

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Non-Frozen Apple Juice Concentrate from the People's Republic of China (PRC)

Summary

We have analyzed the substantive response of the interested parties in the sunset review of the antidumping duty order covering Non-Frozen Apple Juice Concentrate (NFAJC) from the PRC.¹ We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum.

Below is a complete list of the issues in the sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended, (the Act), on June 5, 2000, the Department of Commerce (Department) published its amended final determination and antidumping duty order in the antidumping investigation of NFAJC from the PRC. *See Antidumping Duty Order, Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 35606 (June 5, 2000). We determined that the sales of NFAJC from the PRC were made at less than fair value. On May 30, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that a U.S. industry is "materially injured" within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of NFAJC from the PRC.

¹We received no response from respondent interested parties.

On November 20, 2003, several respondents challenged the Department's determination, and after two remands in *Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al.*, Court No. 00- 00309, Slip Op. 03-150, the Court of International Trade (CIT) affirmed the Department's remand determinations and entered a judgment order.² See *Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 69 FR 7197 (February 13, 2004).

Since the order was issued, the Department has conducted three administrative reviews and two new shipper reviews with respect to NFAJC from the PRC. The Department has not conducted any changed circumstances reviews for this order. The order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC, except for those companies that were affected by the final results of the remand determination and those companies that received a *de minimis* weighted-average margin in the investigation's final determination.

On April 19, 2001, Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., and Tree Top Inc., requested that the Department initiate a scope inquiry to determine whether imports of "semi-frozen" 70 Brix apple juice concentrate (AJC) from the PRC are within the scope of the Department's antidumping duty order on NFAJC from the PRC. In accordance with 19 CFR 351.225(e) of the Department's regulations, the Department initiated a formal inquiry on June 4, 2001, requesting comments from interested parties. On October 1, 2001, pursuant to section 351.225(k)(1) of the Department's regulations, we determined that imports of "semi-frozen" apple juice concentrate were outside the scope of the order. See *Memorandum For: Richard Moreland, Deputy Assistant Secretary, From: The Team* (October 1, 2001) regarding the final scope ruling on NFAJC.

Background

On May 2, 2005, the Department published the notice of initiation of the Five Year (sunset) review of the antidumping duty order on NFAJC from the PRC pursuant to section 751(c) of the Act.³ The Department received the Notice of Intent to Participate from the U.S. Apple Association (U.S. Apple), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations (Sunset Regulations). U.S. Apple claimed interested party status under section 771(9) of the Act, as a domestic producer of NFAJC. We received a complete substantive response from U.S. Apple within the 30-day deadline specified in 19 CFR

² This litigation related to the Department's *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China*, 65 FR 19873 (April 13, 2000) and accompanying Issues and Decision Memorandum (April 6, 2000) (Issues and Decision Memorandum), and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 35606 (June 5, 2000) (collectively, Final Determination).

³ See *Initiation of Five-Year (Sunset) Reviews*, 70 FR 22632 (May 2, 2005).

351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(c)(2), the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the finding were revoked. Below we address the comments of the only interested party participating in this proceeding.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

U.S. Apple argues that revocation of this order would likely lead to the recurrence of dumping because it is reasonable to expect prices to plummet as China increases its U.S. market share of apple juice concentrate and that imposition of the dumping order caused prices to increase. U.S. Apple also states it is reasonable to deduce that the antidumping order has been a deterrent to the huge capacity of the 21 PRC firms not separately listed in the Department's antidumping order or reviews from entering the U.S. market in significant volumes. Without the antidumping order, it alleges, those 21 PRC firms would be free to enter the U.S. market at dumped prices to compete for market share. U.S. Apple argues that this market scenario would duplicate the apple juice concentrate market environment in the United States before the original antidumping petition was filed. Additionally, it claims that maintaining the dumping order will help to preserve the few remaining U.S. concentrate-producing firms. It claims that the number of U.S. firms producing concentrate has declined significantly. *See* Substantive Response of the Domestic Interested Parties regarding NFAJC from the PRC, Sunset Review No. A-570-8855: U.S. Apple's Substantive Response (June 1, 2005) at pages 4 and 5. It also notes that dumping was found in the original investigation and subsequent administrative reviews. *See* U.S. Apple's Substantive Response at 3.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (SAA), H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the

order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of NFAJC from the PRC. Since the issuance of the antidumping duty order on NFAJC from the PRC, the Department has conducted a number of reviews in which it found that dumping continued at levels above *de minimis*. See Footnote 3 of this memorandum.

In addition, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Import statistics on the subject merchandise cited by U.S. Apple and those examined by the Department demonstrate that the level of imports increased significantly after the issuance of the order, and to date, import volumes have exceeded pre-order levels. See U.S. Apple's Substantive Response at 8 and the attached ITC Dataweb statistics. Furthermore, dumping margins and cash deposits rates at or above *de minimis* levels remain in effect for several PRC companies. The Department finds that the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. As Congress explained in the SAA, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. See SAA at 890. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

In its substantive response, U.S. Apple states that the dumping margins are likely to prevail if the order was revoked and it expects a return to the same market scenario that existed before the dumping order was put in place. See U.S. Apple Substantive Responses at page 6.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "PRC-Wide" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only rate on the record that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recent margin to report to the ITC. See *Potassium Permanganate from the People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005). In this case, we are using the margins from the amended final determination as there is no reason to doubt their validity, and these margins best represent the magnitude of the margins likely to prevail if the order were revoked.

Final Results of Review

We determine that revocation of the antidumping duty order on NFAJC from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Xian Asia	3.83
XianYang Fuan	3.83
Changsha	3.83
Shandong Foodstuffs	3.83
SAAME	51.74
Yantai Golden	51.74
PRC-Wide Rate	51.74

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)

WEIGHTED-AVERAGE MARGIN RATE HISTORY

Manufacturers/s Exporters/Producer Year of Final	Weighted-Average Margin (percent)					
	Investigation ⁴ 2000 ³	AR1 2002	AR2 2003	AR3 2004	NSR1 2003	NSR2 2003
North Andre	0.00					
Haisheng	0.00	0.00	0.00	/6/		
Lakeside	0.00	0.00	0.00	/6/		
ZhongLu	0.00	0.00	0.00	/6/		
Oriental	0.00	0.00	0.00	/6/		
Nannan	0.00	0.00	/2/			
Xian Asia	3.83	0.00	/2/	/5/		
XianYang Fuan	3.83	/2/	/2/	/5/		
Changsha	3.83	/3/				
Shandong Foodstuffs	3.83	0.00	/2/			
Gold Peter		0.00	/2/			
Shaanxi Hengxing		0.00	/2/	/5/		
SAAME	/1/	0.00	/2/			
Gansu			/4/	0.00	0.00	
Yantai Golden						6.34
PRC-Wide Rate	51.74	51.74				

/1/ Withdrew from the investigation, facts otherwise available PRC Wide Rate 51.74.

/2/ No shipments preliminary rescinded review.

/3/ No response, facts otherwise available PRC Wide Rate 51.74.

/4/ New shipper review (NSR1) was combined with Administrative Review Two.

/5/ Withdrew their request for a review.

/6/ Requested a one year deferral, however, Oriental, Zhonglu, Haisheng and Lakeside were subsequently excluded from the order, see footnote 3.

⁴See *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 69 FR 7197 (February 13, 2004).

O/E ⁵	Manufacturers/Exporters/Producer Table Case No. A-570-855	
	Full Name/Company Number	Short Name
E	Yantai North Andre Juice Co., Ltd. /001	North Andre
E	Shaanxi Haisheng Fresh Fruit Juice Co., Ltd./002	Haisheng
E	Sanmexia Lakeside Fruit Juice Co., Ltd./003	Lakeside
E	Shandong Zhonglu Juice Group Co., Ltd./004 Rushan Shangjin-Zhonglu Foodstuff Co., Ltd. Shandong Luling Fruit Juice Co. Rushan Dongjin Foodstuffs	Collectively known as Shandong Zhonglu
E	Yantai Oriental Juice Co., Ltd./005	Oriental
E	Qingdao Nannan Foods Co., Ltd./006	Nannan
O	Shaanxi Machinery & Equipment Import & Export Corporation/007	SAAME
O	Xian Asia Qin Fruit Co., Ltd./008	Xian Asia Qin
O	XianYang Fuan Juice Co., Ltd./009	Xian Yang Fuan
O	Changsha Industrial Products & Minerals Import and Export Co., Ltd./010	Changsha
O	Shangdong Foodstuffs Import and Export Corporation/011	Shangdong Foodstuffs
O	Gansu Tongda Fruit Juice and Beverage Company/012 Tongda Fruit Juice and Beverage Co., Ltd./016 Tongda Fruit Juice & Beverage Binxian Co., Ltd./017	Collectively known as Gansu Tongda
O	Shaanxi Gold Peter Natural Drink Co., Ltd./013	Gold Peter
O	Shaanxi Hengxing Fruit Juice Co., Ltd./014	Shaanxi Hengxing
O	Yantai Golden Tide Fruits & Vegetable Food Co., Ltd./015	Yantai Golden

⁵O indicates that the company has an active order outstanding and E indicates those companies excluded from the order based on findings from the investigation.

