

December 15, 2003

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the Final Results of the New Shipper Review of Non-Frozen Apple Juice Concentrate from the People's Republic of China: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.

SUMMARY

We have analyzed the respondent's brief in the new shipper review of non-frozen apple juice concentrate ("AJC") 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 the respondent:

- Comment 1: The Department's use of Poland as the primary surrogate country is contrary to law and unsupported by the administrative record.
- Comment 2: The Department should revise its surrogate ratio calculations derived from the Agros financial statement.
- Comment 3: The Department should revise its surrogate value for domestic brokerage and handling.

BACKGROUND

On July 23, 2003, the Department of Commerce (“the Department”) issued the preliminary results of this new shipper review of AJC from the PRC. (See Certain Non-Frozen Apple Juice Concentrate From the People’s Republic of China: Preliminary Results of New Shipper Review, 68 FR 44741 (July 30, 2003) (“Preliminary Results”).)

The period of review (“POR”) is June 1, 2002, through November 30, 2002. We invited parties to comment on the Preliminary Results. We received a case brief on October 15, 2003, from Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. (“the respondent”). No further briefs were filed and no rebuttal briefs were received. No public hearing was held because none was requested.

DISCUSSION OF ISSUES

Comment 1: The Department’s use of Poland as the primary surrogate country is contrary to law and unsupported by the administrative record.

Respondent’s Argument: The respondent argues that the Department selected Poland as its primary surrogate country even though Poland was not identified as an economically comparable country and despite the fact that no interested party in this review has suggested the use of Poland or submitted any surrogate data regarding Poland. The respondent argues that it has placed valid data on the record showing that India is a significant producer of comparable merchandise, and, thus, India should be used as the primary surrogate in this review.

First, the respondent states that the Department’s attempt to justify its use of Poland by citing the U.S. Court of International Trade’s (“the Court”) findings in connection with the original investigation is incorrect. The respondent argues that the Court stated that the Department’s selection of India as a surrogate country was unsupported by substantial evidence on the record because the Department did not justify the use of India based on a market study submitted by petitioners, nor did it establish the production of Himachal Pradesh Horticultural Produce Marketing & Processing Corp. (“HPMC”) as being representative of the production in India as a whole. Therefore, the respondent argues that the Court never questioned whether India was a significant producer of AJC, rather, the Court took issue with the process the Department used in reaching its conclusion, and the lack of support for its conclusion. Thus, according to the respondent, the Department’s assertion that the Court has called into question India’s status as a significant producer of subject merchandise in this case is incorrect, and its reliance on the Court’s ruling to support the choice of Poland is likewise in error.

Second, the respondent argues that the record for this segment of the proceeding provides a wealth of information to demonstrate that India has become a significant producer of AJC and comparable merchandise. Thus, the respondent states that the Department’s cursory rejection of India as a

significant producer was erroneous and contrary to substantial record evidence. Furthermore, the respondent argues that the Department's statement that there is no evidence that fruit juice and other processed fruit products are comparable merchandise to AJC is contrary to common sense and established precedent regarding comparable merchandise. According to the respondent, all processed fruit juices have similar physical characteristics, end uses, production processes, and material inputs and should be considered comparable based on the criteria previously established by the Department. The respondent cites to Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 5 where the Department determined whether merchandise is comparable by considering "whether products have similar physical characteristics, end uses, and production processes," and Preliminary Determination of Less Than Fair Value Sales: Certain Partial Extension Steel Drawer Slides With Rollers from China, 60 FR 29571 (June 5, 1995) where the Department determined that all formed metal furniture parts are comparable merchandise for drawer slides because they undergo a similar production process and have similar end uses.

Third, the respondent argues that the Department has continued to use India as the primary surrogate country in past cases where India was found to not produce the subject merchandise, but only comparable merchandise. The respondent cites to Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 1 where the Department states that "it is undisputed that, in the original investigation of sales at less than fair value (LTFV), and in all subsequent reviews under this order, none of the countries listed in the surrogate country selection memos for this order have been found to be significant producers of crawfish tail meat," and Preliminary Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts from China 67 FR 72141 (December 4, 2002) where the Department selected India as the primary surrogate country based on its production of circular welded pipe, steel tubes, plates, rods, and pillars, and Sebacic Acid from China: Preliminary Results of Administrative Review, 65 FR 18968 (April 10, 2000) where the Department continued to find India as the primary surrogate country based solely on its production of the comparable product oxalic acid. The respondent argues that the Department's precedent is to continue to use India as the primary surrogate, and the Department did not attempt to differentiate the instant case from previous cases before rejecting India as the surrogate.

Finally, the respondent argues that the record in this segment of the proceeding is devoid of any meaningful facts whatsoever regarding the juice industry in Poland. According to the respondent, the conclusion the Department reached that Poland is a 'significant producer,' based on the fact that Poland is a 'net exporter' of AJC, is arbitrary and wholly unreliable, because under the 'net exporter' test, the United States (one of the largest AJC producers in the world) would not be considered a significant producer. The respondent also comments that the only mention of Poland on the record of this review comes from statements made by a past chairman of the U.S. Apple Association before the

House Appropriations Committee, Subcommittee on Commerce, Justice, State and Judiciary where he argues that the U.S. apple industry strongly favors the choice of Poland. The respondent contends that the petitioners (the U.S. industry) have not provided any comments regarding surrogate country selection in this review nor participated at all in this review.

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

Department's Position: Contrary to the respondent's contention, the Department has not based its decision to use Poland as the surrogate country on the Court of International Trade's decision in Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al., Slip Op. 02-56 (June 18, 2002). Instead, Poland has been selected because it is a significant producer of apple juice concentrate.

Under section 773(c)(4) the Department will value an NME producer's factors of production in a market economy that is at a level of economic development comparable to the NME and that is a significant producer of comparable merchandise, to the extent possible. In this review, for the reasons explained below, we have not found a surrogate country that is both economically comparable to the PRC and a significant producer of comparable merchandise. Where it is not possible to find a surrogate country that meets both criteria, the Department must decide whether to place greater emphasis on the economic comparability criterion or on the significant production criterion. As explained in the preamble to the Department's proposed regulations, the Department may assign more weight to the significant producer criterion where important inputs are not traded, *i.e.*, where inputs must be acquired locally. Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7307 (February 27, 1996). In this case, there is no information indicating that the major input for apple juice concentrate, juice apples, are traded over long distances or across borders. Given their relatively low value, we would expect that juice apples are usually acquired locally. Consequently, we have placed greater weight on whether a country is a significant producer of comparable merchandise than on its economic comparability to the PRC in selecting the surrogate.

India is economically comparable to the PRC, but we disagree with the respondent that India is a significant producer of comparable merchandise. Consistent with the analytical approach adopted in the redetermination on remand (November 15, 2002, "Redetermination Pursuant to Court Remand"), we have relied upon two measures to identify countries as significant producers: (i) significant net-exports (exports minus imports), and (ii) significant exports to the United States. We used these measures because the Department was unable to locate information showing worldwide production of AJC or production figures in potential surrogate countries through contact with the U.S. Department of Agriculture, to ask whether AJC production statistics were available, and review of the ITC's preliminary report.

According to the United Nations Food and Agriculture Organization's database on their website ("FAOSTAT"), India did not export any AJC in 2001 and exported only very small amounts of other

fruit juices. Total juice exports from India in 2001 (including frozen and non-concentrate) amounted to 7,348 metric tons (“MT”), according to FAOSTAT, but imports were 11,169 MT, indicating that India is a net-importer of juices. Only plum juice concentrate had a 972 MT positive amount when we deducted imports from exports. Turning to a second source, the World Trade Atlas database, total juice exports from India (including frozen and non-concentrate) were 4,731 MT in 2001 and 4,825 MT in 2002, and net-exports were negative.

These numbers can be compared to net-export volumes of other countries. In 2001, Poland’s net-exports of non-frozen apple juice concentrate alone was 185,331 MT. Net-exports in 2001 of non-frozen apple juice concentrate from Turkey, Chile and Argentina were 48,934 MT, 53,711 MT and 76,882 MT, respectively. Thus, these data indicate that Poland is a significant producer, while India’s total juice exports are insignificant compared to other countries’ net-exports of only the subject merchandise.

These results for India are echoed in U.S. import data. India exported practically zero metric tons of AJC to the United States in 2001/2002. The amounts from Poland, Turkey, Chile and Argentina were in the thousands of metric tons. Thus, while the respondent has submitted information showing that India produced and exported AJC during the relevant period, and that India’s fruit and vegetable processing sector may be growing, this information also states that “India’s fruit beverage industry is still in the nascent stage.” See July 11, 2003, “Surrogate Data Submission for Yantai Golden Tide” at Exhibit 33 and August 19, 2003, “2nd Surrogate Value Submission” at Exhibit 1.” Therefore, we have concluded that India is not a significant producer of comparable merchandise.

Finally, we disagree with the respondent that the record is devoid of meaningful information regarding the apple juice concentrate industry in Poland. The magnitude of Poland’s net-exports is a meaningful indicator that Poland is a significant producer of AJC. Moreover, although the respondent objects to the use of net-exports to identify significant producers, this measure is specifically listed in the legislative history of this provision. (The legislative history of the current nonmarket economy provision, which was added to the statute in 1988, gives some guidance on determining whether a country should be considered a significant producer of comparable merchandise. Specifically, the conference report for the 1988 bill, at p. 590, states: “The term ‘significant producer’ includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant net exporting country in valuing factors.” H.R. Conf. Rep. No. 576, 590, 100th Cong. 2d Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988)).

Regarding the respondent’s contention that the United States would not qualify as a significant producer because it is not a net-exporter, we note that the United States is a major exporter of apple juice concentrate (25,170 MT in 2001), whereas the respondent’s suggested surrogate, India, is not. Moreover, if we had information on production of apple juice concentrate in the potential surrogate countries, we would not need to rely on the more indirect indicators of significant production, net-exports and exports to the United States.

The fact that Poland was not suggested as a surrogate by any party to the proceeding does not enjoin the Department from using Poland as a surrogate. The Department has an affirmative obligation to calculate a dumping margin as accurately as possible, and all options were reviewed and researched before Poland was chosen. Among the countries that could be considered significant producers of comparable merchandise, Poland was the best surrogate because the valuation data for Poland were superior.

Comment 2: The Department should revise its surrogate ratio calculations derived from the Agros financial statement.

Respondent's Argument: The respondent argues that the Department should revise its calculations of the financial ratios if it continues to use Poland as the primary surrogate. First, the respondent argues that 'subcontracting costs' are properly considered manufacturing labor costs and should be entirely included in the 'cost of manufacturing.' The respondent cites to Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 68 FR 3859 (January 27, 2003), and Suspension of Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation, 67 FR 61579, 61582 (October 1, 2002) where the Department defines the direct labor element of the cost of manufacturing to include any subcontracting expense, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Administrative Review, 62 FR 61276 (November 17, 1997) which confirms that a subcontractor merely performed part of the manufacturing process.

The respondent continues by arguing that the allocation of 'subcontracting costs' was derived from an incorrectly translated figure in Note 29 of the financial statement. Correctly translated, the 'general management costs' is not an element of subcontracting costs. Therefore, 'subcontracting costs' should not be allocated between 'cost of manufacturing' and 'factory overhead.'

Second, the respondent argues that factory overhead costs should not include 'general management' expenses. Because of the incorrect translation by the Department of this expense as 'cost of maintenance,' it was included in factory overhead. Now that the respondent has submitted a corrected, complete translation, the respondent argues that this expense should not be included in 'factory overhead.'

Third, the respondent argues that the Department must offset 'other operating costs' by 'other operating income' because both the expense items in Note 31 and the income items in Note 30 are the same categories.

Fourth, the respondent argues that profit should be calculated based on the company's reported operating profit, listed as 'profit from operating activities' in the financial statement since this reported amount is a more accurate benchmark of the company's actual operating profit.

Finally, the respondent also argues that the Department incorrectly calculated the profit ratio using the cost of manufacturing (“COM”), whereas the correct ratio should use the cost of production (“COP”) as the denominator.

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

Department’s Position: Concerning subcontracting costs, we agree with the respondent, in part, and have excluded subcontracting costs from our calculation of fixed overhead. We have not, however, included the total value of subcontracting costs shown in Note 29 in our calculation of COM. Instead, we have revised our calculation of COM in these final results from the COM calculated for the preliminary results. This revised COM calculation includes any subcontracting costs (i.e., labor) considered to be associated with manufacturing. We determined labor costs as the difference between the total manufacturing costs shown on Agros’ consolidated profit and loss statement and the sum of materials, energy, and depreciation expenses. As a result of our revised calculation of COM, any subcontracting costs listed in Note 29 that are not included in COM are included in the calculation of SG&A.

Concerning factory overhead, we agree with the respondent and have revised our calculation of fixed overhead costs to include only the depreciation expenses shown in Note 29 to Agros’ consolidated profit and loss statement.

Concerning other operating income, we agree with the respondent. We have included other operating income as an offset in our revised calculation of SG&A expenses.

Concerning profit, we disagree with the respondent. We did not rely on the operating profit shown in Agros’ consolidated profit and loss statement because an operating profit reflects only the excess of revenues over the cost of goods sold, not the profit of the company (i.e., operating profit less selling, general, administrative, and financial costs). Instead, we looked to the profit (loss) calculated after these costs were deducted from the operating profit. Agros’ consolidated financial statements show a loss rather than a profit. However, because the loss incurred by Agros was a direct result of the sale of shares in subsidiaries (i.e., investments), we have recalculated Agros’ profit to exclude this loss because it relates to an investment rather than the manufacturing operations of the company. Furthermore, for these final results, we continue to calculate profit as a percentage of COM because we have applied the profit percentage to COM for the purposes of calculating the total cost of manufacturing.

Comment 3: The Department should revise its surrogate value for domestic brokerage and handling.

Respondent's Argument: The respondent argues that it submitted a more contemporaneous and more representative surrogate value for foreign brokerage and handling than the single quote from Meltroll Engineering from February 1999 that the Department used in the Preliminary Results. First, the respondent argues that its cite (to Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India 67 FR 50406 (October 3, 2001) (“Hot Rolled”)) is more contemporaneous because it is from October 1999 - September 2000. Second, the respondent also argues that the value is more representative because it is a value that covers a company's (Essar Steel Ltd.) shipments throughout a full year, instead of being a quote for one single shipment. Third, the respondent argues that the Department has used the Essar Steel Ltd. value that it submitted in recent cases such as Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review 67 FR 63877 (October 16, 2002) in the “Factors Valuation Memo for the Preliminary Results” (September 30, 2002), Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum at Comment 47 (“Ball Bearings”), and Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts From the People's Republic of China 68 FR 20373 (April 25, 2003) and accompanying Issues and Decision Memorandum at Comment 5 (“Fence Posts”). Moreover, recently the Department rejected the Meltroll Engineering value in two recent cases. See Ball Bearings, Issues and Decision Memorandum at Comment 47 (February 27, 2003), and Fence Posts, Issues and Decision Memorandum at Comment 5 (April 18, 2003) where the Department stated that the Essar value is more contemporaneous and covers multiple shipments. The respondent continues by arguing that if the Department chooses to use the Meltroll Engineering value, then it should calculate the value in a more accurate and reasonable manner. The respondent argues that the charges are made on a per-container basis, not on a weight basis. The respondent supports this argument with the Maersk Sealand notice included in the July 23, 2003 “Factors of Production Values Used for the Preliminary Results: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.” at Exhibit 21 which states prices for Chinese Terminal Handling Charges on a per-container basis. Therefore, the respondent argues that the Department should use the weight of a 20-foot container of apple juice concentrate, which is already on the record, to calculate a per metric ton foreign brokerage and handling value, instead of the weight of a container of steel bars.

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

Department's Position: The Department agrees with the respondent in part. The Department agrees that the charges are made on a per container basis, and the Department has recalculated the brokerage and handling on this basis.

The Department does not agree that the Hot Rolled brokerage and handling value is more appropriate.

The record from Hot Rolled indicates that the subject hot rolled carbon steel flat products are not palletized or containerized, therefore, the brokerage and handling charges are not related to the movement of containers. AJC, on the other hand, is palletized and shipped in containers. Therefore, it would be inappropriate to use the Hot Rolled brokerage and handling charges for AJC.

The Department found that in both Notice of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001) and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China 64 FR 69723 (December 14, 1999) in the December 6, 1999 "Preliminary Determination Valuation Memo" at Attachment 15, the Department used the average of two Indian freight forwarder quotes from November 1999, which are quoted on a per container basis. The freight forwarder quotes come from Sarr Freights Corporation and OM Freight Forwarders Pvt., Ltd. from India. The Department has calculated the surrogate brokerage and handling value by averaging these two freight forwarder quotes with the Stainless Steel Bar from India 1998-1999 New Shipper Review December 18, 1999, submission by Metroll Engineering Pvt. Ltd. quote.

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 margin for Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. in the Federal Register.

AGREE _____

DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

Date