REDETERMINATION
PURSUANT TO COURT REMAND
YANTAI ORIENTAL JUICE CO., ET AL.
V. UNITED STATES AND COLOMA FROZEN FOODS, INC., ET AL.
Court No. 00-00309

SUMMARY

The Department of Commerce ("Commerce" or "the Department") has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("the Court") in Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al., Slip Op. 03-33 (March 21, 2003) ("Yantai"). This remand pertains to the calculation of the separate rate for producers/exporters that responded to the Department's separate rate ("Section A") questionnaire but did not respond to the full antidumping questionnaire because they were not selected to respond ("separate-rate companies").

We have recalculated the dumping margin to be applied to the four separate-rate companies (i.e., 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")) by using the rates of zero percent for the fully-investigated companies in the November 15, 2002, remand redetermination ("Remand Determination") and the estimated margins determined for the separate-rate companies using in part, their volume and value of sales to the United States, as reported in their Section A responses. As a result, the separate-rate companies will receive a 3.83 percent margin. (Please see "Analysis" section below).

If the Court approves this redetermination on remand, the antidumping rate for Fuan, Asia, Changsha Industrial, and Shandong Foodstuffs will be 3.83 percent. The antidumping rates 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") remain unchanged from the Remand Determination at zero percent. The PRC-wide rate will be unchanged from our final determination in the investigation at 51.74 percent. (See 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), as amended in Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Order: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 35606 (June 5, 2000) (collectively, "Final Determination")).

BACKGROUND

The Department's investigation of apple juice concentrate ("AJC") from the PRC was initiated on July 6, 1999, based on a petition filed by Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top Inc. ("the petitioners"). This investigation covered the period October 1, 1998, through March 31, 1999. The plaintiffs in the litigation that led to this remand redetermination are Oriental, Nannan, Lakeside, Haisheng, Zhonglu, Fuan, Asia, Changsha Industrial, and Shandong Foodstuffs. In addition to those plaintiffs, the Department investigated Yantai North Andre Juice Co. Ltd. ("North Andre"), which received a zero margin, and Shaanxi Machinery & Equipment Import & Export Corporation ("SAAME") who withdrew from the investigation and received a rate based on adverse facts available.

In its remand order of June 18, 2002, the Court identified five issues for the Department to address: (1) selection and application of the appropriate surrogate country, (2) effects of the market intervention scheme on apple prices, (3) domestic steam coal, (4) use of Himachal Pradesh Horticultural Produce Marketing & Processing Corp.'s financial data, and (5) calculation and use of certain freight rates. The Department submitted its Remand Determination to the Court on November 15, 2002. On March 21, 2003, the Court accepted the Department's conclusions on these five issues.

In the Remand Determination, after the Department calculated antidumping rates for the fully-investigated companies, it was also necessary to recalculate a separate margin for those companies that had responded to the Department's separate rate questionnaires. However, the Court rejected the methodology the Department used in the recalculation of the 28.33 percent antidumping duty margin for the separate-rate companies and remanded the case a second time for this issue to be reconsidered. In remanding this issue to the Department, the Court directed the Department to recalculate the separate rate using the methodology set forth in section 735(c)(5)(B) of the Tariff Act of 1930, as amended (the "Act"), or to set out another methodology.

On April 18, 2003, the Department released its draft results of the second redetermination to the plaintiffs and petitioners. On April 23, 2003, the Department received comments on the draft results from the plaintiffs.

DISCUSSION

In the Final Determination, the Department concluded that the four separate-rate companies: Fuan, Asia, Changsha Industrial, and Shandong Foodstuffs met the criteria for application of separate antidumping duty rates. See 65 FR at 19873. The Department further stated that the responding companies in the investigation were assigned individual dumping margins and that for the four companies that responded to the separate rate questionnaire, the Department calculated a weighted-average margin based on the rates calculated for the fully-examined responding companies. We did not

include rates that were zero (i.e., North Andre's rate), rates based entirely on facts available (i.e., the PRC-wide rate and SAAME's rate), or the rates calculated for voluntary respondents. Thus, for these four companies, in determining the estimated all-others rate, the Department followed the methodology set out in section 735(c)(5)(A) of the Act.

In the Remand Determination, as all the dumping rates in that redetermination were either a calculated rate of zero or based entirely on facts available, the Department applied the methodology of section 735(c)(5)(B) of the Act which is consistent with that used in determining the "all-others" rate (i.e., the rate applied to companies not individually investigated) in a market economy case under the same circumstances. Section 735(c)(5)(B) of the Act states that in situations where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776, "the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the weighted-average dumping margins determined for the exporters and producers individually investigated." The Statement of Administrative Action ("SAA") states that in using any reasonable method to calculate the all-others rate, "the expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." See SAA accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol 1., 103d Cong. (1994) (SAA) at 203. Thus, consistent with section 735(c)(5)(B) of the Act, we recalculated the separate rate for these companies which were not individually investigated by weight-averaging the zero margins and margins determined pursuant to facts available. Therefore, in the Remand Determination, we calculated the separate rate for these four companies to be 28.33 percent.

However, in its second remand order of March 21, 2003, the Court rejected the methodology the Department used in recalculating the separate rate in the Remand Determination. The Court stated that the record shows that the separate-rate companies fully cooperated with the Department in the investigation and that the only apparent difference between the fully-investigated and the separate-rate companies is that the Department did not choose them for full investigation. The Court also stated that, had the non-selected respondents been fully investigated, it seemed unlikely that their rate would increase when all of the fully-investigated companies' rates were reduced to zero percent–including the company that originally had a 27.57 percent calculated margin.

The Court took exception to the Department's abandonment of the methodology it used in the underlying investigation to calculate the separate rate, which was consistent with section 735(c)(5)(A) of the Act, and the Department's application, without further justification, of the methodology in section 735(c)(5)(B) of the Act. Specifically, the Court stated that the Department "failed to justify the use of its new methodology other than by reference to the SAA." The Court explained that the SAA "takes into account the possibility that, under certain facts, the 'expected' method should not be used ... if {the expected} method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other

reasonable methods." In addition, the Court stated that "{a}s the SAA indicates, when choosing a methodology for assigning antidumping duty margins Commerce must insure that any methodology it employs in any particular investigation is 'based on the best available information and establishes antidumping margins as accurately as possible.'" The Court further noted that "when selecting a methodology Commerce must 'articulate a rational connection between the facts found and the choice made.'" See Yantai at 16 and 17.

The Court concluded that the Department's recalculation of the separate-rate companies' antidumping duty margin in the Remand Determination was "neither based on substantial evidence nor otherwise in accordance with law." As a result, the Court remanded the calculation of the separate rate for the four separate-rate companies to the Department. In its remand order, the Court directed the Department to reconsider the "proper calculation of the {separate-rate companies'} antidumping duty margin and shall either: (1) use the methodology set forth in 19 U.S.C. § 1673d(c)(5)(B); or (2) set out another methodology." The Court further stated that "in either event, Commerce shall explain in clear and specific terms why its selected methodology 'is based on the best available information and establishes antidumping margins as accurately as possible.'" See Id. at 18.

ANALYSIS

In the investigation, the Department used the methodology specified in section 735(c)(5)(A) of the Act for determining the estimated all-others rate to calculate the margin to be applied to the separate-rate companies. However, in the Remand Determination, because the calculated margins for the individually investigated companies were zero or determined entirely under section 776 of the Act, the Department used the methodology specified in section 735(c)(5)(B) of the Act to calculate a separate margin for those companies that had responded to the Department's separate rate questionnaire.

Section 735(c)(5)(B) of the Act states that in situations where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776, "the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the weighted-average dumping margins determined for the exporters and producers individually investigated." (Emphasis added). The SAA states that in using any reasonable method to calculate the all-others rate, "the expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." The SAA further provides that "if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, {the Department} may use other reasonable methods." (Emphasis added).

The Department agrees with the Court that the four separate-rate companies were responsive and fully cooperated with the Department in the investigation. The four separate-rate companies had originally requested to be fully examined during the investigation. Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, when faced with a large number of producers/exporters, section 777A(c)(2) of the Act gives the Department the discretion to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Given the large number of exporters involved, the Department determined that it was necessary to limit the number of respondents to be fully examined in the investigation to the five largest producers/exporters based on their volumes of exports to the United States. See August 17, 1999, "Respondent Selection" Memorandum to the Acting Deputy Assistant Secretary, Import Administration. In that memorandum, we stated that for those companies not selected for full investigation, the Department would issue each of them a separate rate questionnaire (i.e., Section A of the antidumping questionnaire) to determine whether the company was entitled to receive a separate rate. If the company responded and its response showed that it met the test for a separate rate, and the company otherwise cooperated fully with the Department in the investigation, the Department would assign that company a weighted-average rate based on the rates of the fully-investigated companies. If a non-selected company did not respond, or did not qualify for a separate rate, it would receive the PRC-wide rate.

To comply with the Court's order, the Department has revised its methodology for calculating a separate rate for the non-investigated companies. In this regard, we have considered the calculated margins of zero percent for the fully cooperative respondents as well as the information on the record of the investigation for the separate-rate companies. For this remand redetermination, and consistent with the SAA, the Department has determined the antidumping duty margin for the separate-rate companies by weight-averaging the zero margins for the fully-investigated companies with the estimated margins determined for the separate-rate companies. In calculating the estimated margins for the separate-rates companies, we relied, in part, upon information provided by these companies in their Section A questionnaire responses to the Department in which they provided the gross volume and value of their sales to the United States during the period of investigation. We also relied upon corroborated information from the petition, as adjusted to reflect the surrogate values incorporated by the Department in its Remand Determination. The information relied upon from the petition had been corroborated by the Department in the final determination. See April 6, 2000, Memorandum to File, "Corroboration of data contained in the petition for assigning an adverse facts available rate." Using this information, we were able to incorporate into our calculation information that enabled us to establish antidumping margins as accurately as possible.

Under section 777A(d) of the Act, we establish dumping margins by comparing the normal value ("NV") and export price ("EP") of the subject merchandise sold during the period of investigation. To determine the margins for the separate-rate companies, we first calculated a single NV for the separate-rate companies by relying upon the corroborated factors of production and values provided by the petitioners in the original petition. However, consistent with the Remand

Determination, we adjusted certain values to reflect the Turkish values for juice apples, selling, general, and administrative expenses, overhead, and profit.

In the petition, the corroborated EP was based on U.S. price obtained by the petitioners. However, since the separate-rate companies were requested to provide the volume and value of their United States sales of apple juice concentrate during the period of investigation, we were able to use this information as the basis for calculating an EP that more accurately reflected the actual U.S. selling prices of these companies. Section 772(c) of the Act requires the Department to make adjustments to the EP before it can be compared to the NV to establish a dumping margin. These adjustments typically include packing, movement charges, taxes, etc. Since the average gross unit prices reported by these companies were inclusive of movement and other selling expenses, it was necessary to restate these prices on a net unit price basis. This was accomplished by deducting from these gross unit prices, the weighted-average difference between the Section A gross unit prices of the fully-investigated companies and the calculated net unit prices for these fully-investigated companies. These adjustments and calculations using the actual data of the fully-investigated companies enabled us to establish antidumping margins for the separate-rate companies as accurately as possible. See May 5, 2003, "Separate Rate Calculations for the Non-Investigated Companies in the Investigation Remand" Memorandum to the Deputy Assistant Secretary, Import Administration ("Separate Rate Memo")

To calculate a separate rate for the four separate-rate companies, we weight-averaged the zero margins of the fully-investigated companies and the margins determined for the separate-rate companies for which we were able to calculate an estimated margin. We did not include rates that were based entirely on facts available (i.e., the PRC-wide rate). Based upon this methodology, we calculated a weighted-average margin of 3.83 percent, which we will assign as the antidumping duty margin for the four separate-rate companies. See Separate Rate Memo. This methodology should be affirmed by the Court since it is reasonable, based on substantial evidence, and in accordance with law.

COMMENTS

Comment 1: The recalculated separate rate is not based on the "best available information."

Plaintiffs' Argument: The plaintiffs assert that the Department, contrary to the Court's direction, failed to explain "in clear and specific terms" why the methodology it chose to calculate a margin for the separate rates companies is based on the best information available. Specifically, they claim that the Department did not explain why it relied upon two separate sources of data to calculate a net U.S. sales price and a normal value. For EP, the Department used certain verified data of the fully-investigated companies but for its calculation of NV, the Department relied on information from the petition. The plaintiffs contend that, to be internally consistent, the Department should use the verified data from the fully-investigated companies in calculating a weighted-average NV for the separate-rate companies. The plaintiffs also note that the NV from the petition is not the best available information to

use for the cooperative separate-rate companies because it was used as adverse "facts available" in the calculation of the adverse facts available margin for the uncooperative respondent in the investigation.

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

Department's Position: We disagree with the plaintiffs that using data from the petition for determining the NV is contrary to the Court's direction.

In recalculating the separate rate, the Department was able to determine an EP for the separate-rate companies that was based on the quantity, value and terms of each separate-rate company's U.S. sales during the period of investigation, as reported in their Section A responses. Because the reported terms of sale indicate that the sales value was inclusive of movement expenses, as best available information, we derived a weighted-average adjustment (as described above) based upon the verified information of the fully-investigated companies, and deducted this amount from each separate-rate company's gross average U.S. selling price. Thus, the Department only relied upon the verified information of the fully investigated companies to adjust the actual U.S. selling prices reported by the separate-rate companies. We further note that the gross average U.S. selling price of the separate-rate companies is well below the gross average selling price of the fully-investigated companies with the same reported terms of sale, indicating the possibility that had the separate-rate companies been fully investigated, their margin may have been greater than the zero margins calculated for the fully-investigated companies. See Separate Rate Memo.

In calculating the NV for the separate-rate companies, no company specific information was available from the record of the investigation for these companies. Section 773(c)(1) of the Act provides that "... {i}f (A) the subject merchandise is exported from a non-market economy country, and (B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a), the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses." Since the record of the investigation does not contain any company-specific factors of production data for the separate-rate companies, as best available information, we relied upon the corroborated factors of production from the petition. We did not rely upon the factors of production for the fully-investigated companies because the record of the investigation shows that the factors of production vary significantly from company to company. Thus, there is no basis for assuming that the factors of production for the fully-investigated companies are any more representative of the factors of production of the separate-rate companies than the information from the petition.

Further, the NV we determined for this remand redetermination is not the same NV used for the adverse "facts available" rate. This is because, consistent with the Court's determination in the Remand Determination, we have replaced the surrogate values used in the petition with Turkish data to

value juice apples, selling, general, and administrative expenses, overhead, and profit, which comprise the major factors of production for AJC.

Comment 2: The EP calculation incorrectly relies upon CEP sales information.

Plaintiffs' Argument: The plaintiffs argue that the adjustments the Department made to arrive at EP for the separate-rate companies included data from CEP sales of the fully-investigated companies. In plaintiffs' view, this improperly increases the amount of the average adjustment. Therefore, according to the plaintiffs, the calculation of the EP should be revised to exclude the CEP sales.

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

Department's Position: We agree with the plaintiffs. Since the Section A response of each separate-rate company indicates that these companies only had EP sales, we have removed the fully-investigated companies' CEP sales in calculating the adjustment applied to EP.

Comment 3: The EP calculation incorrectly deducts ocean freight from all separate-rate companies' sales.

Plaintiffs' Argument: The plaintiffs contend that the EPs the Department calculated for the separate-rate companies are distorted because they included adjustments for ocean freight charges for all separate-rate companies' sales. The plaintiffs claim that the separate-rate companies had some sales that were free on board ("FOB") which, therefore, did not incur ocean freight charges. Thus, according to the plaintiffs, applying a weighted-average adjustment that included a deduction for ocean freight charges to all separate-rate companies' sales including those with no ocean freight lowers the resulting EP value. The plaintiffs urge the Department to remove the ocean freight deduction from its adjustment for all separate-rate companies' sales or seek additional information from the separate-rate companies to establish which sales were made with or without ocean freight.

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

Department's Position: We agree with the plaintiffs that the reported terms of sale in Section A vary between companies and have adjusted our calculations to reflect the different terms. However, we disagree with the plaintiffs' presumption that the difference in the average gross selling price between the fully-investigated companies and the separate-rate companies is largely due to the terms of sale of the separate-rate companies. The separate-rate companies reported their Section A terms of sale as either C&F or C&F/FOB. The fully-investigated companies reported their Section A sales as either C&F/CIF/FOB, C&F/FOB, or C&F. We do not have information on the record from the separate-rate companies that identifies the volume and value of sales made at each term, e.g., C&F or FOB, although this information would be available from the record of the investigation of the fully-investigated

companies.

Since none of the separate-rate companies reported only FOB sales, it is reasonable to assume that a certain portion of their reported U.S. sales included ocean freight. Likewise since none of the fully-investigated companies reported only FOB sales, it is reasonable to assume that a certain portion of their reported U.S. sales included ocean freight. As described above, the adjustment made to the separate-rate companies' average gross unit U.S. prices was based on a factor derived by comparing fully-investigated companies' Section A average gross unit U.S. prices with their average net unit U.S. prices, as calculated in the investigation. In order to ensure apples-to-apples comparisons, as best available information, we have recalculated the adjustment factor to take into account the terms of sale stated in the Section A responses of the separate-rate companies and the fully investigated companies. Specifically, we grouped the separate-rate companies with the fully-investigated companies with the same Section A terms of sale and used the volume and value data of the fully-investigated companies in the group to calculate the EP adjustment for the separate-rate companies in that group. See Separate Rate Memo.

RESULTS OF REDETERMINATION

As a result of this remand, we have recalculated the weighted-average separate-rate margin for this investigation. The weighted-average margin percentages are as follows:

Xian Yang Fuan Juice Co., Ltd.	3.83 %
Xian Asia Qin Fruit Co.	3.83 %
Changsha Industrial Products & Minerals Import & Export Corporation	3.83 %
Shandong Foodstuffs Import & Export Corporation	3.83 %

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date