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MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Administrative Review of the Antidumping Duty Order on Canned  
Pineapple Fruit from Thailand: July 1, 2004, through June 30, 2005

### Summary

The Department of Commerce (Department) has analyzed the case brief submitted by the respondent, Vita Food Factory (1989) Ltd. (Vita), as well as the rebuttal brief submitted by the petitioners<sup>1</sup> in the 2004-2005 administrative review of the antidumping duty order on canned pineapple fruit from Thailand. The one issue addressed in those briefs is whether the Department should continue to reject Vita's post-U.S. sale price adjustments. After analyzing parties' comments, the Department has made no changes to Vita's preliminary dumping margin calculation. We recommend that you approve the position described in the "Discussion of the Issues" section of this memorandum.

### Background

This review covers canned pineapple fruit from Thailand exported to the United States by the following producers/exporters: Vita and Tropical Food Industries Co., Ltd. (TROFCO) (in these final results the Department rescinded the instant review with respect to Prachuab Fruit Canning Co. Ltd.). The period of review (POR) is July 1, 2004, through June 30, 2005. The Department issued its preliminary results of review on August 4, 2006. See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 44256 (Preliminary Results). In response to the Department's invitation to comment on the preliminary results of this review, Vita submitted a case brief to the Department on August 23, 2006. Petitioners submitted rebuttal comments on September 11, 2006.

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<sup>1</sup> The petitioners are Maui Pineapple Company Ltd. and the International Longshoreman's and Warehouseman's Union.

## Discussion of the Issue

### Comment 1: Whether the Department Should Continue to Reject the Post-Sale Price Adjustments That Vita Reported for U.S. Sales

Vita requests that the Department reconsider its decision not to adjust U.S. prices by post-sale price increases. Addressing the Department's concern as to why post-sale price increases were made for only U.S. sales and not comparison market sales, Vita claims that since its U.S. contracts covered longer periods than its comparison market contracts, and it could not predict and adjust for increases in pineapple costs over those longer periods, it had to enter into billing adjustment agreements with certain U.S. customers. Vita claims that because it could, for the most part, predict the cost of pineapple fruit for up to six months, and the sales contracts with customers in the comparison market ranged from three to six months, it was able to set prices for canned pineapple fruit accurately in its comparison market sales contracts. Therefore, Vita maintains it did not need to enter into agreements for billing adjustments with comparison market customers.

Further, Vita notes that its post-sale price increases were either based on a pre-existing agreement with the customer or, when the sale was made through a trading company, "all the sales and agreement was done between {the trading company} and Vita Food." See Vita's case brief at 1. Additionally, Vita states that record evidence shows the U.S. customers that were charged additional amounts after the sale accepted and paid those amounts.

Petitioners disagree with Vita for the following reasons. First, petitioners question Vita's rationale for employing post-sale price increases in the United States but not the comparison market. Petitioners note that despite rising costs and short-term comparison market contracts, which supposedly allowed for price increases in subsequent contracts, the record shows that Vita held comparison market prices for canned pineapple relatively constant, and in some cases, decreased its prices. See the Department's July 19, 2006 memorandum: Vita's Post-Sale Price Adjustments (Price Adjustment Memorandum). Moreover, irrespective of Vita's ability to predict events that affect the cost of pineapple fruit, petitioners note that Vita's post-sale price increases were based on changes in the exchange rate and the cost of labor, steam, and cans, not on the price of fresh pineapple.

Second, petitioners claim that Vita failed to provide agreements with U.S. customers (that were in effect at the time of sale) that support the post-sale price adjustments. Given the importance of providing such agreements to guard against manipulation of the dumping margin, petitioners claim Vita's failure to provide an agreement with one U.S. customer because it sold to that customer through a trading company cannot be excused. Petitioners also argue that the one agreement Vita did submit to the Department is inconsistent with the post-sale price adjustments that were actually made and covers only one-half of the POR.

Third, petitioners argue the record evidence shows that cost increases reported by Vita, and the exchange rate fluctuations it experienced, do not account for the percentage price increases it charged through post-sale price adjustments. Thus, petitioners contend the Department was correct in concluding that record evidence calls into question Vita's reasons for the post-sale price increases. Given that Vita has provided no evidence to change the Department's position regarding the post-sale price adjustments, petitioners urge the Department to continue to reject those adjustments.

#### Department's Position:

We disagree with Vita. While the Department's regulations allow for post-sale price adjustments that are reasonably attributable to the subject merchandise,<sup>2</sup> the Preamble to the regulations indicates that exporters or producers should not be allowed "to eliminate dumping margins by providing price adjustments 'after the fact.'" See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27344 (May 19, 1997). Thus, as explained in the preliminary results of review, where a price adjustment made after the fact lowers a respondent's dumping margin, the Department will closely examine the circumstances surrounding the adjustment to determine whether it was a *bona fide* adjustment made in the ordinary course of business.<sup>3</sup>

In the preliminary results of review, we rejected the claimed post-sale price increases because 1) the record did not support Vita's rationale for the price increases (*i.e.* the cost increases reported by Vita do not support the price increases); 2) Vita either could not supply an agreement providing for the price increases or supplied an agreement where virtually none of the terms of the agreement were followed; and, 3) the price increases appeared to be unique given there was

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<sup>2</sup> See 19 CFR § 351.401(c) and 19 CFR §351.102 (b).

<sup>3</sup> See Price Adjustment Memorandum at 2-3; see also Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy and Determination to Revoke in Part, 70 FR 71464 (November 29, 2005) and accompanying Issues and Decision Memorandum at Comment 9 (denying an adjustment for post-sale payments because the respondent, among other things, failed to demonstrate that the payments were part of its standard business practice); Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 3677 (January 26, 2005) and accompanying Issues and Decision Memorandum at Comment 1 (accepting post-sale price adjustments which the Department found to be for legitimate commercial purposes); Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews, 61 FR 13815, 13823 (March 28, 1996), (noting, with respect to price adjustments by way of rebates, that the "purpose of requiring respondent to prove that the buyer was aware of the conditions to be fulfilled and the approximate amount of the rebates at the time of sale is to protect against manipulation of the dumping margins by a respondent once it learns that certain sales will be subject to review.").

no evidence that Vita made post-sale price adjustments to sales to any other markets or any other customers. See Price Adjustment Memorandum. Although Vita has attempted to explain its rationale for employing post-sale price adjustments in the U.S. market but not in the comparison market, its explanation is contradicted by the record. Despite Vita's claim that it could promptly raise comparison market prices in response to higher costs, the record shows that after experiencing higher costs and a drop in the U.S. dollar to Thai baht exchange rate, Vita held comparison market prices for canned pineapple fruit relatively constant and, in some cases, decreased its prices. See Attachment I of the Price Adjustment Memorandum.<sup>4</sup> Vita's selective use of price increases in the face of rising costs calls into question the commercial purpose of the post-sale adjustments.

Second, despite its claim, Vita did not supply an agreement between itself and the trading company referenced in its case brief that provided for post-sale price adjustments. While Vita did supply an agreement with one U.S. customer that called for post-sale price adjustments, we found the agreement was inconsistent with, and did not support, the post-sale price adjustments claimed on sales to that customer. Specifically, Vita calculated the post-sale price increases based on production inputs and exchange rates that were not listed in the agreement; there was no evidence of the type of discussion regarding post-sale adjustments that was contemplated in the agreement; and Vita calculated increases in certain costs using a time period other than that called for in the agreement. Given the foregoing, we find that the agreement supplied by Vita does not support the claimed post-sale price adjustments.

Finally, the circumstances surrounding the U.S. customers' payment of the post-sale price increases do not appear to be consistent with commercial realities and call into question the nature of these payments. As noted in the Preliminary Results, if these are, in fact, payments on the claimed post-sale price adjustments, it would mean that these customers were willing to pay significant charges imposed after the sale, even though, in the case of one U.S. customer, there was: 1) no agreement requiring the company to pay such amounts; 2) no understanding as to how these additional charges would be calculated; and 3) no limits placed on the amount of the additional charges. Similarly, another U.S. customer reportedly paid the post-sale price increases even though: 1) the purported agreement covering these additional charges was not followed; and 2) the price increases appear to be inconsistent with Vita's cost increases. Thus, regardless of how Vita labeled the payments, the payments do not demonstrate that Vita is entitled to the claimed post-sale price adjustments.

The Department's regulations provide that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of the particular adjustment. . ." 19 CFR § 351.401(b)(1). Particularly, when the

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<sup>4</sup> We compared comparison market contracts dated within the first six months after the POR to comparison market contracts dated during the POR. We took this approach under the assumption that the cost increases reported for the second half of the POR would be reflected in the contracts written immediately thereafter.

adjustment confers a benefit, a respondent must justify such an adjustment.<sup>5</sup> Because the post-sale adjustments benefitted Vita, Vita bore the burden of demonstrating that it is entitled to these adjustments.<sup>6</sup> For the reasons cited above, we find that Vita failed to demonstrate that it is entitled to the claimed post-sale price increases. Thus, we have continued to deny these adjustments for purposes of the final results of this administrative review.

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above position. We will publish the final results of review and the final weighted-average dumping margin for the reviewed company in the Federal Register.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date

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<sup>5</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Rep. No. 103-316 at 829 (1994), (“{A}s with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such an adjustment.”).

<sup>6</sup> See Corus Engineering Steels Ltd. v. United States, Slip Op. 2003-110, 2003 CIT Lexis 110 at \* 11, Aug. 27, 2003 (“The burden of proof is upon the claimant to prove entitlement.”).