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3. Nureddin Shariff Sehweil, a.k.a. Dean Sehweil ("Sehweil"), 888 Cross Grates Boulevard, Slidell, Louisiana 70458, and, 106 Everest Drive, Slidell, Louisiana, 70461, and, P.O. Box 46112, Abu Dhabi, United Arab Emirates.

(Collectively, Uni-Arab, Radi Mustafa, and Sehweil are referred to as "proposed related persons.")

On July 7, 2003, attorneys representing proposed related persons filed a timely opposition to BIS's request that I modify the TDO.

On July 14, 2003, BIS filed its Reply to Respondents' Opposition.

Having reviewed all submissions, I have found the following:

- A close relationship in the conduct of trade or business existed in the past, and continues to exist, between the parties subject to the TDO and the proposed related persons;
- After the TDO was issued, the proposed related persons knew of, and participated in, attempted export transactions in violation of the TDO; and
- The proposed related persons have engaged in business activities with Libya concerning items subject to the EAR without obtaining necessary authorization.

Consequently, I have determined that it is necessary to name the above-named entity and individuals as persons related to Talyi and IBS in order to prevent evasion of the terms and conditions of the TDO.

*It is therefore ordered* that the terms of the TDO denying the export privileges of Talyi and his company IBS, and related person Top Oil, are hereby made applicable to Uni-Arab, Radi Mustafa, and Sehweil as related persons.

In accordance with the provisions of Section 766.23(c) of the EAR, related persons may appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

This modification of the TDO is effective immediately and shall remain in effect until the expiration of the TDO.

A copy of this modification to the TDO shall be served on Uni-Arab, Radi Mustafa, and Sehweil, and shall be published in the **Federal Register**.

Entered this 24th day of July, 2003.

**Lisa A. Prager,**

*Acting Assistant Secretary for Export Enforcement.*

[FR Doc. 03-19303 Filed 7-29-03; 8:45 am]

**BILLING CODE 3510-DT-M**

## 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 New Shipper Review**

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

**ACTION:** Notice of Preliminary Results of New Shipper Review.

**SUMMARY:** The Department of Commerce is currently conducting 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, 2002, through November 30, 2002.

The new shipper review covers one exporter: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period of review by Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Bureau of Customs and Border Protection to assess antidumping duties based on the difference between export price and normal value for Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of issuance of these preliminary results.

**EFFECTIVE DATE:** July 30, 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, 2002 through November 30, 2002.

## Background

On December 17, 2002, the Department received a timely request from Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. ("Golden Tide"), to conduct a new shipper review.

On January 30, 2003, we published a notice of initiation of a new shipper review of the antidumping duty order on non-frozen apple juice concentrate ("AJC") from the People's Republic of China ("PRC"). See *Non-Frozen Apple Juice Concentrate from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 68 FR 4762 (January 30, 2003). On January 31, 2003, the Department sent a questionnaire to Golden Tide and received a response on March 21, 2003, and a response to a supplemental questionnaire on April 2, 2003.

On June 26, 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 a response from Golden Tide on July 11, 2003.

The Petitioners have not made any written submissions in this proceeding.<sup>1</sup>

## Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate ( $\geq$ 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.

## Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping

<sup>1</sup> Petitioners are Tree Top, Inc., Knouse Foods Cooperative, Inc., Green Valley Packers, Mason County Fruit Packers Co-op, Inc. and Coloma Frozen Foods, Inc.

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.

Golden Tide has placed two documents on the record to demonstrate absence of *de jure* government control, "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law") and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"). 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 segment of the proceeding which would cause us to reconsider this determination.

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.

According to the respondent, 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 respondent.

#### 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 finds the following facts about the respondent: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; (4) it retains the proceeds from export sales and uses profits according to its business needs without any restrictions; (5) it 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 this company. Consequently, we preliminarily determine that Golden Tide has met the criteria for the application of a separate rate.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise by Golden Tide to the United States were made at prices below normal value ("*NV*"), we compared Golden Tide's export price to *NV*, as described in the "Export Price" and "Normal Value" sections of this notice, below.

#### Export Price

For the sale made by Golden Tide during the POR we used export price, 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 constructed export price methodology was not warranted by other circumstances.

We calculated export price based on Golden Tide's selling price to an unaffiliated purchaser. In accordance with section 772(c) of the Act, we deducted from this price amounts for foreign inland freight from plant to warehouse and from warehouse to port, foreign brokerage and handling, U.S. customs broker fees, international freight, U.S. inland freight from port to warehouse, U.S. warehousing expense, and U.S. customs duty. We valued the deductions for foreign inland freight, international freight, and brokerage and

handling using surrogate data, which was based on Indian freight costs. (Our surrogate-country selection is discussed in the "Normal Value" section of this notice, below.) Because ocean freight was provided by a PRC-owned company, we valued this deduction using amounts charged by market-economy providers.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine 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, a significant producer of non-frozen apple juice concentrate, as the primary surrogate country 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 Department's list of most comparable economies, we were unable to establish that these comparable economies were significant producers of merchandise comparable to non-frozen apple juice concentrate.

We have relied upon publicly available values from Poland for the major input, juice apples, as well as for electricity, factory overhead, selling, general and administrative expenses ("SG&A"), and profit ratios. Because 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 we identified. See the June 17, 2003, Memorandum to Audrey Twyman from Ron Lorentzen, "New Shipper Review for Non-frozen Apple Juice Concentrate from the People's Republic of China (PRC): Request for a List of Surrogate Countries."

Because some of the Indian data was not contemporaneous with the POR we inflated the values to the POR using the Indian wholesale price indices ("WPI")

published by the International Monetary Fund. See the July 23, 2003, Memorandum to Jeffrey May from Susan Kuhbach, "Surrogate Selection and Valuation - Non-Frozen Apple Juice Concentrate from China: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd." ("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 Golden Tide's reported factors of production by multiplying them by the following values<sup>2</sup>:

**Juice Apples:** We have valued juice apples using prices of juice apples in Poland, covering 20 weeks of the POR. This information was provided to the Department by the Foreign Agriculture Service ("FAS") at the U.S. Embassy in Warsaw, Poland, which obtained it 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 20 weekly prices is \$45.30 per metric ton.

**Processing Agents:** We valued pectinex enzyme, amylase enzyme, bentonite, 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 19 CFR 351.408(c)(3), 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 used the 1999 price and inflated it to the POR. We determined that the most contemporaneous and detailed information regarding steam coal was from the *Energy Data Directory & Yearbook (2001/2002)* published by Tata Energy Research Institute ("TERI"). We used the Indian data because, unlike

the Polish data, the Indian price of steam coal is segregated by useful heat value ("UHV"). We used the January 2001 price and inflated it to the POR using the Indian WPI.

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

**Packing Materials:** We calculated values for aseptic bags and labels 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](http://www.infreight.com). We used the April 2002 price and inflated it to the POR using the Indian WPI. With regard to rail freight, we based our calculation on posted rail rates from the Indian Railways at <http://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 to value Golden Tide's international freight.

**Brokerage and Handling:** The brokerage and handling amount we used in our calculations was derived from an amount charged in Indian Rupees by and 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 segment of the proceeding on July 23, 2003, as an attachment to the *FOP Memo*). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

**By-products:** Golden Tide reported a by-product resulting from production of the subject merchandise, apple pomace. Because we were unable to find reliable values in any potential surrogate country for apple pomace we used U.S. prices. We will continue to look for an appropriate surrogate for purposes of

<sup>2</sup> For a complete description of the factor values used, see the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd." ("FOP Memo"), dated July 23, 2003, which is on file in the CRU.

the final results. 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 margin exists for the

period June 1, 2002, through November 30, 2002:

Exporter	Producer	Weighted-average margin percentage
Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.	Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.	12.36 %

### 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 new shipper 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 new shipper review, including the results of its analysis of issues raised in any such written briefs or hearing, within 90 days of the date of issuance of these preliminary results, pursuant to section 751(a)(2)(B)(iv) 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 new shipper review, if any importer/customer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), the Department will issue appraisal instructions directly to the U.S. Bureau of Customs and Border Protection to assess antidumping 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. The Department will issue assessment instructions

directly to the U.S. Bureau of Customs and Border Protection within 15 calendar days of the publication of the final results of this new shipper review in the **Federal Register**.

### Cash Deposit Requirements for New Shipper Review

Bonding will no longer be permitted to fulfill security requirements for shipments from Golden Tide of AJC from the PRC on or after the publication date of the final results of this new shipper review. Instead, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Golden Tide of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Golden Tide, we will require a cash deposit at the rate established in the final results; and (2) for subject merchandise exported by Golden Tide 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 section 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: July 23, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas,  
Under Secretary.*

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**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-821]

### Certain Hot-Rolled Carbon Steel Flat Products From India: Extension of Preliminary Results of Countervailing Duty Administrative Review

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

**ACTION:** Notice of extension of time limit for preliminary results of countervailing duty administrative review.

**EFFECTIVE DATE:** July 30, 2003.

### FOR FURTHER INFORMATION CONTACT:

Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: (202) 482-2786.

### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

### Background

On January 22, 2003, the Department published a notice of initiation of administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from India, covering the period April 20, 2001, through December 31, 2002 (see 68 FR 3009). The preliminary results are currently due no later than September 2, 2003.