DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review

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

ACTION: Notice of preliminary results of 2001–2002 administrative review and new shipper review, and partial rescission of review.

SUMMARY: The Department of Commerce is currently conducting the second administrative review and a new shipper review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China, covering the period June 1, 2001, through May 31, 2002.

The new shipper review covers one exporter: Gansu Tongda Fruit Juice and Beverage Company. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period of review by Gansu Tongda Fruit Juice and Beverage Company.

The administrative review covers five exporters: Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Yantai Oriental Juice Co., Ltd., SDIC Zhonglu Fruit Juice Co., Ltd., Sanmenxia Lakeside Fruit Juice Co., Ltd., and Changsha Industrial Products & Minerals Import and Export Co., Ltd. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period of review by Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Yantai Oriental Juice Co., Ltd., SDIC Zhonglu Fruit Juice Co., Ltd., and Sanmenxia Lakeside Fruit Juice Co., Ltd.

Changsha Industrial Products & Minerals Import and Export Co., Ltd. did not respond to the Department's questionnaire and will receive the facts available rate. See ''*Use of Fact Otherwise Available*'' section, below.

If these preliminary results are adopted in our final results of revivew, we will instruct the U.S. Bureau of Customs and Border Protection to liquidate appropriate entries for Gansu Tongda Fruit Juice and Beverage Company without regard for antidumping duties. However, with respect to Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Yantai Oriental Juice Co., Ltd., SDIC Zhonglu Fruit Juice Co., Ltd., Sanmenxia Lakeside Fruit Juice Co., Ltd., and Changsha Industrial Products & Minerals Import and Export Co., Ltd., there is an injunction in place from the investigation and ongoing litigation. Therefore, entries will not be liquidated until the conclusion of the litigation.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534, (202) 482–3798 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The period of review (''POR'') is June 1, 2001 through May 31, 2002.

Background

On June 5, 2000, the Department published in the **Federal Register** (65 FR 35606) the antidumping duty order on certain non-frozen apple juice concentrate (''AJC'') from the People's Republic of China (''PRC''). On June 5, 2002, the Department notified interested parties of the opportunity to request an administrative review of this order (67 FR 38640). On June 24, 2002, Shaanxi Haisheng Fresh Juice Co., Ltd. (''Haisheng''), Yantai Oriental Juice Co., Ltd. (''Oriental''), and SDIC Zhonglu Fruit Juice Co., Ltd. (''Zhonglu'') requested an administrative review. On June 28, 2002, Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc., (collectively, ''the petitioners''), requested that the Department conduct an administrative review of the antidumping order for Haisheng, Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside''), Zhonglu, Oriental, Qingdao Nannan Foods Co., Ltd. (''Nannan''), Xian Asia Qin Fruit Co., Ltd. (''Xian Asia''), Xian Yang Fuan Juice Co., Ltd. (''Xian Yang''), Changsha Industrial Products & Minerals Import and Export Co., Ltd. (''Changsha''), Shandong Foodstuffs Import and Export Corporation (''Shandong''), Shaanxi Hengxing Fruit Juice Co., Ltd. (''Hengxing''), Shaanxi Machinery and Equipment Import and Export Corporation (''SAAME''), Shaanxi Gold Peter Natural Drink Co., Ltd. (''Gold Peter''), and Yantai North Andre Juice Co., Ltd. (''North Andre'').

On July 10, 2002, North Andre objected to the petitioners' request for an administrative review of North Andre because it received a zero percent margin in the less-than-fair-value (''LTFV'') investigation, and thus, is excluded from the order. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice From the People's Republic of China,* 65 FR 35606 (June 5, 2000 (''*Final Determination*''). Therefore, the Department did not initiate a review for North Andre.

In accordance with 19 CFR 351.221(b)(1), on July 24, 2002, we published a notice of initiation of this antidumping duty administrative review (67 FR 48435) for Zhonglu, Oriental, Lakeside, Changsha, Haisheng, Nannan, Xian Asia, Xian Yang, Shandong, Hengxing, SAAME, and Gold Peter.

On June 25, 2002, the Department received a request from Gansu Tongda Fruit Juice and Beverage Company (''Gansu Tongda'') to conduct a new shipper review. On July 24, 2002, we initiated a new shipper review of the antidumping order on AJC from the PRC. *See Non-Frozen Apple Juice Concentrate From the People's Republic of China: Initiation of Antidumping New Shipper Review,* 67 FR 48440. On July 26, 2002 Gansu Tongda waived the time limits applicable to the new shipper review and agreed to permit the Department to conduct the new shipper review concurrently with the annual administrative review for 2001–2002.

On August 2, 2002, the Department sent questionnaire to all respondents and to the Chinese Chamber of Commerce for the Import and Export of Foodstuffs, Native Produce & Animal By-Products (''China Chamber''), with a copy to the Embassy of the PRC in the United States, requesting that the China Chamber also forward the questionnaire to the respondents named in the initiation notice.

Following the issuance of questionnaire, the following parties reported that they had no shipments during the POR: Shandong, Nannan, SAAME, Hengxing, Xian Asia, Gold Peter, and Xian Yang. See ''*Partial Rescission*'' section, below.

In September 2002, we received responses the questionnaire from the following companies: Haisheng, Lakeside, Oriental, Zhonglu and Gansu Tongda. Changsha did not respond to the Department's original questionnaire. See ''*Use of Fact Otherwise Available*'' section, below.

On August 14, 2002, April 4, 2003, and June 6, 2003, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from Haisheng, Oriental, Zhonglu and Gansu Tongda on May 5, 2003.

We issued supplemental questionnaire to Lakeside, Haisheng, Zhonglu, Oriental and Gansu Tongda, and received responses by January 10, 2003.

On January 24, 2003, the Department published a notice postponing the preliminary results of this review until June 30, 2003. *See Extension of Time Limit for the Preliminary Results of the 2001–2002 Antidumping Duty Administrative Review and New Shipper Review,* 68 FR 3510.

We note that the Petitioners have not made any written submissions in this proceeding.

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate (''AJC''). Certain AJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang, which reported that they made no shipments of subject merchandise during this POR. We examined shipment data furnished by the U.S. Bureau of Customs and Border Protection and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these companies during the POR.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC AJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Haisheng, Zhonglu, Oriental, Lakeside and Gansu Tongda have placed a number of documents on the record to demonstrate absence of de jure government control, including ''Foreign Trade Law of the People's Republic of China'' (''Foreign Trade Law''), ''Company Law of the PRC'' (''Company Law''), the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (''Administrative Regulations''), the ''Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures'' (''Joint Ventures Law''), and the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (''Industrial Enterprise Law''). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of de jure control. (*See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From the People's Republic of China,* 63 FR 72255 (December 31, 1998) (''*Mushrooms*'')). We have no new information in this proceeding which would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of de jure control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies.

In keeping with the Company Law, the Administrative Regulations safeguard social and economic order, as well as establishing an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of de jure control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies.

The Joint Ventures Law states that Chinese and foreign parties shall share earnings and bear risks jointly. An analysis of the Joint Ventures Law by the Department further indicates lack of de jure control for Oriental, Xian Asia, and Zhonglu, those respondents actually subject to this law.

The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. As in prior

PRC cases, the Department has analyzed the Industrial Enterprises Law and found that this law establishes mechanisms for private control of companies, which indicates an absence of de jure control. *See Pure Magnesium From the People's Republic of China: Final Results of New Shipper Review,* 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, AJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that AJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of de jure government control over export pricing and marketing decisions of the respondents.

Absence of De Facto Control

De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; (4) whether each exporter has autonomy from the government regarding the selection of management (*See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589).

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Mushrooms,* 63 FR at 72255). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department has reviewed the record in this case and notes that each respondent: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Changsha did not submit a response to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that Changsha did not establish its entitlement to a separate rate in this review and, therefore, is presumed to be part of the PRC NME entity and, as such, is subject to the PRC country-wide rate. *See* the ''*Use of Facts Otherwise Available*'' section, below.

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, Changsha is appropriately considered part of the PRC-wide entity. This entity did not respond to the Department's questionnaire. 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 title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (*See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufactures/Exporters: Certain Preserved Mushrooms from the People's Republic of China,* 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms for the People's Republic of China,* 65 FR 40609, 40611 (June 30, 2000)); *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review,* 62 FR 2655 (January 17, 1997) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy,* 61 FR 36551, 36552 (July 4, 1996)). Because the PRC entity provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated full.'' *See* Statement of Administrative Action (''SAA)'' accompanying the URAA, H.Doc. No. 103–316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.'' On August 2, 2002, the Department transmitted its questionnaire to Changsha via priority mail. We confirmed with the delivery company that this transmission was received and signed for by Changsha personnel on August 6, 2002. Changsha did not submit a response to our questionnaire by the deadline established for such submissions. On December 2, 2002, the Department faxed and sent a letter by priority mail to Changsha asking whether the company had received the August 2, 2002, questionnaire, and whether it had, in fact, decided not to comply with our requests for information. The Department received no responses from Changsha personnel to either the letter or the facsimile. Therefore, we determine that the PRC entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (*See, e.g.,*

Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China, 64 FR 61581, 61584 (November 12, 1999); *Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China,* 64 FR 39115 (July 21, 1999); and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 65 FR 33295 (May 23, 2000) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China,* 64 FR 39115 (July 21, 1999)), as adverse facts available, we have preliminarily assigned to the PRC entity (which includes Changsha) the PRC-wide rate of 51.74 percent, which is the PRC-wide rate established in the LTFV investigation (*See Final Determination*) and the highest dumping margin determined in any segment of this proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors, From Taiwan,* 63 FR 8909, 8932, (February 23, 1998).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' The Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). We have determined that there is no evidence on the record which would render the application of the petition margin inappropriate. Therefore, we consider the petition information relevant for this proceeding.

Furthermore, in the underlying LTFV investigation, we established the reliability of the petition margin (*See Final Determination*). As there is no information on the record of this review that demonstrates that the petition rate is not reliable for use as the adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC-wide rate to be applied in this review to exports of subject merchandise by the PRC entity (which includes Changsha).

Export Price and Constructed Export Price

For certain sales made by Haisheng and Zhonglu to the United States, we used constructed export price (''CEP'') in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by Ganus Tongda, Oriental, and Lakeside, and certain sales made by Haisheng and Zhonglu, we used export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not warranted by other circumstances.

We calculated EP based on the various prices to unaffiliated purchasers, as appropriate. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for U.S. freight forwarder fees, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), and U.S. warehousing. We valued the deductions for foreign inland freight and brokerage and handling using surrogate data, which were based on Indian freight costs. (We selected Poland as the surrogate country for the reasons explained in the ''*Normal Value*'' section of this notice, below. However, where we were unable to find Polish data to value other miscellaneous factors of production, we have valued these inputs using public information on the record for India, one of the comparable economies identified by the Office of Policy.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight or marine insurance was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight or marine insurance values for all U.S. sales made by that company. *See* 19 CFR 351.408(c)(1) (regulation for the information used to value factors of production).

We calculated CEP based on the ex-dock (PRC), ex-dock (USA), DDP (delivered duty paid), and delivered prices from Haisheng and Zhongulu's U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, we deducted from the starting price for CEP amounts for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), U.S. Freight forwarder fee, U.S. warehousing expense, credit expenses, commissions, direct selling expenses and indirect selling expenses.

In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: Commissions, warranties, credit expenses, indirect selling

expenses (including inventory carrying costs), and other direct selling expenses. In accordance with section 772(d)(3) of the Act, we also deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production methodology if: (1) The subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with section 773(c) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose Poland as the primary surrogate, a significant producer of the comparable merchandise, apple juice concentrate, on the basis of the criteria set out in sections 773(c)(2)(B) and 773(c)(4) of the Act, and in 19 CFR 351.408(b). Although Poland was not on the Office of Policy's list of most comparable economies, we were unable to establish that these comparable economies were significant producers of comparable merchandise. We have applied surrogate values based on publicly available information from Poland for the major input, juice apples, as well as electricity, factor overhead, SG&A and profit ratios. However, since we were unable to obtain Polish data to value the other miscellaneous factors of production, we have valued these inputs using public information on the record for India, one of the comparable economies identified by the Office of Policy. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price indices (''WPI'') published by the International Monetary Fund. *See* the June 30, 2003, Memorandum to Jeff May from Susan Kuhbach ''Surrogate Selection and Valuation—Non-Frozen Apple Juice Concentrate from China (''Surrogate Country Memo'') for a further discussion of our surrogate selection, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Pursuant to the Department's factors-of-production methodology as provided in section 773(c) of the Act and 19 CFR 351.408(c), we valued the respondents' reported factors of production by multiplying them by the following values (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated June 30, 2003, which is on file in the CRU):

Juice Apples: We have valued juice apples using prices of juice apples in Poland, covering 33 weeks of the POR, which were provided to the Department by the Foreign Agriculture Service (''FAS'') at the U.S. Embassy in Warsaw, Poland. This pricing data was obtained by the FAS from the Polish Foreign Agricultural Markets Monitoring Unit/ Foundation for Aid Programs for Agriculture and the Institute of Agricultural Economics. The average value of these 33 prices is $34.54 per metric ton.

Processing Agents: We valued pectinex enzyme, amylase enzyme, bentonite, diatomite, gelatin, silica gel, and activated carbon for the POR using the World Trade Atlas data for India which is based on data reported by the DGCI&S of the Ministry of Commerce, which also supplies the same data for the Monthly Statistics of the Foreign Trade of India, Volume II: Imports (''Indian import statistics'').

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website.

Electricity and Steam Coal: To value electricity, we used Polish industrial electricity rate data from the Energy Prices & Taxes—Quarterly Statistics (Third Quarter 2000) published by the International Energy Agency. We determined that the most contemporaneous and detailed information on the record for steam coal could be derived from the Energy Data Directory & Yearbook (2001/2002) published by Tata Energy Research Institute (''TERI''). The data for the Indian domestic price of steam coal is contemporaneous with the POR and broken out by useful heat value (''UHV''). The available Polish steam coal data was not broken out by useful heat value.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SG&A, and profit, using the 2002 financial statement of Agros Fortuna, a public company in Poland that produces products similar to the subject merchandise.

Packing Materials: We calculated values for aseptic bags, plastic liners, labels, wood bins, steel corners, steel bolts, steel bands, steel clips, styrofoam padding, adhesive tape, nails, and cardboard boxes using the World Trade Atlas data for India for the POR. We converted values from a per kilogram to a per piece basis, where necessary.

For steel drums, we could not find a reliable current Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

Inland Freight Rates: To value truck freight rates, we used an April 2002 article from the Iron and Steel Newsletter, which quotes information derived from the website, *www.infreight.com.* With regard to rail freight, we based our calculation on posted rail rates from the Indian Railways at *www.indianrailways.gov.in.* We calculated an average per kilometer per metric ton rate.

International Freight: We used rates collected from the Descartes online system. Where an individual PRC producer-exporter used a market-economy shipper and paid for the shipping in a market-economy currency, and could provide the complete documentation of the transaction, we calculated an average price for shipping paid by that producer/exporter.

Marine Insurance: We were unable to find a marine insurance rate from an Indian supplier of marine insurance. Furthermore, there is no other information on the record valuing marine insurance from another surrogate country. Therefore, we have used a POR price quote from a U.S. insurance provider, as we have in past PRC cases. *See also* 14th Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Memo to Susan Kuhbach, ''Factors of Production Values used for the Preliminary Results,'' July 1, 2002. (This was consistent with the Court of International Trade's decision that the Department must ''determine marine insurance in a manner reasonably related to the value and risks of transporting TRBs.'' *See Peer Bearing Company* v. *U.S.,* 12 F Supp. 2D 445 (CIT 1998)).

Brokerage and Handling: The brokerage and handling amount used in our calculations was derived from an amount charged in Indian Rupees by an Indian shipping company. This figure was taken from the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering, for *Stainless Steel*

Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000) (Placed on the record of this proceeding June 30, 2003, as an attachment to the Memorandum to Susan Kuhbach, ''Factors of Production Values Used in the Preliminary Results.'' Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

By-products: Certain respondents reported by-products resulting from production of the subject merchandise. For those respondents that reported their production of apple essence/aroma and/or apple pomace, we have made a deduction for the production of by-products generated during production of AJC. Because we were unable to find reliable Indian values for apple essence or apple pomace, and we are still in the process of looking for a Polish price, we used U.S. prices as the surrogate values because they are the only values on the record of this proceeding. We will continue to look for an appropriate surrogate for purposes of the final results. The value for apple essence/aroma was calculated as a simple average of the various prices reported at the July 1999 ITC hearing and 1999 price quotes provided to the Department by two U.S. brokers of food products. Apple pomace was valued using an April 2000 study published by the University of Georgia. *Preliminary Results of the Review.*

We preliminarily determine that the following dumping margins exist for the period June 1, 2001, through May 31, 2002:

Second Administrative Review

Exporter/Producer	Weighted-average margin percentage
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
Shandong Zhonglu Juice Group Co., Ltd.	0.00
Yantai Oriental Juice Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
PRC-wide rate (including Changsha Industrial Products & Minerals Import and Export Co., Ltd.)	51.74

New Shipper Review

Exporter	Producer	Weighted-average margin percentage
Gansu Tongda Fruit Juice and Beverage Company.	Gansu Tongda Fruit Juice and Beverage Company.	0.00

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d)(2), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issuers raised in any such written briefs or hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to the U.S. Bureau of Customs and Border Protection to assess antidumpting duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements for Administrative Review

The following cash deposit requirements will be effective upon publication 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 date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates for exporters to the United States by these companies will be the rates for these firms shown above, except that, for exporters with *de minimis* rates *i.e.*, less than 0.50 percent, no deposit will be required; (2) for North Andre, which was excluded from the antidumping duty order, no deposit is required; (3) for exporters previously found to be entitled to a separate rate in a prior segment of the proceedings, and for which no review has been requested, the cash deposit rate will continue to be the rate established for that exporter in the most recent segment of the proceeding; (4) for all other PRC exporters (including Changsha), the cash deposit rate will be 51.74 percent, the PRC country-wide ad-valorem rate; and (5) for all other non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Cash Deposit Requirements for New Shipper Review

Bonding will no longer be permitted to fulfill security requirements for shipments from Gansu Tongda of AJC from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Gansu Tongda of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Gansu Tongda, we will require a cash deposit at the rate established in the final results; and (2) for subject merchandise exported by Gansu Tongda but not manufactured by it, the cash deposit will be the PRC countrywide rate (*i.e.,* 51.74 percent).

Notification to Importers

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

We are issuing and publishing these results in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act and 19 CFR 351.221(b).

Dated: June 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Importer Administration.

[FR Doc. 03–17065 Filed 7–3–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Notice of Amended Final Results Pursuant to Final Court Decision

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

ACTION: Notice of amended final results of antidumping administrative review pursuant to final court decision on stainless steel bar from India.

SUMMARY: On March 18, 2003, in *Carpenter Technology Corp.* v. *the United States*, Court No. 00–09–00447, Slip. Op. 03–28 (CIT 2003), a lawsuit challenging the Department of Commerce's (''the Department'') *Stainless Steel Bar from India; Final Results of Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000) and accompanying Issues and Decision Memorandum (''*Issues and Decision Memorandum*'') (collectively, ''*Final Results*''), the Court of International Trade (''CIT'') affirmed the Department's remand determination and entered a judgment order. As no further appeals have been filed and there is now a final and conclusive court decision in this action, we are amending our *Final Results.*

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2613.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Results*, Carpenter Technology Corp. (''Carpenter''), the petitioner in this case, and Viraj Impoexpo Ltd. (''Viraj''), a respondent in this case, filed lawsuits with the CIT challenging the Department's *Final Results.*

In the *Final Results*, in accordance with section 773(a)(1)(C) of the Tariff Act of 1930, as amended effective January 1, 1995 (''the Act'') by the Uruguay Round Agreements Act (''URAA''), the Department calculated Viraj's antidumping duty margin using third country sales data for normal value because Viraj's home market sales information was incomplete. In using the third country database, the Department was unable to make adjustments for differences in merchandise because, although Viraj cooperated to the best of its ability, it did not report variable cost of manufacture (''VCOM'') data in its third country and U.S. sales databases. *See* section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Therefore, the Department relied on facts otherwise available to account for these differences. In doing so, the Department matched U.S. sales to third country sales according to size ranges (''banding'') for price comparison purposes. Where banding did not result in an identical match, the Department applied the ''all others'' rate of 12.45 percent calculated in *Stainless Steel Bar from India; Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994) (''*LTFV investigation*''). The ''all others'' rate was calculated in accordance with the Tariff Act of 1930, as amended, pre-URAA.

The Court remanded the use of banding to the Department for further explanation. The Court did not find the Department's matching methodology unreasonable or inconsistent with law and recognized the Department's broad authority to determine and apply a model-matching methodology to determine a relevant ''foreign like product'' under sections 773 and 771(16) of the Act. However, the Court noted the apparent disparate treatment between Viraj and another respondent, Panchmahal Steel, Ltd. The Court found that this ''disparity'' and the Department's language in its *Issues and Decision Memorandum* necessitated a further explanation from the Department of its rationale for banding Viraj's sales.

Additionally, the Court questioned the Department's use of the ''all others'' rate applied to Viraj's unmatched sales. The Court found that the Department's use of a pre-URAA weighted-average ''all others'' rate that contained one margin based entirely on adverse facts available did not constitute non-adverse facts available. As such, the Court concluded that the Department could not apply this ''all others'' rate to Viraj, a cooperative respondent. *See* section 776(b) of the Act.

The *Draft Redetermination Pursuant to Court Remand* (''*Draft Results*'') was released to the parties on September 5, 2002. In its *Draft Results*, the Department clarified to the courts its use of banding and the dissimilar treatment of Viraj and Panchmachal Steel, Ldt. We also reconsidered our use of the ''all others'' rate from the *LTFV investigation* as neutral facts otherwise available where Viraj's U.S. sales did not have an identical match under the banding methodology. We modified our application of neutral facts otherwise available in the margin calculations by substituting for ''all others'' rate the weighted-average dumping margin from Viraj's matched banded sales in order to confirm with the Court's conclusion that the ''all others'' rate was not a reasonable choice as neutral facts otherwise available.

Comments on the *Draft Results* were received from Carpenter on September 13, 2002, and Viraj submitted rebuttal comments on September 18, 2002. On September 30, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand (''*Final Results of Redetermination*''). The Department's *Final Results of Redetermination* was identical to the *Draft Results.*

The CIT affirmed the Department's *Final Results of Redetermination* on March 18, 2003. *See Carpenter Technology Corp.* v. *United States,* Consol. Court No. 00–09–00447, Slip. Op. 03–28.

Amendment to the Final Results

Pursuant to section 516A(e) of the Act, because no further appeals have been filed and there is not a final and conclusive decision in the court proceeding, we are amendment the *Final Results* for the period of review February 1, 1998, through January 31, 1999. The revised weight-averaged dumping margin for Viraj Impoexpo Ltd. is as follows: