

*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*").

In its remand determinations, the Department reviewed the record evidence regarding the selection of a surrogate country; the valuation of juice apples, steam coal, and ocean freight; and the calculation of selling, general and administrative ("SG&A") expenses, overhead, and profit. The Department found that Turkey, rather than India was the appropriate surrogate country. Juice apples, SG&A, overhead and profit were valued using surrogate value information from Turkey. Steam coal was valued using a domestic Indian price and the ocean freight rate was revised to include a rate for Detroit.

As the remand determinations resulted in changes to calculated company-specific margins, the Department also recalculated the separate rate margin it applied to producers/exporters that responded to the Department's separate rate ("Section A") questionnaire but were not selected to respond ("separate-rate companies"). The calculated antidumping rate for Xian Yang Fuan Juice Co., Ltd. ("Fuan"), Xian Asia Qin Fruit Co., Ltd. ("Asia"), Changsha Industrial Products & Minerals Import & Export Corporation ("Changsha Industrial"), and Shandong Foodstuffs Import & Export Corporation ("Shandong Foodstuffs") (collectively "separate-rate companies") is 3.83 percent.

The remand determinations also resulted in weighted average margins of zero percent for Yantai Oriental Juice Co. ("Oriental"), Qingdao Nannan Foods Co. ("Nannan"), Sanmenxia Lakeside Fruit Juice Co. Ltd. ("Lakeside"), Shaanxi Haisheng Fresh Fruit Juice Co. ("Haisheng"), and SDIC Zhonglu Juice Group Co. ("Zhonglu"). Therefore, these companies will be excluded from the antidumping duty order on certain non-frozen apple juice concentrate ("AJC") from the People's Republic of China ("PRC").

The PRC-wide rate of 51.74 percent is unchanged from our final determination in the investigation.

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the

Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation for Oriental, Nannan, Lakeside, Haisheng, and Zhonglu and revise the cash deposit rate from the investigation for Fuan, Asia, Changsha Industrial, and Shandong Foodstuffs.

**EFFECTIVE DATE:** December 12, 2003.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

Following publication of the *Final Determination*, Oriental, Nannan, Lakeside, Haisheng, Zhonglu, Fuan, Asia, Changsha Industrial and Shandong Foodstuffs (collectively the "respondents"), filed lawsuits with the CIT challenging the Department's *Final Determination*.

In the underlying investigation, the Department was required to choose a surrogate country based on "significant production" of "comparable merchandise" and "economic comparability" to the PRC. The Department selected India because it is economically comparable to the PRC, and a significant producer of apples and single strength apple juice, products the Department found to be comparable to AJC. The Department then valued the juice apples, SG&A, overhead, profit, steam coal and other factors of production in India. In calculating ocean freight rates, the Department included freight rates to Detroit in its calculation of an East Coast freight rate.

The Court remanded five issues to the Department.

First, the Court questioned the Department's reliance on a market study included in the petition and an annual report for an Indian company as the basis for determining that India was a significant producer of comparable merchandise. In particular, the Court found the Department had not corroborated the market study, nor had it explained the connection between the market study and the annual report, and the Department's conclusion that India was a significant producer of AJC. The Court similarly rejected the Department's determination that India's status as a significant producer of apples was relevant to the Department's treatment of India as a significant producer of comparable merchandise.

The Court directed the Department to develop sufficient evidence from the record of India's suitability as the surrogate market economy country for AJC production, or, if it could not, to select another suitable country.

Second, the Court instructed the Department to provide an explanation of why the distortions caused by the Government of India's market intervention scheme did not disturb the fair market value of Indian apples. The Court also directed the Department to explain why it treated government subsidies that enabled producers to lower their prices as market distorting, but did not apply the same treatment to such subsidies that raise prices. Furthermore, the Court requested that the Department explain why the price paid by Himachal Pradesh Horticultural Produce Marketing & Processing Corp., a government-controlled entity, should be considered a market-derived price.

Third, for steam coal valuation, the Department used Indian import statistics data because it found that the value was contemporaneous with the period of investigation and because there was no evidence to suggest that the data was aberrational or unreliable. The Court instructed the Department either to recalculate normal value using Indian domestic prices for steam coal, or explain why the use of domestic prices for steam coal was not appropriate during the period of investigation.

Fourth, the Court argued that the Department's use of data from the *Reserve Bank of India Bulletin*, rather than data from an Indian producer to value SG&A and overhead was not supported by substantial evidence on the record and instructed the Department to either recalculate these values using the financial statement of an Indian producer, or fully explain why the Department felt that the *Reserve Bank of India Bulletin* gave better financial data.

Finally, the Court instructed the Department to explain its reasoning for not calculating a separate Detroit freight rate and to explain why the Department did not weigh its calculation to reflect accurately the volume of merchandise actually shipped to each destination.

To assist it in complying with the Court's instructions, the Department opened the record and requested new information concerning possible surrogate countries. The petitioners submitted data supporting the use of Poland, while the respondents pointed to Turkish data that they had placed on the record in the investigation.

The "Draft Results Pursuant to Court Remand" ("*First Draft Results*") was released to the parties on November 6,