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November 6, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the Final Results of the First
Antidumping Duty Administrative Review of Non-Frozen Apple
Juice Concentrate from the People's Republic of China

SUMMARY

We have analyzed the briefs of interested parties in the first antidumping duty administrative review of non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to the margin calculations from the Preliminary Results. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this review for which we received comments by parties:

- Comment 1: Valuation of steam coal
- Comment 2: Deduction of domestic brokerage and handling charges from U.S. sales price
- Comment 3: Valuation of aseptic bags
- Comment 4: Inclusion of government MIS apple price in surrogate value calculation

BACKGROUND

On July 9, 2002, the Department of Commerce (“the Department”) issued the preliminary results of this first antidumping duty administrative review of NFAJC from the PRC. (See Certain Non-Frozen Apple Juice Concentrate From the People’s Republic of China: Preliminary Results of 1999-2001 Administrative Review and Partial Rescission of Review, 67 FR 45462 (July 9, 2002) (“Preliminary Results”).) The merchandise covered by this administrative review is all NFAJC 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 period of review (“POR”) is November 23, 1999, through May 31, 2001. We invited parties to comment. We received case briefs on August 8, 2002, from respondents Yantai Oriental Juice Co., Ltd., Xian Asia Qin Fruit Co., Ltd., Shaanxi Hengxing Fruit Juice Co., Ltd., Qingdao Nannan Beverage Co., Ltd., Shandong ZhongLu Juice Group Co., Ltd., Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., and Shaanxi Machinery and Equipment Import and Export Corporation (collectively “Yantai et al”)¹, and from Sanmenxia Lakeside Fruit Juice Co., Ltd. (“Lakeside”). We received a rebuttal brief on August 13, 2002, from the petitioners.² No public hearing was held because none was requested.

DISCUSSION OF ISSUES

Comment 1: Valuation of steam coal

Respondents’ Argument: Yantai et al argue that the Department should value steam coal by using the domestic steam coal prices from India that are “exactly contemporaneous” with the POR, rather than steam coal prices taken from Indian import statistics that were used by the Department in the Preliminary Results. They state that the Department recently confirmed that domestic prices from the selected surrogate country should be used in lieu of import values, unless there is evidence of a price distortion, citing Creatine Monohydrate from the People’s Republic of China: Final Results of Antidumping Duty Review, 67 FR 10892 (March 11, 2002) and accompanying Issues and Decision Memorandum at Comment 1 (“Creatine”), and Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 67 FR 46173 (July 12, 2002) and accompanying Issues and Decision Memorandum at

¹ A single brief was filed by counsel for these companies.

² Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc.

Comment 7 (“Preserved Mushrooms”), where the Department determined that if no price distortion existed, the Department would use only domestic prices for valuing all inputs.

Yantai et al claim that there is no evidence of a price distortion in the domestic steam coal prices in the instant case. Further, they contend that the use of domestic steam coal prices in this case is warranted because the Department’s use of import values for steam coal has been specifically criticized by the U.S. Court of International Trade, citing Yantai Oriental Juice Co. v. United States, U.S.C.I.T. Slip Op. 02-56 (June 18, 2002) (“Yantai”) at p. 24. Finally, according to Yantai et al, the domestic steam coal prices are far more precise than the import values used in the Preliminary Results because the domestic prices are broken out by “useful heat value” (“UHV”) levels and Yantai et al have reported to the Department the average UHV levels of steam coal that they consumed in the production of NFAJC.

Petitioners’ Argument: The petitioners did not comment on this issue.

Department’s Position: We agree with Yantai et al that we should value steam coal by using the domestic steam coal prices from India which are contemporaneous with the POR and are more specific to the input.

In Creatine, the Department stated that it does not have an unconditional preference for using domestic prices over import prices to value factors of productions. See, Creatine at Comment 1. See also Preserved Mushrooms at Comment 7. Further, the Department explained that it may reject domestic prices if there is evidence that the domestic prices are distorted by certain factors, such as high tariffs. If no distortion exists, the Department would use domestic prices for valuing the input. See Creatine at Comment 1.

We have reviewed the domestic and import prices that are on the record. The Department agrees with Yantai et al that there is no evidence of a price distortion in the domestic steam coal prices. In the instant case, both the domestic and import prices are contemporaneous with the POR. However, the domestic prices are more specific to the input than the import prices. The import prices are for a blanket category of steam coal whereas the domestic steam coal prices, from the Tata Energy Research Institute (“TERI”) Energy Data Directory and Yearbook 2000/2001, are broken out by UHV levels. (See Yantai et al’s February 11, 2002, Surrogate Value Submission, at p. 7 and Exhibit 13.) Since Yantai et al have submitted for the record the average UHV levels they consumed during the POR, the Department is able to value each of these respondents’ steam coal using the domestic price in India for steam coal with the same or similar UHV. Therefore, for Yantai et al, the Department has valued steam coal using the Indian domestic prices from the TERI Energy Data Directory and Yearbook 2000/2001 instead of the Indian import statistics used in the Preliminary Results. For other respondents utilizing steam coal but which did not report specific UHV levels, we have valued their steam coal using an average of the Indian domestic prices from the TERI Energy Data Directory and Yearbook 2000/2001 for all UHV levels as there is no evidence of price distortion for these domestic prices.

Comment 2: Deduction of domestic brokerage and handling charges from U.S. sales price

Respondents' Argument: Yantai et al claim that the Department improperly deducted charges for domestic brokerage and handling from their U.S. sales prices. Yantai et al charge that the Department apparently assumed that there must be a domestic brokerage charge despite their statements in their responses that they did not incur a separate expense for domestic brokerage. Citing to China National Arts and Crafts Import and Export Corp. v. United States, 771 F. Supp. 407, 411 (CIT 1991), they argue that the courts have stated repeatedly that the Department cannot speculate or make assumptions, and then merely claim to make a decision based upon the substantial evidence on the record.

Yantai et al contend that the Department's assumption regarding domestic brokerage charges is refuted not only by the record evidence that they did not incur domestic brokerage charges but also by recent articles and notices confirming that certain domestic brokerage charges were not in effect in the PRC during the POR. Yantai et al provided an article from the Times Net Asia and notices from two international shipping companies indicating that terminal handling charges ("THC") did not come into effect in the PRC until January 15, 2002, which is after the POR. Yantai et al point out that terminal handling charges account for over 50% of the surrogate brokerage and handling charges used by the Department.

Yantai et al also argue that if the Department continues to apply a domestic brokerage charge, the Department should calculate the domestic brokerage charges based on the appropriate weight for a 20-foot container shipment of NFAJC rather than the weight of an Indian shipment of stainless steel bar that the Department used in the Preliminary Results. Yantai et al charge that calculating domestic brokerage charges based on the weight of the Indian shipment grossly distorts the alleged cost of the domestic brokerage charges since the weight of the Indian shipment bears no relationship to the weight of NFAJC shipments. Yantai et al claim that the per container weight of NFAJC is already on the record and has already been accepted by the Department to calculate ocean freight values. Therefore, if the Department intends to apply the domestic brokerage charges, it should base its calculation for a per metric ton domestic brokerage charge on the weight of a 20-foot container shipment of NFAJC.

Petitioners' Argument: The petitioners did not comment on this issue.

Department's Position: We find no evidence on the record to support a finding that these companies incurred domestic brokerage and handling charges during the POR. Therefore, we have not deducted these charges from those companies' U.S. sales prices. We also did not deduct charges for domestic brokerage and handling from Shaanxi Gold Peter Natural Drink Co., Ltd., and Shandong Foodstuffs Import and Export Corporation's U.S. sales prices because there is no information on the record that these companies incurred domestic brokerage and handling charges during the POR. However, for Lakeside, who has reported to the Department that it did incur domestic brokerage and handling charges during the POR, the Department deducted the charges for domestic brokerage and handling from its U.S. prices, but has excluded the terminal

handling portion of the expense as the record supports that terminal handling charges were not in effect in the PRC during the POR.

Comment 3: Valuation of aseptic bags

Respondent's Argument: Respondent Lakeside argues that the Department's conversion of aseptic bags to weight in kilograms is incorrect because the Department did not use the actual weight of the bags listed on Lakeside's purchase invoices for aseptic bags. The actual conversion rate should be 0.6426 kilograms per aseptic bag, rather than the 0.6661 kilograms per aseptic bag used by the Department.

Petitioners' Argument: The petitioners did not comment on this issue.

Department's Position: In the Preliminary Results, in converting aseptic bags to weight in kilograms, we relied on information from the original investigation and used an average net weight of 0.6661 kilogram per aseptic bag. The purchase invoices relied on by Lakeside in calculating its conversion rate include the weight of a small quantity of sample bags that are listed on the invoices with the relevant aseptic bags. These sample bags are much smaller and are identified only as "sample bags" and not as aseptic bags. It is not possible to calculate a separate weight for the aseptic bags from the invoices because the invoices only contain a combined weight for all bags. Accordingly, we have continued to use an average net weight of 0.6661 kilogram per aseptic bag.

Comment 4: Inclusion of the government MIS apple price in surrogate value calculation

Respondents' Argument: Yantai et al argue that the Market Intervention Scheme ("MIS") price for apples that the Department used to calculate the surrogate value for juice apples is both aberrational and not representative of a "market-based" surrogate value.

Yantai et al claim that the government-mandated MIS price of 2.25 rupees per kilogram ("Rs/kg") is aberrational since it is almost twice as high as the average price of 1.16 Rs/kg for juice apples sold in the open market. They contend that consistent with the Department's established policy of avoiding aberrational prices, this MIS price should be disregarded in the surrogate value calculation for juice apples, citing Certain Cased Pencils from the People's Republic of China: Final Results and Partial Recission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 4, where the Department disregarded certain aberrational values for erasers.

Yantai et al also argue that the MIS price should be rejected because it does not represent a "market-based" surrogate value. They claim that the MIS price "is an artificial price established by the government of India that Himachal Pradesh Horticulture Produce Marketing and Processing Corporation ("HPMC") is forced to pay ..." They say this is because HPMC is wholly owned by the Government of India, and is therefore obligated to pay the MIS price for apples.

They cite HPMC's 1998/1999 financial statement which identifies the purchase of MIS apples as one of the primary reasons for HPMC's heavy losses and its inability to compete in the international market. They also cite the U.S. Court of International Trade ("CIT" or "Court") decision in Yantai at pp. 17-18, which they claim states that the MIS price is not a market-driven price because it is based on a subsidy.

Yantai et al state that "the goal of the surrogate value methodology in nonmarket economy cases is to calculate a hypothetical 'market value' production cost that is representative of the foreign producers under investigation." They contend that the MIS price is neither market-based nor representative of what NFAJC producers in the PRC pay for apples and, therefore, cannot be used in the surrogate value calculation.

Petitioners' Argument: The petitioners argue that the Department's Preliminary Results calculation of the surrogate value for juice apples inappropriately incorporates both the apple prices from articles in The Tribune, an Indian news source, as well as the minimal disposal price used by HPMC to value its inventory of apples, rather than the actual price paid for juice apples by Indian producers of apple juice, which is the 3.75 Rs/kg. paid by HPMC to farmers.

Regarding The Tribune news articles, the petitioners claim that one of the news articles indicates that HPMC procures culled apples from growers at 3.75 Rs/kg. The petitioners further assert that to reduce losses from the culled apples that it is unable to process, HPMC disposes of the culled apples at the table apple market, thus, severely affecting prices in the Indian table apple market. The petitioners contend that the prices advocated by Yantai et al for use as the surrogate value for juice apples, i.e., the prices in The Tribune news articles, are actually distress prices of apples sold by HPMC into the table apple market and are not reflective of apple prices paid by producers of NFAJC.

In addition, the petitioners claim that the 2.25 Rs/kg price is irrelevant and represents the inventory value of the apples on HPMC's records. Instead, the petitioners state that the Department should use the 3.75 Rs/kg price paid by HPMC to Indian apple growers in its surrogate value calculation. The petitioners agree that the 3.75 Rs/kg price is set by the government of India but contend that it is a market-driven price because it reflects the cost of production for these apples. The petitioners argue that the "use of a major input price below the actual cost of producing that input would artificially and materially distort the cost of producing the product under investigation." The petitioners assert that section 773(c)(4) of the Act permits the Department to use the cost of the input rather than the price in the surrogate country in certain cases.

Department's Position: Section 773(c)(1)(B) of the Tariff Act of 1930, as amended, requires the Department to value factors of production using the "best available information." We disagree with both the petitioners and Yantai et al and have continued to apply the 1.34 Rs/kg price as the surrogate value for juice apples because we believe that this price is the best available information for valuing this factor of production.

In the Preliminary Results, we valued juice apples at the weighted average price paid for culled or processing grade apples in India, based on information in two articles from The Tribune. These articles described the price charged to HPMC for apples procured under the Government of India's price support scheme (MIS) for apple growers, as well as the prices obtained for the remaining apples (*i.e.*, apples that are not processed by HPMC and are sold at auction). Because of the wide range of prices reported for auctioned apples, and because the information in the articles was not sufficiently detailed to allow us to know the actual amounts sold at the various prices, we invited parties to submit additional information regarding the prices of juice apples in India. While we did not receive any additional apple price information from the parties, both the petitioners and Yantai *et al* did comment on various aspects of the prices used by the Department in its Preliminary Results.

We disagree with Yantai *et al* that the MIS apple price of 2.25 Rs/kg used in the surrogate value calculation is aberrational and not representative of a "market-based" surrogate value. According to the May 6, 2000, article in The Tribune, the 2.25 Rs/kg price is the price HPMC paid for juice apples to produce NFAJC during the POR. Further, the introduction to HPMC's financial statements shows that the company's cost for processing apples used in NFAJC production was 2.25 Rs/kg in 1998/99. As HPMC is a major NFAJC producer in India, the price actually paid by an NFAJC producer like HPMC for processing grade apples is significant for our determination of the appropriate surrogate value. Accordingly, it is appropriate to continue to include the 2.25 Rs/kg price in the calculation of the surrogate value for juice apples because we believe that this is one price that is actually paid by a producer of NFAJC in India.

Regarding the CIT's ruling in Yantai, we note that part of the Court's instructions were for the Department to provide further explanation regarding this issue, as it applied to the underlying investigation. The Department has not yet filed its remand redetermination with the Court providing its analysis. Therefore, the CIT's judgment on this issue is not yet finalized and no surrogate apple prices have been conclusively accepted or rejected by the Court.

We also disagree with the petitioners' argument that we should disregard the prices used in the Preliminary Results and instead use the 3.75 Rs/kg price as the surrogate value of apples. We do not believe that this is an appropriate surrogate value for the apple input because it is the augmented price received by the apples growers, not the price we are concerned with (*i.e.*, the price for processing grade apples paid by NFAJC producers).

Regarding the petitioners' argument about HPMC's disposal of culled apples, we agree that the September 18 Tribune article indicates that the auctioning of these apples affected prices for table apples in the auction markets. However, we are not using the prices of table apples to value this input. Instead, we are concerned with the price of culled or processing grade apples and the auction prices are the prices that were paid in the Indian market for the vast majority of processing grade apples. Regardless of whether the auction prices are called a "disposal" or "distress" value, they are prices actually paid in the Indian market for processing grade apples. Thus, they are properly included in the surrogate value.

We further disagree with the petitioners that the 2.25 Rs/kg value is merely an inventory value recorded in HPMC's books. The May 6 Tribune article specifically describes this amount as the "exorbitant" cost HPMC faces for its processing grade apples.

Finally, regarding the petitioners' claim that any price below 3.75 Rs/kg is a below-cost price and should not be used, we note that the Department does not use dumped or subsidized prices to value nonmarket economy inputs. (See, e.g., Certain Automotive Replacement Glass Windshields from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum). However, it is not the Department's practice to make determinations of whether domestic prices in surrogate market economy countries are below cost. Moreover, the statutory provision cited by the petitioners is relevant to market economy dumping cases, not nonmarket economy cases.

Therefore, the Department believes that the best available information for valuing the apple input is the weighted-average price of 1.34 Rs/kg.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of this review and the final weighted-average dumping margins for all investigated firms in the Federal Register.

AGREE _____

DISAGREE _____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date