

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the Decision Memo are identical in content.

### Final Results

After our analysis of the comments received, we determine that Degussa-AJ's factors of production have not changed substantially since Degussa AG's investment in AJ Works. As a result, the Department will consider in any relevant future revocation inquiry any administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: November 28, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

### Appendix—Issues in Decision Memo

*Comment 1:* Whether the Department Must Make a Successor-in-Interest Determination in this Changed Circumstances Review

*Comment 2:* Whether Ai Jian May Use Reviews In Which it Sourced its Merchandise from AJ Works to Support a Revocation Request

*Comment 3:* Whether Ai Jian is Subject to a Combination Antidumping Duty Rate Based on the Exporter-Producer Combination of Ai Jian and AJ Works [FR Doc. 03-30260 Filed 12-4-03; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-813]

### Notice of Initiation of Antidumping Investigation: Certain Processed Hazelnuts from Turkey

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

**EFFECTIVE DATE:** December 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** John Drury at (202) 482-0195, Michael Ferrier at (202) 482-1394, or Abdelali Elouaradia at (202) 482-1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### The Petition

On October 21, 2003, the Department of Commerce ("Department") received

an antidumping duty petition ("Petition") filed in proper form by Westnut LLC, Northwest Hazelnut Company, Hazelnut Growers of Oregon, Willamette Filbert Growers, Evergreen Orchards, and Evonuk Orchards ("Petitioners"). Petitioners are domestic producers of certain processed hazelnuts ("hazelnuts"). On October 28, 2003, and October 29, 2003 inclusive, Petitioners submitted information to supplement the Petition ("First Petition Amendment"). Additionally, on October 30, 2003, counsel for the Petitioners met with Department officials, at which time Department officials notified Petitioners that the Petition to date was insufficient. See *Memorandum to the File from John Drury, Case Analyst: Ex-parte meeting with Counsel for Petitioners*, dated October 31, 2003. On November 4, 2003, Petitioners submitted further information to supplement the Petition ("Second Petition Amendment"). On November 24, 2003, Petitioners submitted additional information to supplement their Petition at the request of the Department ("Third Petition Amendment"). On November 10, 2003, and November 26, 2003, the Istanbul Hazelnut and Hazelnut Products Exporters Union and the Black Sea Hazelnut and Hazelnut Products Exporters Union filed comments regarding industry support. On November 28, 2003, Petitioners filed additional comments regarding industry support. In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioners filed their Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigation they are presently seeking. See *Determination of Industry Support for the Petition* section below.

#### Scope of the Investigation

The scope of this investigation covers certain processed hazelnuts, including kernels, and kernels that have been roasted, blanched, sliced, diced, chopped, or in the following other forms: paste, meal, flour, croquant, and butter. In-shell hazelnuts are excluded from the scope of the order.

The merchandise subject to this investigation is classified in the

Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 0802.22 and 2008.19.2000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding the scope of the investigation. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute

directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

Moreover, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. The Petition covers certain processed hazelnuts as defined in the Scope of the Investigation section, above, and it constitutes a single class or kind of merchandise. The Department has no basis on the record to find the Petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the Petition. *See Antidumping Duty Investigation Initiation Checklist ("Initiation Checklist")*.

Based on the Petition data, the share of total estimated U.S. production of the domestic like product from October 2002 to September 2003 represented by Petitioners and the supporting domestic producers equal over 25 percent of total domestic production but less than 50 percent of production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Memorandum to the File from Richard O. Weible, Office Director, Group III, Office 8: Antidumping Duty Petition on Certain Processed Hazelnuts from*

*Turkey: Extension of Deadline for Determining Industry Support*, dated November 10, 2003. Petitioners did not meet the 50 percent threshold with their Third Petition Amendment for industry support because there are other hazelnut processors in the United States who are not subject to the U.S. Department of Agriculture's federal marketing order for hazelnuts and source some or all of their supply of hazelnuts from imports. Therefore, in accordance with Section 732(c)(4)(D), we polled the industry. On November 12, 2003, the Department sent a letter to possible hazelnut processors requesting U.S. production data for the period October 2002 to September 2003. This letter is on file in the Central Records Unit in room B-099 of the main Department of Commerce building and on the Import Administration website. For a detailed summary of the Department's efforts to identify relevant companies, *See Memorandum to the File regarding Procedures Used to Determine Industry Support*, dated December 1, 2003. Additionally, the Department published a notice in the **Federal Register** extending the twenty-day initiation and requesting production information from hazelnut processors in the United States (*See Notice of Request for Information and Extension of time for Initiation: Antidumping Duty Petition on Certain Processed Hazelnuts from Turkey*, (68 FR 64589) November 14, 2003.) The Department has relied upon the responses to this letter and follow-up phone calls to clarify certain responses to determine industry support. For the analysis of the data, *See Initiation Checklist*. Our analysis of the data indicates that the domestic producers of processed hazelnuts who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See Initiation Checklist*.

Therefore, we find that the industry support requirements of section 732(c)(4)(A) of the Act have been met.

#### **Period of Investigation**

The anticipated period of investigation ("POI") will be October 1, 2002 through September 30, 2003.

#### **Export Price and Constructed Value**

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed

value ("CV") have been accorded treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

#### **Export Price**

In calculating the U.S. price, the Petitioner relied upon actual sales during the POI of Turkish processed hazelnuts to the United States. Petitioners provided sales invoices as support for their U.S. starting price. To calculate a net price, Petitioners deducted the Turkish export tax on processed hazelnuts and movement expenses, which include ocean freight, marine insurance, and brokerage. Petitioners calculated the export tax and the movement expenses from publically available data.

#### **Constructed Value**

Petitioners attempted to locate home market and third country prices of processed hazelnuts and outlined their efforts in the Third Petition Amendment. Petitioners were unable to locate home market prices that occurred within the POI or prices of subject merchandise (*i.e.*, shelled hazelnuts). Petitioners located prices of Turkish processed hazelnuts to Germany and provided information demonstrating reasonable grounds to believe or suspect that sales of processed hazelnuts in the German third country market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department initiate a country-wide sales-below-cost investigation. *See Memorandum to the File from Steve Williams, Import Analyst, Office of Policy: Telephone call with Pete Koenig regarding antidumping duty petition of Certain Processed Hazelnuts from Turkey*, dated December 01, 2003. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the Petitioners based normal value for sales in Turkey on CV. The Petitioners calculated CV using the cost of manufacturing, depreciation, selling, general and administrative expenses, and interest expense figures. Consistent with section 773(e)(2) of the Act, the Petitioners included in CV an amount for profit. For profit, the Petitioners relied upon amounts reported in a publicly available document.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing, selling, general and administrative expenses, and packing. The Petitioners calculated COM based on publicly available information and their own production experience, adjusted for known differences between costs incurred to produce processed hazelnuts in the United States and Turkey using publicly available data. To calculate SG&A and interest expense, the Petitioners were unable to obtain the financial statements of a Turkish hazelnut processor and therefore relied upon publicly available information for marketing and financing costs and their experience during the POI for general and administrative costs. Based upon a comparison of the price of the foreign like product in the third-country market, Germany, to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Germany. We note, however, that if we determine that the home market (*i.e.*, Turkey) is viable, our initiation of a country-wide cost investigation with respect to sales to Germany will be rendered moot.

Based upon the comparison of CV to EP, the Petitioners' calculated estimated dumping margin is 31.80 percent (*See Initiation Checklist*).

#### Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold at less than fair value.

#### Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioners contend that the industry's injured condition is evident in examining reduced production, shipments and net income, decreased employment, declining kernel prices, and lost sales and revenue. *See Petition* at pages 23–31. Petitioners assert its share of the market has declined from 2000 to 2002. *See Petition* at page 26. For a full discussion of the allegations and evidence of material injury, *See Initiation Checklist* at Attachment II.

#### Initiation of Antidumping Investigation

Based on our examination of the Petition covering certain processed hazelnuts, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain processed hazelnuts from Turkey are being, or are likely to be, sold in the United States at less than normal value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or April 19, 2004.

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the government of Turkey.

#### International Trade Commission Notification

The ITC will preliminarily determine on December 10, 2003, whether there is reasonable indication that imports of certain processed hazelnuts from Turkey are causing, or threatening, material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Date: December 1, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–30261 Filed 12–4–03; 8:45 am]

BILLING CODE 3510–DS–S

#### DEPARTMENT OF COMMERCE

#### International Trade Administration

[C-475–819]

#### Certain Pasta from Italy: Notice of Rescission of Countervailing Duty New Shipper Review

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

**ACTION:** Notice of Rescission of Countervailing Duty New Shipper Review.

**SUMMARY:** On March 5, 2003, the Department of Commerce published in the **Federal Register** (68 FR 10446) a notice announcing the initiation of a

new shipper review of the countervailing duty order on certain pasta from Italy, covering the time period January 1, 2002 through December 31, 2002. On March 24, 2003, the Department published a corrected notice of initiation in the **Federal Register** (68 FR 14198). We are now rescinding this new shipper review. **EFFECTIVE DATE:** December 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Alexy or John Brinkmann, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1540 or 482–4126, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On December 17, 2002, the Department of Commerce (the “Department”) received a request from Pastificio Carmine Russo S.p.A. (“Pastificio Russo”), made pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the “Act”) and 19 CFR §351.214(b), to conduct a new shipper review of the countervailing duty order on certain pasta from Italy, which was issued on July 24, 1996 (61 FR 38544). On February 24, 2003, the Department received submissions from Pastificio Russo containing additional information.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR §351.214, on February 27, 2003, the Department initiated a countervailing duty new shipper review for certain pasta from Italy, covering calendar year 2002. *See Certain Pasta from Italy: Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). Corrections to the initiation notice were published in the **Federal Register** on March 24, 2003 (*See* 68 FR 14198). On August 29, 2003, the Department extended the time limit for the publication of the preliminary results in the new shipper review. *See Certain Pasta From Italy: Notice of Extension of Time Limit for Countervailing Duty New Shipper Review*, 68 FR 51965 (August 29, 2003).

On August 22, 2003, the Department, after receiving a timely request from Pastificio Russo pursuant to 19 CFR §351.213(b)(2), initiated an administrative review covering calendar year 2002 for that company. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). Accordingly, parallel reviews covering the same period of review were initiated