanged in final results 68 FR 7503 ) with *Top-of-the-Stove Stainless Steel Cooking Ware From Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 66 FR 11259, 11263-64 (February 23, 2001) (unchanged in final results 66 FR 45664 ) for an example where the Department instituted a below cost inquiry under section 773(b)(2)(A)(ii) of the Act based on a below cost finding in the most recently completed administrative review and the recently completed administrative review was based on a different comparison market than the on-going administrative review.

*Trofco:* On November 27, 2007, petitioner alleged that Trofco made home market sales of CPF at prices below the cost of production during the POR. The Department found a reasonable basis to believe or suspect that Trofco’s sales in Thailand were at prices below the COP and accordingly initiated a cost investigation for the current review. *See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from The Team on Petitioner’s Allegation of Sales Below the Cost of Production for Tropical Food Industries Co., Ltd.*, (December 14, 2006). We relied on the COP data submitted by Trofco in its cost questionnaire responses with the following exceptions: (1) We revised the reported net realizable values (“NRV”) which Trofco used to allocate pineapple fruit cost to pineapple solid and pineapple juice products to account for the separately identifiable costs incurred to produce each product; (2) we revised

<sup>2</sup> In addition, the Department notes that on May 15, 2007, petitioner submitted a request that a cost investigation be initiated by the Department with respect to sales of CPF by Vita to Germany during the POR.

the reported financial expense rate to include the net foreign exchange gains and losses; and (3) we adjusted the cost of sales denominator used to calculate the general and administrative and financial expense rates to remove packing expenses. Our revisions to Trofco's COP data are discussed in the Memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results," dated concurrently with this notice.

#### Test of Comparison Market Sales Prices

We compared sales of the foreign like product in the home market with model-specific COP figures in the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, and financial expenses and packing. In our sales-below-cost analysis, we used comparison market sales and COP information provided by Vita and Trofco in their questionnaire responses. See Vita's September 27, 2006 section D questionnaire response; see also Trofco's December 28, 2007 section D questionnaire response.

#### Results of COP Test

We compared the weighted-average COPs to comparison market sales of the foreign-like product, consistent with section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. See also 19 CFR 351.404(b). In determining whether to disregard comparison market sales made at prices below the COP, we examined whether such sales were made (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act.<sup>3</sup> On a product-specific basis, we compared the COP to comparison market prices, less any movement charges, discounts and rebates, and direct and indirect selling

expenses. See *Treatment of Adjustments and Selling Expenses in Calculating the Cost of Production ("COP") and Constructed Value ("CV")* Import Policy Bulletin (March 25, 1994) on file in the CRU, which can also be accessed directly on the Web at <http://ia.ita.doc.gov>.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than the COP, we disregarded the below-cost sales when: (1) They were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act and; (2) based on our comparison of prices to average COPs in the POR, we determined that the below-cost prices would not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

#### Price-to-Price Comparisons

For those product comparisons for which there were comparison market sales of like product in the ordinary course of trade, we based NV on comparison market prices to affiliated (when made at prices determined to be arms-length) or unaffiliated parties, in accordance with section 773(a)(1)(A) and (B) of the Act. We made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.411 as well as for differences in direct selling expenses, in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We relied on our model match criteria in order to match U.S. sales of subject merchandise to comparison sales of the foreign like product based on the reported physical characteristics of the subject merchandise. Where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. See section 771(16) of the Act.

*Vita:* When comparing Vita comparison market sales to its EP sales, the Department calculated Vita's NV (shipped FOB, CNF or FAS) NV based

on its gross unit price in Germany to unaffiliated customers. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions for movement expenses (*i.e.*, inland freight, ocean freight and warehousing), when appropriate. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we deducted comparison market direct selling expenses (*i.e.*, credit, warranty) and added U.S. direct selling expenses. We made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the "commission offset." Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

*Trofco:* The Department calculated Trofco's NV based on its gross unit price to unaffiliated customers less billing adjustments pursuant to section 773(a)(1)(A) of the Act. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions for movement expenses (*i.e.*, inland freight and warehousing), when appropriate. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we deducted comparison market direct selling expenses (*i.e.*, credit) and added U.S. direct selling expenses. We made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the "commission offset." Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

<sup>3</sup> Section 773(b)(2)(ii)(B-C) of the Act defines extended period of time as a period that is normally 1 year, but not less than 6 months, and substantial quantities as sales made at prices below the cost of production that have been made in substantial quantities if (i) The volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or (ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

### Price to Constructed Value Comparisons

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when we could not determine NV because there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act, including the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market. Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, SG&A expenses, and profit for CV, where possible.

*Vita*: We used CV as the basis for NV for sales in which there were no usable contemporaneous sales of the foreign like product in the comparison market, in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added reported materials, labor, and factory overhead costs to derive the cost of manufacture (COM), in accordance with section 773(e)(1) of the Act. We then added interest expenses, SG&A expenses, profit, and U.S. packing expenses to derive the CV (and added U.S. credit expenses for comparison to EP), in accordance with sections 773(e)(2) and (3) of the Act. We calculated profit based on the total value of sales and total COP reported by Vita in its questionnaire response, in accordance with section 773(e)(2)(A) of the Act. Finally, we deducted comparison market credit expenses from CV and added U.S. credit to calculate the foreign unit price in dollars (FUPDOL), pursuant to section 773(e)(2)(A) of the Act.

*Trofco*: We used CV as the basis for NV for sales in which there were no usable contemporaneous sales of the foreign like product in the comparison market, in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added reported materials, labor, and factory overhead costs, adjusted as shown in the COP Analysis section above, to derive the cost of manufacture (COM), in accordance with section 773(e)(1) of the Act. We then added interest expenses adjusted as shown in the COP Analysis section above, SG&A expenses adjusted as shown in the COP

Analysis section above, profit, and U.S. packing expenses to derive the CV, in accordance with sections 773(e)(2) and (3) of the Act.

Based on the information currently on the record, all of Trofco's sales in Thailand failed the COP test and therefore were outside the ordinary course of trade; hence, we cannot determine selling expenses or profit under section 773(e)(2)(A) of the Act. Section 773(e)(2)(B) of the Act sets forth three alternatives: (i) Selling expense and profit may be calculated based on "actual amounts incurred by the specific exporter or producer of merchandise in the same general category" as subject merchandise; (ii) may be calculated based on "the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation"; or (iii) "any other reasonable method," with limits on the "profit cap."

For this review, the Department is calculating CV profit based on the amounts earned by Trofco on its home market sales of canned fruit other than pineapple (*i.e.*, profit on sales of the same general category of merchandise as subject canned pineapple fruit under section 773(e)(2)(B)(i) of the Act). For selling expenses, we cannot use alternative (i) because we do not have the information on Trofco's other canned fruit sales (other than pineapple) which we consider to be in the same general category of merchandise as subject canned pineapple fruit. In addition, we cannot use alternative (ii) without violating our responsibility to protect respondent's administrative protective order (APO) information, because Vita is the only other respondent in this review. Therefore, for selling expenses, we are using alternative (iii) "any other reasonable method," and basing Trofco's CV selling expenses on its reported home market sales. Therefore, we deducted home market credit expenses from CV and added U.S. credit to calculate the foreign unit price in dollars (FUPDOL), pursuant to section 773(e)(2)(B)(iii) of the Act.

### Level Of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP sale. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of

marketing. Id.; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*South African Plate Final*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution),<sup>4</sup> including selling functions,<sup>5</sup> class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. With respect to CEP sales, the Department removes the selling activities set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001). As such, for CEP sales, the U.S. LOT is based on the starting price of the sales, as adjusted under section 772(d) of the Act.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. However, in this case, the Department preliminarily determines that no level of trade adjustment was necessary for Trofco and Vita, consistent with what the parties reported in their respective questionnaire responses. For further details on the Department's LOT analysis, *see Vita Preliminary Analysis Memorandum and Trofco Preliminary Analysis Memorandum*.

### Currency Conversion

In accordance with section 773A of the Act, we made currency conversions

<sup>4</sup> The marketing process in the United States and in the comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale occurs.

<sup>5</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, technical service, freight and delivery, and inventory maintenance.

based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See also* 19 CFR 351.415.

#### Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Margin
Vita Food Factory (1989) Ltd. ....	7.11 %
Tropical Food Industries Co., Ltd. ....	10.51 %

#### Cash Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Vita will be that established in the final results of this review; (2) the cash deposit rate for Trofco will be that established in the final results of this review; (3) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is a firm covered in this review, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (5) if neither the exporter nor the manufacturer is a firm covered in this or any previous proceeding conducted by the Department, the cash deposit rate will continue to be the "all others" rate established in the LTFV investigation, which is 24.64 percent. *See Antidumping Duty Order* 71 FR at 36776. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Duty Assessment

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each

respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in the final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

#### Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing or to participate if one is requested must submit a written request

to the Assistant Secretary for Import Administration within 30 days of the publication of this notice. Requests should contain (1) the party's name, address and telephone number; (2) the number of participants; and, (3) a list of issues to be raised. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will issue the final results of this administrative review within 120 days after the publication of this notice, unless extended. *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

The preliminary results of this administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2007.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

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#### DEPARTMENT OF COMMERCE

##### International Trade Administration (A-570-803)

##### **Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Notice of Extension of Time Limit for Final Results of the 2005-2006 Antidumping Duty Administrative Review**

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

**EFFECTIVE DATE:** August 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner or Robert James, AD/CVD Enforcement Office 7, Import