

Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to issue the final results of an antidumping duty investigation within 120 days of the date the preliminary results are issued. However, if the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days.

### Background

On October 2, 2000, the Department initiated the above-referenced review. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 58733 (October 2, 2000). The preliminary results were published in the **Federal Register** on September 11, 2001. See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review* ("Preliminary Results"), 66 FR 47163 (September 11, 2001). The current due date for the final results is January 9, 2001.

### Extension of Time Limits for the Final Results

Due to the complexity of issues involved in these cases, such as complicated cost accounting, downstream home market affiliated parties, and the addition of a new respondent in this seventh administrative review, it is not practicable to complete these reviews within the original time limit. Therefore, the Department has postponed the deadline for issuing the final results until March 11, 2002, which is 180 days after publication of the *Preliminary Results*.

Dated: October 12, 2001.

**Richard O. Weible,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-837]

### Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Greenhouse Tomatoes From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended preliminary determination of sales at less than fair value and postponement of final determination.

**SUMMARY:** The Department of Commerce is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of greenhouse tomatoes from Canada to reflect the correction of a significant ministerial error made in the dumping-margin calculation regarding BC Hot House Foods, Inc., and is postponing the final determination.

**EFFECTIVE DATE:** October 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Ross or Thomas Schauer, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone; (202) 482-4794 or (202) 482-0410, respectively.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR part 351 (April 2000).

### Significant Ministerial Error

The Department of Commerce (the Department) is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of greenhouse tomatoes from Canada to reflect the correction of a significant ministerial error made in the dumping-margin calculation regarding BC Hot House Foods, Inc., in that determination, pursuant to 19 CFR 351.224(g)(1) and (g)(2). A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying,

duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. See 19 CFR 351.224(f). A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the weighted-average dumping margin for BC Hot House Foods, Inc.

### Scope of Investigation

The merchandise subject to this investigation consists of all fresh or chilled tomatoes grown in greenhouses in Canada, e.g., common round tomatoes, cherry tomatoes, plum or pear tomatoes, and cluster or "on-the-vine" tomatoes. Specifically excluded from the scope of this investigation are all field-grown tomatoes.

The merchandise subject to this investigation may enter under item numbers 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, i.e., field-grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

### Ministerial-Error Allegation

On October 1, 2001, the Department issued its affirmative preliminary determination in this proceeding. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 66 FR 51010 (October 5, 2001) (*Preliminary Determination*). The following five companies are respondents in this investigation: BC Hot House Foods, Inc.,

Red Zoo Marketing (a.k.a. Produce Distributors, Inc.), Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors), J-D Marketing, Inc., and Mastronardi Produce Ltd.

On October 5 and 9, 2001, the Department received timely allegations of ministerial errors in the *Preliminary Determination* from BC Hot House Foods, Inc., and Red Zoo Marketing, respectively. BC Hot House Foods, Inc., alleged three ministerial errors: (1) The Department used arithmetically incorrect conversion factors in calculating the warehousing expense adjustment, (2) the Department incorrectly used a simple average, not a weighted average, to combine certain growers' costs, and (3) the Department incorrectly eliminated transactions with billing adjustments that exceed gross unit price only if the adjustments bore a negative value rather than eliminating billing adjustments with both positive and negative values that exceed gross unit price. See October 5, 2001, letter from BC Hot House Foods, Inc., alleging ministerial errors in the *Preliminary Determination*. Red Zoo Marketing alleges that the Department made a ministerial error in calculating separate costs for roma tomatoes-on-the-vine (TOVs) and cherry TOVs produced by Great Northern Hydroponics. See October 9, 2001, letter from Red Zoo Marketing alleging ministerial errors in the *Preliminary Determination*.

We have reviewed our preliminary dumping-margin calculations for BC Hot House Foods, Inc., and agree that only one of the three errors that the respondent alleges is a ministerial error within the meaning of 19 CFR 351.224(f). Specifically, we agree that we used arithmetically incorrect conversion factors in calculating the warehousing expense adjustment. In the *Preliminary Determination* we treated the warehousing expense adjustment as if the respondent reported it on a per kilogram basis. After further analyzing the record in response to the ministerial-error allegation, we find that the record indicates that BC Hot House Foods, Inc., reported the warehousing expense adjustment on a per-case basis as claimed in its ministerial-error allegation. For example, in the respondent's August 31, 2001, and September 5, 2001, submissions, it specifically stated that the unit basis for these warehousing expenses is Canadian dollars per case. Further, the figure BC Hot House Foods, Inc., used as the denominator for calculating the warehousing expense adjustment is only one third the size of the kilogram value that it reported in the volume and value table at Exhibit A-24 of its August 23,

2001, supplemental questionnaire response. This supports that BC Hot House Foods, Inc., calculated and reported the warehousing expense adjustment on a per-case basis. Furthermore, we determine that this ministerial error rises to the level of a "significant error" pursuant to 19 CFR 351.224(g)(1) and (g)(2), and we are amending the *Preliminary Determination* to reflect the correction of this significant ministerial error made in the dumping-margin calculations for BC Hot House Foods, Inc., pursuant to 19 CFR 351.224(e). See the BC Hot House Foods, Inc., Amended Preliminary Determination Analysis Memorandum dated October 15, 2001. We have corrected this ministerial error by treating the warehousing expense adjustment as a per-case amount in the dumping-margin calculation.

After analyzing the other two ministerial errors alleged by BC Hot House Foods, Inc., we have determined that the alleged "errors" the respondent describes are not ministerial errors, and that the allegations are more properly classified as comments on our methodology. With regard to the allegation that we incorrectly used a simple average, not a weighted average, to combine certain growers' costs, on page 6 of our October 1, 2001, Preliminary Determination Analysis Memorandum for BC Hot House Foods, Inc., we specifically stated that this is the methodology we intended to use where more than one of the "cost respondents" provided costs for a given product. This was not a ministerial error. Similarly, with regard to BC Hot House Foods, Inc.'s, allegations that we incorrectly eliminated transactions with billing adjustments that exceed gross unit price only if the adjustments bore a negative value, rather than eliminating billing adjustments with both positive and negative values that exceed gross unit price, we do not find this to be a ministerial error. The elimination of transactions with negative billing adjustments that exceed gross unit price is consistent with our practice of disregarding transactions with adjustments that result in negative prices. See, e.g., *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12781 (March 16, 1998). Further, the methodology we applied is consistent with the explanation provided on page 10 of our October 1, 2001, Preliminary Determination Analysis Memorandum for BC Hot House Foods, Inc. With regard to billing adjustments where the positive values of such adjustments

exceed gross unit price, we included such transactions in the dumping-margin calculation because there is no information on the record that supports their exclusion.

As noted above, Red Zoo Marketing alleges that the Department made a ministerial error in calculating separate costs for roma tomatoes-on-the-vine (TOVs) and cherry TOVs produced by Great Northern Hydroponics. Red Zoo Marketing claims that the cost figures the Department calculated are "so grossly overstated and unrealistic as to be clear error" and that the costs the Department calculated for these tomatoes are many times greater than the next highest cost of any type of tomato produced by any other Canadian producer. Red Zoo Marketing further claims that the vast majority of its production is of round red TOVs and alleges that cost differences between different varieties of TOVs are not significant because, according to Red Zoo Marketing, all require the same inputs and have comparable productivity and vine life.

Red Zoo Marketing further contends that the error was caused in large part by the Department's faulty question in its supplemental questionnaire. Because of the way the question was worded and because Red Zoo Marketing did not know the reason the Department asked the question, Red Zoo Marketing states that it reported the product-specific areas as of December 31, 1999, and December 31, 2000. Red Zoo Marketing claims that the areas do not and were not intended to represent actual usage of the available greenhouse facilities throughout the year.

Red Zoo Marketing suggests two methods for fixing the alleged ministerial error. First, it suggests that the Department should use a single per-unit cost calculated for all of Great Northern Hydroponics's production. Alternatively, if the Department finds it necessary to continue calculating costs for each type, Red Zoo Marketing suggests that the Department use the data it attached to its October 9, 2001, ministerial-error allegation which would provide a more accurate measurement of the areas under production throughout the period of investigation rather than the year-end snapshot the Department used for the preliminary determination.

After analyzing Red Zoo Marketing's comments, we have determined that the alleged "error" Red Zoo Marketing describes is not a ministerial error. We made our decisions for the preliminary determination based on the record before us. Red Zoo Marketing's comments about our segregation of

Great Northern Hydroponics's costs between tomato types and our use of the year-end product-specific area usage are more properly classified as comments on our methodology and not ministerial errors.

Further, to the extent the costs we calculated are "absurdly" high, it is not primarily a result of our methodology or the area data we used in calculating the costs but, rather, it overwhelmingly depends on the production quantities Great Northern Hydroponics reported. In examining Red Zoo Marketing's October 9, 2001, ministerial-error allegation, we found that Red Zoo Marketing used new production quantities for roma TOVs and cherry TOVs because "certain products were misclassified." See Red Zoo Marketing's October 9, 2001, ministerial-error allegation submission at page 10. This misclassification relates to how Red Zoo Marketing reported product-specific production quantities prior to the preliminary determination, not how the Department made adjustments in calculating the respondent's antidumping margin. The production quantities for these tomato types, which Red Zoo Marketing submitted after the preliminary determination in its ministerial error allegation, are approximately ten times greater than those production quantities Great Northern Hydroponics reported in its August 28, 2001, supplemental response. To the extent that there was an error in data the company submitted to us for use in the preliminary determination, it was not an error on our part. Accordingly, we have not recalculated Red Zoo Marketing's dumping margin for this amended preliminary determination. We intend, however, to examine this issue closely at verification.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination in accordance with sections 733(d) and (f) of the Act.

#### Amended Preliminary Determination

As a result of our correction of a ministerial error for BC Hot House Foods, Inc., we have determined that a revised weighted-average dumping margin of 33.95 percent applies to this company. In addition, we have recalculated the "all others" dumping margin to reflect the change to BC Hot House Foods, Inc.'s weighted-average dumping margin. The revised "all-others" dumping margin is 24.04 percent.

We are issuing an amendment to our instructions directing the Customs

Service to suspend liquidation on imports of subject merchandise. The suspension-of-liquidation instructions will remain in effect until further notice.

#### Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters which account for a significant proportion of exports of the subject merchandise. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 9, 2001, Red Zoo Marketing, Veg Gro Sales, Inc., J-D Marketing, Inc., Mastronardi Produce Ltd., and all Ontario companies subject to the "all others" rate (collectively referred to as the "Ontario companies") requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. On the same day the parties making this request also requested an extension of the provisional measures from a four-month period to not more than six months. See 19 CFR 351.201(e). According to Attachment III of the "Selection of Respondents" memorandum from Laurie Parkhill to Richard W. Moreland dated May 15, 2001, during 2000 the Ontario companies accounted for more than 60 percent of exports of tomatoes from Canada. For the reasons explained on page 2 of the same memorandum, we determine that these export statistics which we obtained from the Customs Service provide a reasonable basis for concluding that the Ontario companies account for a significant proportion of exports of the subject merchandise.

On October 11, 2001, BC Hot House Foods, Inc., filed a letter stating that it opposes postponement of the final determination. The respondent claims that its high preliminary dumping margin will adversely affect its suppliers' ability to obtain financing for the upcoming season, jeopardize commercial relationships with its customers, and make it difficult to coordinate marketing and planting strategies for next year. We do not find this to be a compelling reason for denying the extension requested by the

Ontario companies because such concerns are not different from those faced by any of the other companies that we preliminarily determined to be making sales at less than fair value.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the respondents requesting the postponement account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the Ontario companies' request and are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. Because February 17, 2002, is a Sunday, and February 18, 2002, is a federal holiday, we are postponing the final determination until no later than Tuesday, February 19, 2002. Suspension of liquidation, where applicable, will be extended accordingly.

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

#### Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's verification reports. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made, the hearing will be tentatively held three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street

and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, by November 5, 2001. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published in accordance with sections 733(f), 735(a)(2), and 777(i)(1) of the Act and 19 CFR 351.210(b)(2).

Dated: October 15, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-307-820, A-533-823, and A-834-807]

#### **Silicomanganese From Kazakhstan, India and Venezuela; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of postponement of preliminary determinations in antidumping duty investigations.

**SUMMARY:** The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of silicomanganese from Kazakhstan, India, and Venezuela from October 15, 2001, until no later than November 2, 2001. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** October 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jean Kemp (Kazakhstan), at (202) 482-4037, Sally Gannon (India), at (202) 482-0162, and Robert James (Venezuela), at (202) 482-0649, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW., Washington DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

##### **Postponement of Due Date for Preliminary Determinations**

On April 26, 2001, the Department initiated antidumping duty investigations of imports of silicomanganese from Kazakhstan, India, and Venezuela. The notice of initiation stated that we would issue our preliminary determinations no later than 140 days after the date of initiation. See 66 FR 22209 (May 3, 2001). On August 17, 2001, petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 30-day postponement, pursuant to section 733(c)(1)(A) of the Act. On September 17, Universal Ferro & Allied Chemical, Ltd. from India submitted a request that the Department fully extend the preliminary determination because of the time constraints. On September 24, Kazchrome and Considar submitted a request that the Department determine that the investigation on silicomanganese from Kazakhstan was extraordinarily complicated and postpone the preliminary determination to the full extent possible. On August 31, 2001, in accordance with petitioners' request for a postponement, the Department postponed the preliminary determinations in these investigations for 30 days. See 66 FR 45964. Currently, the preliminary determinations in these investigations are due on October 15, 2001.

However, pursuant to section 733(c)(1)(B) of the Act, we have determined that these investigations are "extraordinarily complicated" and are therefore fully extending the due date for the preliminary determinations to no later than November 2, 2001.

Under section 733(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that:

(i) The case is extraordinarily complicated by reason of:

(I) The number and complexity of the transactions to be investigated or adjustments to be considered;

(II) The novelty of the issues presented;

(III) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in each case all concerned parties are cooperating. Regarding the second requirement, we find that each of these four cases is extraordinarily complicated for the following reasons:

#### **Kazakhstan**

The Kazakhstani investigation is extraordinarily complicated because the Government of Kazakhstan and Transnational Co. Kazchrome and Aksu Ferroalloy Plant ("Kazchrome"), the producer, requested that the Department revoke Kazakhstan's non-market economy status or determine that the silicomanganese industry in Kazakhstan is a "market oriented industry." In addition, Kazchrome claims it does not have knowledge of which of its export sales to Alloy 2000, a trading company, are destined to the United States. The Department is considering other complex issues such as the relationship between Considar, a U.S.-based selling agent, and Alloy 2000, as well as the appropriate date of sale.

#### **India**

The Indian investigation is extraordinarily complicated because of certain sales and cost issues including depreciation, date of sale, and cost of production. In addition, one of the companies is not represented by counsel. The Department has just sent out extensive supplemental questionnaires for each of the two companies, and we consider the information to be analyzed for these two companies within the time constraints of this investigation to be voluminous.

#### **Venezuela**

The Venezuelan investigation is extraordinarily complicated due to complex issues related to date of sale, cost of production, and affiliation.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 10, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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