

On August 14, 2002, April 4, 2003, and June 6, 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 responses from Haisheng, Oriental, Zhonglu and Gansu Tongda on May 5, 2003.

We issued supplemental questionnaire to Lakeside, Haisheng, Zhonglu, Oriental and Gansu Tongda, and received responses by January 10, 2003.

On January 24, 2003, the Department published a notice postponing the preliminary results of this review until June 30, 2003. *See Extension of Time Limit for the Preliminary Results of the 2001–2002 Antidumping Duty Administrative Review and New Shipper Review*, 68 FR 3510.

We note that the Petitioners have not made any written submissions in this proceeding.

### Scope of the Order

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

### Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang, which reported that they made no shipments of subject merchandise during this POR. We examined shipment data furnished by the U.S. Bureau of Customs and Border Protection and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these companies during the POR.

### Separate Rates Determination

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

Haisheng, Zhonglu, Oriental, Lakeside and Gansu Tongda have placed a number of documents on the record to demonstrate absence of de jure government control, including “Foreign Trade Law of the People’s Republic of China” (“Foreign Trade Law”), “Company Law of the PRC” (“Company Law”), the “Administrative Regulations

of the People’s Republic of China Governing the Registration of Legal Corporations” (“Administrative Regulations”), the “Law of the People’s Republic of China on Chinese-Foreign Cooperative Joint Ventures” (“Joint Ventures Law”), and the “Law of the People’s Republic of China on Industrial Enterprises Owned by the Whole People” (“Industrial Enterprise Law”). 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 proceeding which would cause us to reconsider this determination.

The Company Law is designed to meet the PRC’s needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of de jure control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies.

In keeping with the Company Law, 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.

The Joint Ventures Law states that Chinese and foreign parties shall share earnings and bear risks jointly. An analysis of the Joint Ventures Law by the Department further indicates lack of de jure control for Oriental, Xian Asia, and Zhonglu, those respondents actually subject to this law.

The Industrial Enterprises Law provides that enterprises owned by “the whole people” shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. As in prior